



# Oversight of the Office of the Information Commissioner

**Report No. 9, 55<sup>th</sup> Parliament**  
**Legal Affairs and Community Safety Committee**  
September 2015

## Legal Affairs and Community Safety Committee

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### Acknowledgements

The Committee acknowledges the assistance provided by the Queensland Information Commissioner, Privacy Commissioner and Right to Information Commissioner.



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## Abbreviations

Annual Report	Office of the Information Commissioner's 2013-14 Annual Report
Attorney-General	The Honourable Yvette D'Ath MP, Attorney-General and Minister for Justice and Minister for Training and Skills
committee	Legal Affairs and Community Safety Committee
2013 Report	Legal Affairs and Community Safety Committee Report No. 35, ' <i>Oversight of the Office of the Information Commissioner</i> ', for the previous reporting period, 2011-12
2014 Report	Legal Affairs and Community Safety Committee Report No. 74, ' <i>Oversight of the Office of the Information Commissioner</i> ', for the previous reporting period, 2012-13
Department	Department of Justice and Attorney-General
former committee	the previous Legal Affairs and Community Safety Committee, constituted for the 54 <sup>th</sup> parliament
IP Act	<i>Information Privacy Act 2009</i>
OIC	Office of the Information Commissioner
RTI Act	<i>Right to Information Act 2009</i>

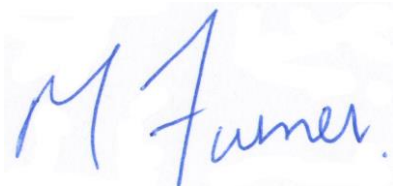
## Chair's foreword

The Legal Affairs and Community Safety Committee (committee) has oversight responsibility for the Office of the Information Commissioner. This report provides information regarding the performance of the Office of the Information Commissioner and its functions under the *Right to Information Act 2009* and the *Information Privacy Act 2009*.

The committee met with the Information Commissioner, Ms Rachael Rangihaeata, the Right to Information Commissioners, Ms Jenny Mead and Ms Clare Smith, and the Acting Privacy Commissioner, Ms Clare Smith in private session on Monday, 22 June 2015. This was followed by a public briefing on Wednesday, 15 July 2015. The committee also reviewed the Office of the Information Commissioner's Annual Report for 2013-2014 which was tabled in the Legislative Assembly on 30 September 2014.

On behalf of the committee, I thank the officers and staff of the Office of the Information Commissioner who assisted the committee in conducting this oversight inquiry.

I commend this Report to the House.

A handwritten signature in blue ink that reads "M Furner." The signature is written in a cursive style with a large initial "M" and a period at the end.

Mark Furner MP

Chair

## Recommendations

### Recommendation 1

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The committee recommends the Legislative Assembly note the advice of the Attorney-General and Minister for Justice to the committee at its Estimates hearing on 20 August 2015 that the recruitment and selection process for the Privacy Commissioner is now underway.

### Recommendation 2

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The committee recommends the Attorney-General and Minister for Justice confirm whether the Government intends to conduct the strategic review of the Office of the Information Commissioner under the *Right to Information Act 2009* and if so, when and with what action it will commence; and when a reviewer will be appointed.

### Recommendation 3

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The committee recommends the Attorney-General and Minister for Justice fulfil the legislative requirement to review the relevant sections of the *Right to Information Act 2009* and *Information Privacy Act 2009* as required by those Acts; and advise the committee about when this will be done.

## 1 Introduction

### 1.1 Role of the Committee

The Legal Affairs and Community Safety Committee (committee) is a portfolio committee of the Legislative Assembly which commenced on 27 March 2015 under the *Parliament of Queensland Act 2001* and the Standing Rules and Orders of the Legislative Assembly.<sup>1</sup>

The committee's primary areas of responsibility include:

- Justice and Attorney-General
- Police Service
- Fire and Emergency Services
- Training and Skills.

Section 93(1) of the *Parliament of Queensland Act 2001* provides that a portfolio committee is responsible for examining each bill and item of subordinate legislation in its portfolio areas to consider:

- the policy to be given effect by the legislation
- the application of fundamental legislative principles
- for subordinate legislation – its lawfulness.

The committee also has oversight responsibilities in respect of the performance of the functions of the Office of the Information Commissioner, the Office of the Queensland Ombudsman and the Criminal Organisation Public Interest Monitor, and the Queensland Electoral Commission when it is fulfilling its functions in respect of Part 3 of the *Electoral Act 1992* (that is, electoral redistributions).

This Report is made in relation to the committee's statutory oversight responsibility of the Office of the Information Commissioner (OIC).

### 1.2 Purpose and functions of the Office of the Information Commissioner

The OIC is an independent statutory body established under the *Right to Information Act 2009* (RTI Act) and the *Information Privacy Act 2009* (IP Act). Its functions include supporting Queensland government agencies '*...to be more open, accountable and transparent*'.<sup>2</sup> The OIC promotes '*...access to government-held information and protecting people's personal information held by the public sector*'.<sup>3</sup>

The OIC's 2013-14 Annual Report (Annual Report) identifies the OIC's services and responsibilities as follows:

*The services we provide include promoting information rights and responsibilities, fostering improvements in the quality of RTI and IP practice in agencies, conducting external reviews of agency decisions about access to information and resolving privacy complaints through mediation.*

*We are responsible for monitoring and reporting to the Queensland Parliament on the performance of public sector agencies in complying with the RTI and IP Act requirements.*<sup>4</sup>

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<sup>1</sup> *Parliament of Queensland Act 2001*, section 88 and Standing Order 194.

<sup>2</sup> Office of the Information Commissioner, *Annual Report 2013-14*, p i.

<sup>3</sup> Office of the Information Commissioner, <http://www.oic.qld.gov.au/about>, accessed 6 August 2015.

<sup>4</sup> Office of the Information Commissioner, *Annual Report 2013-14*, p i.



On its website, the OIC presents details of its role, stating it:

*...provides information and assistance to support Queensland public sector agencies to comply with the law, reviews agency decisions regarding access and amendment applications, deals with privacy complaints and makes decisions on whether an agency's privacy obligations can be waived or modified in the public interest.*<sup>5</sup>

### **1.3 Committee's responsibilities regarding the Office of the Information Commissioner**

The committee's oversight role in respect of the OIC is set out in the RTI Act and the IP Act. Under those Acts, the committee's functions include:

- to monitor and review the performance by the Information Commissioner of the commissioner's functions under the RTI Act and IP Act
- to report to the Legislative Assembly on any matter concerning the Information Commissioner, the commissioner's functions or the performance of the commissioner's functions that the committee considers should be drawn to the Legislative Assembly's attention
- to examine each annual report tabled in the Legislative Assembly by the Information Commissioner under the RTI Act and the IP Act and, if appropriate, to comment on any aspect of the report and to make recommendations
- to report to the Legislative Assembly any changes to the functions, structures and procedures of the OIC the committee considers desirable for the more effective operation of the RTI Act and the IP Act
- any other functions conferred on the committee by the RTI Act and IP Act.<sup>6</sup>

#### ***Statutory office holders***

The committee must be consulted on the selection process for appointment, and the appointment of, a person as Information Commissioner, Right to Information Commissioner, or Privacy Commissioner.<sup>7</sup>

#### **Information Commissioner and Right to Information Commissioners**

In its 2014 Report, the previous Legal Affairs and Community Safety Committee (former committee) was pleased to note the following appointments at the OIC:

- Ms Rachael Rangihaeata appointed to the role of Information Commissioner on 20 September 2013
- Ms Jenny Mead and Ms Clare Smith, reappointed as (part-time) Right to Information Commissioners.<sup>8</sup>

On 11 May 2015, the Attorney-General wrote to the committee about these appointments, noting they would end on 30 June 2015 and proposing the reappointment of Ms Rachael Rangihaeata to the role of Information Commissioner and Ms Jenny Mead and Ms Clare Smith to the role of (part-time)

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<sup>5</sup> Office of the Information Commissioner, <http://www.oic.qld.gov.au/about>, accessed 6 August 2015.

<sup>6</sup> *Right to Information Act 2009*, section 189; *Information Privacy Act 2009*, section 195.

<sup>7</sup> *Right to Information Act 2009*, section 135 (Information Commissioner); section 151 (Right to Information Commissioner); *Information Privacy Act 2009*, section 145 (Privacy Commissioner). Both Acts provide that the Committee is not consulted on the process of selection for appointment, where a person is re-appointed as Information Commissioner, Right to Information Commissioner or Privacy Commissioner.

<sup>8</sup> Legal Affairs and Community Safety Committee, *Oversight of the Office of the Information Commissioner*, Report No. 74, September 2014, p 2.

Right to Information Commissioners for a further five year term, commencing from 1 July 2015 up to and including 30 June 2020.<sup>9</sup>

The Attorney-General sought the committee's views on these reappointments as required under the IP Act, with the intention of recommending them to the Governor in Council as soon as possible.<sup>10</sup>

On 19 June 2015, the committee wrote to the Attorney-General, advising that the committee had resolved to endorse the appointments.<sup>11</sup> They have since been finalised, as per the Information Commissioner's evidence at the public hearing.

#### Privacy Commissioner

In its 2014 Report, the former committee noted that the permanent role of Privacy Commissioner had been vacant since December 2011 and continued to be filled by staff at the OIC on a temporary basis.<sup>12</sup> The committee notes that, at the time of writing, this continues to be the case.

At the committee's public briefing on 15 July 2015, the Information Commissioner commented on the role of Privacy Commissioner, noting that:

*...for the period of the annual report to which this meeting relates, Ms Clare Smith, Right to Information Commissioner, and Mr Lemm Ex, Principal Privacy Officer, held the role of Acting Privacy Commissioner for part of the year each due to the vacancy in the role and legislative restriction on the period for which a person may act in the role during a vacancy. Ms Mead, Right to Information Commissioner, is currently Acting Privacy Commissioner, as you are aware, and has performed that role since November 2014.<sup>13</sup>*

In its 2013 and 2014 Reports, the former committee recommended that the Privacy Commissioner be recruited as soon as possible. In response to the 2014 Report, the former government advised:

*There have been ongoing discussions between the Government and the Office of the Information Commissioner in relation to the appointment of the Privacy Commissioner. The Government will keep the Committee informed.<sup>14</sup>*

Encouragingly, at the public briefing Ms Rangihaeata advised the committee that:

*...the position of Queensland Privacy Commissioner will be advertised, to commence the recruitment and selection process, this weekend in national and state newspapers and on the Queensland government employment website, SmartJobs.*

*The Attorney's approval to advertise the position is a significant development, as the position has been vacant since November 2011 and filled on an acting basis since that time. Utilising senior staff of the Office of the Information Commissioner to fill this vacancy for an extended period with associated uncertainty has had an impact across our small office. I will assist the Attorney-General and Department of Justice and Attorney-General to progress this process as soon as possible to ensure a Privacy Commissioner is appointed before Ms Mead's acting appointment expires in October.<sup>15</sup>*

Despite recent progress in finalising this long outstanding matter, the permanent position remains vacant and the current recruitment process is yet to be completed. The committee reiterates the former committee's commentary from its 2013 and 2014 Reports that it has no concerns about the

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<sup>9</sup> Letter from the Attorney-General and Minister for Justice and Minister for Training and Skills, 11 May 2015, p 1.

<sup>10</sup> Letter from the Attorney-General and Minister for Justice and Minister for Training and Skills, 11 May 2015, p 1.

<sup>11</sup> Letter to the Attorney-General and Minister for Justice and Minister for Training and Skills, 19 June 2015, p 1.

<sup>12</sup> Legal Affairs and Community Safety Committee, *Oversight of the Office of the Information Commissioner*, Report No. 74, September 2014, p 2.

<sup>13</sup> *Record of Proceedings (Hansard)*, Public Hearing, Legal Affairs and Community Safety Committee, 15 July 2015, p 1.

<sup>14</sup> *Government response to recommendations of the Legal Affairs and Community Safety Committee Report No. 74*, Oversight of the Office of the Information Commissioner, tabled 12 September 2014, p 1.

<sup>15</sup> *Record of Proceedings (Hansard)*, Public Hearing, Legal Affairs and Community Safety Committee, 15 July 2015, p 1.

skill level and ability of the persons temporarily acting in the role of Privacy Commissioner however considers that for the purposes of certainty and direction within the OIC, it would be preferable for the vacant statutory position of Privacy Commissioner to be filled on a permanent basis as soon as possible.

**Recommendation 1**

The committee recommends the Legislative Assembly note the advice of the Attorney-General and Minister for Justice to the committee at its Estimates hearing on 20 August 2015 that the recruitment and selection process for the Privacy Commissioner is now underway.

**Strategic Review of the Office of the Information Commissioner**

Under the RTI Act, a strategic review of the OIC must be conducted within four years after the commencement of the relevant section of the RTI Act,<sup>16</sup> followed by further strategic reviews at least every five years.<sup>17</sup> The relevant section of the RTI Act commenced 1 July 2009, meaning the initial strategic review was required to be conducted by 1 July 2013.

In the 2014 Report, the former committee recommended that the then Attorney-General confirm whether the government intended to conduct the strategic review of the OIC under the RTI Act, and if so, when it would commence and a reviewer will be appointed.<sup>18</sup> In response, the former government advised:

*The Government intends to conduct the strategic review of the Office of the Information Commissioner, and will provide further advice to the Committee about the timeframe for the review as soon as possible.*<sup>19</sup>

The Annual Report comments on the required strategic review:

*The terms of the strategic review are to be decided by the Governor-in-Council. Before a reviewer is appointed, the Minister must consult with the parliamentary committee and the Information Commissioner about the appointment of the reviewer and the terms of reference for the review.*

The strategic review is to include a review of the commissioner's functions and performance of those functions to assess whether they are being performed economically, effectively and efficiently. A strategic review is yet to be conducted.<sup>20</sup>

These comments repeat those made in the OIC's prior annual report.<sup>21</sup>

In the OIC's written response to the committee's Questions on Notice, Ms Rangihaeata commented on her understanding of the current status of progress of the strategic review: '*I have been advised by the Attorney-General that the process will commence in the near future*'.<sup>22</sup>

As noted in the 2013 and 2014 Reports, the committee will have additional involvement at the end of the process, as once the report on the strategic review is tabled in the Legislative Assembly, it is

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<sup>16</sup> *Right to Information Act 2009*, section 186(2).

<sup>17</sup> *Right to Information Act 2009*, section 186(2) and (3).

<sup>18</sup> Legal Affairs and Community Safety Committee, *Oversight of the Office of the Information Commissioner*, Report No. 74, September 2014, p 5.

<sup>19</sup> *Government response to recommendations of the Legal Affairs and Community Safety Committee Report No. 74*, Oversight of the Office of the Information Commissioner, tabled 12 September 2014, p 1.

<sup>20</sup> Office of the Information Commissioner, *Annual Report 2013-14*, p 30.

<sup>21</sup> See: Office of the Information Commissioner, *Annual Report 2012-13*, p 12.

<sup>22</sup> Office of the Information Commissioner, Response to Questions on Notice, July 2015, p 18.

referred to the committee for examination.<sup>23</sup> Both committee reports also included the following commentary, including footnotes:

*Both the Committee and the OIC have had the opportunity to comment on the draft Terms of Reference for the strategic review, circulated in January 2013 by the Department.<sup>24</sup> The OIC considered that it was adequately consulted and agreed the terms of reference appeared 'comprehensive and appropriate'.<sup>25</sup> Similarly, the Committee also considered the draft Terms of Reference were appropriate and provided no further specific comments to the Attorney-General.<sup>26</sup>*

The committee acknowledges the change of government since the 2014 Report, but notes there is a statutory requirement in the RTI Act for a strategic review of the OIC to occur. It is now well overdue.

As considerable time has now passed without further update since receiving the former government's response to the prior committee's recommendations in September 2014, and given the change of government in early 2015, the committee requires a further update on the status of the strategic review in order for it to fulfil its functional oversight responsibility.

### **Recommendation 2**

The committee recommends the Attorney-General and Minister for Justice confirm whether the Government intends to conduct the strategic review of the Office of the Information Commissioner under the *Right to Information Act 2009* and if so, when and with what action it will commence; and when a reviewer will be appointed.

## **1.4 Legislative reviews**

In addition to the strategic review of the OIC detailed in section 1.3 of this report, the responsible Minister must start reviews of the RTI Act and IP Act, no later than two years after the commencement of the relevant sections of those Acts.<sup>27</sup>

The RTI Act and IP Act substantively commenced on 1 July 2009, meaning the reviews were required to start no later than 1 July 2011. The former Attorney-General wrote to the former committee on 1 October 2013, noting initial work commenced by the necessary date.<sup>28</sup>

The objects of the reviews, as set out in the Acts, are to:

- decide whether the primary objects of the RTI Act and IP Act remain valid
- decide whether the RTI Act and IP Act are meeting their primary objects
- decide whether the provisions of the RTI Act and IP Act are appropriate for meeting their primary objects
- investigate any specific issue recommended by the Minister or Information Commissioner.<sup>29</sup>
- Upon completion of these reviews, reports relating to their outcome must be tabled in the Legislative Assembly, as soon as practicable.<sup>30</sup>

<sup>23</sup> *Right to Information Act 2009*, section 188(7) and section 189(e).

<sup>24</sup> Office of the Information Commissioner, Answers to Questions on Notice, March 2013, pages 20-21; Letter to the Legal Affairs and Community Safety Committee from the Attorney-General and Minister for Justice, 9 January 2013.

<sup>25</sup> Office of the Information Commissioner, Answers to Questions on Notice, March 2013, p 20.

<sup>26</sup> Letter to the Attorney-General and Minister for Justice, 25 January 2013.

<sup>27</sup> *Right to Information Act 2009*, section 183(1); *Information Privacy Act 2009*, section 192(1).

<sup>28</sup> Letter from the Attorney-General and Minister for Justice, 1 October 2013, p 1.

<sup>29</sup> *Right to Information Act 2009*, section 183; *Information Privacy Act 2009*, section 192.

<sup>30</sup> *Right to Information Act 2009*, section 183(3); *Information Privacy Act 2009*, section 192(3).

As excerpted in the 2014 Report, the former Attorney-General advised the former committee:

*On 5 August 2013, I released two discussion papers as part of the review. One of these papers considers the RTI Act and the access and amendment provisions of the IP Act. The other considers the IP Act's privacy provisions. The papers aim to identify the key issues and challenges raised in the legislation.<sup>31</sup>*

The discussion papers were released to the public and the closing date for submissions was 15 November 2013.<sup>32</sup>

The Annual Report advises that the OIC welcomed the opportunity to provide input during public consultation on the former government's review of the RTI and IP Acts:

*We made comprehensive submissions on the discussion papers and recommended key issues for consideration in the review to increase certainty and reduce red tape for both agencies and the community and help prevent inefficient use of agency and our resources. Key recommendations included consolidating access applications under a single Act, strengthening the push model, mechanisms to manage demand for external review, streamlining legislative processes and increasing certainty and consistency.<sup>33</sup>*

The 2014 Report provides further detail on the OIC's submissions to the reviews.<sup>34</sup>

No further advice on the legislative reviews has been given to the committee since the October 2013 advice from the former Attorney-General.

In the OIC's written response to the committee's Questions on Notice, the Information Commissioner commented on her understanding of the current status of the legislative review: *'The current status of the legislative review is a matter for the Attorney-General'*.<sup>35</sup>

In the committee's public hearing, the committee queried what broad issues the Information Commissioner wanted to see addressed in the reviews. She responded:

*As a general theme, the review of the acts under the legislation is about whether the objects are still appropriate, if you like, and whether the legislation is effectively supporting those objects. We believe that the objects are still appropriate. The legislation is quite good, but there are certainly opportunities to streamline the legislation which will improve the certainty and remove some red tape from there for everybody.<sup>36</sup>*

The Information Commissioner spoke of options to improve the legislation and commented further on the review process:

*We have identified some of those [options], drawing on both our experience and stakeholders' feedback to us. It is important for us that there are opportunities to help us reduce the external review demand, which will go to mitigate that and mitigate the need for additional resources for the office as well. That is a key concern, of course, for us and one that we would like to progress. We make quite comprehensive submissions. I understand that the Attorney would like to consider that further and possibly consult further on that process. The public consultation on that review was in 2013. So there may have been developments since that time.<sup>37</sup>*

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<sup>31</sup> Letter from the Attorney-General and Minister for Justice, 1 October 2013, p 1.

<sup>32</sup> Letter from the Attorney-General and Minister for Justice, 1 October 2013, p 2.

<sup>33</sup> Office of the Information Commissioner, *Annual Report 2013-14*, p 4.

<sup>34</sup> Legal Affairs and Community Safety Committee, *Oversight of the Office of the Information Commissioner*, Report No. 74, September 2014, pp 5-6.

<sup>35</sup> Office of the Information Commissioner, Response to Questions on Notice, July 2015, p 18.

<sup>36</sup> *Record of Proceedings (Hansard)*, Public Hearing, Legal Affairs and Community Safety Committee, 15 July 2015, p 7.

<sup>37</sup> *Record of Proceedings (Hansard)*, Public Hearing, Legal Affairs and Community Safety Committee, 15 July 2015, p 7.

At the committee's public hearing, the Information Commissioner also spoke of temporary funding, related staff retention issues and the need for the legislative review:

*Once we stabilise our resourcing and the legislative review is finalised and we obtain some policy solutions—I think it will be a combination in terms of resourcing and policy options to resolve the external review demand issue—and we have a resolution there going forward, that will provide a lot of stability to the office and that will certainly go to maximising our effectiveness and our efficiency, because for the last six years that has had a major impact on our office.<sup>38</sup>*

She continued:

*Even when we have had the ongoing funding year to year we do lose staff. So it has been an ongoing issue in terms of retaining staff. We really do need to get a permanent solution. All agencies involved are very aware of the issue and we have ongoing discussions about this, but it is very linked to the legislative review.<sup>39</sup>*

The committee notes the failure of successive governments to fulfil the legislative requirement to review the Acts, and urges the government to fulfil this requirement. The committee also acknowledges the importance to the OIC of the legislative review process. The legislative review will assist the OIC to function efficiently and effectively. Given the time which has elapsed since the former government's consultation process, the committee encourages the Attorney-General to consult further with the OIC and continues to await the outcome of the statutory review with great interest.

### **Recommendation 3**

The committee recommends the Attorney-General and Minister for Justice fulfil the legislative requirement to review the relevant sections of the *Right to Information Act 2009* and *Information Privacy Act 2009* as required by those Acts; and advise the committee about when this will be done.

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<sup>38</sup> *Record of Proceedings (Hansard)*, Public Hearing, Legal Affairs and Community Safety Committee, 15 July 2015, p 5.

<sup>39</sup> *Record of Proceedings (Hansard)*, Public Hearing, Legal Affairs and Community Safety Committee, 15 July 2015, p 5.

## 2 Oversight of the Information Commissioner

### 2.1 Process followed by the Committee

In conducting its oversight functions of the Information Commissioner, the committee followed the process adopted by previous committees, with the addition of a private, introductory briefing shortly after the committee was formed in May 2015.

That process included:

- Questions on Notice were provided to the Information Commissioner with a request for responses to be provided prior to the meeting
- a public hearing with the Information Commissioner to discuss her responses to the Questions on Notice and to ask questions without notice
- providing this Report.

On 5 June 2015, the committee provided Questions on Notice to the Information Commissioner.

On 22 June 2015, the OIC met with the committee in private session.

On 30 June 2015, the committee received the Information Commissioner's response to its Questions on Notice. This is attached at **Appendix A**.

On 3 July 2015, the Information Commissioner supplied supplementary material to its response to question 2 of the committee's Questions on Notice. This is attached at **Appendix A**.

On 15 July 2015, the committee held a public hearing with the Information Commissioner to discuss the responses to the Questions on Notice, the Commissioner's functions and performance under the RTI Act and IP Act and the Annual Report.

In attendance with the Information Commissioner were:

- Ms Clare Smith, Right to Information Commissioner
- Ms Jenny Mead, Acting Privacy Commissioner.

A copy of the transcript of the public hearing is also available on the committee's website.<sup>40</sup>

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<sup>40</sup> [www.parliament.qld.gov.au/work-of-committees/committees/LACSC](http://www.parliament.qld.gov.au/work-of-committees/committees/LACSC)

### 3 Committee consideration

The committee is pleased with the performance of the OIC during the reporting period, and acknowledges the efforts of Ms Rachael Rangihaeata, who was appointed as Information Commissioner on 20 September 2013.<sup>41</sup>

The committee acknowledges the efforts of Ms Clare Smith, Right to Information Commissioner, and Mr Lemm Ex, Principal Privacy Officer, who each held the role of Acting Privacy Commissioner for part of the 2013-14 financial year.

Additionally, the committee acknowledges the efforts of all staff of the OIC, including Ms Jenny Mead, also Right to Information Commissioner.

In her opening statement at the committee's public hearing, the Information Commissioner acknowledged the very high standard of service provided by the OIC:

*The exceptional skill and expertise of our staff, and the processes, systems and knowledge base our office has established, have been the subject of excellent feedback and recognition from other jurisdictions, which is a tribute to all involved, both past and present.*<sup>42</sup>

According to the Information Commissioner, in 2013-14 the OIC observed and reported improvements across all sectors of Queensland government agencies including:

- *improved performance reported by agencies in implementation of RTI and IP obligations across all sectors of Queensland government agencies in the 2013 Electronic Audit*
- *desktop audits of online information show ongoing improvement in agency websites providing clear pathways to access information, publication schemes, disclosure logs and privacy compliance*
- *compliance reviews have identified good practices and demonstrated agency commitment to achieving full compliance*
- *strong agency engagement in training, seeking expert privacy advice about projects and policies, and accessing authoritative online resources and enquiry service assistance to improve quality of RTI and IP practices.*<sup>43</sup>

The committee is pleased to note the Annual Report indicates a significant increase in the number of people trained. The target of 500 people was considerably exceeded, with the OIC achieving 8,479 people trained:

*In 2013-14 the Office completed a suite of free online general awareness and specialised training courses, which is a key initiative to ensure all agency staff can access training resources when they need it, from anywhere across Queensland. General awareness training supports agencies to ensure all staff understand what right to information and privacy obligations mean for their agency and them as an individual staff member. We have encouraged agencies to build this training into their induction for new staff, and ensure all staff complete the training.*<sup>44</sup>

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<sup>41</sup> Office of the Information Commissioner, *Annual Report 2013-14*, p 27.

<sup>42</sup> *Record of Proceedings (Hansard)*, Public Hearing, Legal Affairs and Community Safety Committee, 15 July 2015, p 3.

<sup>43</sup> Office of the Information Commissioner, *Annual Report 2013-14*, p 4.

<sup>44</sup> Office of the Information Commissioner, *Annual Report 2013-14*, p 4.



The Annual Report indicates that, during the 2013-14 year, the OIC focused on improving awareness and compliance in regional areas of Queensland:

*Through our regional engagement project our officers contacted 126 agencies to ensure agency officers were aware of their responsibilities and offer support and assistance. The Privacy Commissioner and I met with chief executive officers, mayors, councillors, and senior officers of local government and Hospital and Health Services across Queensland.<sup>45</sup>*

In the public hearing, the Information Commissioner advised the committee on the reasons for this increased focus:

*...in part due to the results of the self-assessment electronic audit which showed that the local government and Hospital and Health Service sectors required greater improvement in implementing their right to information and information privacy obligations. We will continue to engage with regional leaders and support all agencies to improve compliance and adopt good practices.<sup>46</sup>*

The committee is pleased to note the OIC's participation in community engagement, especially in regional areas.

According to the Annual Report, the OIC received a record number of 500 external review applications in 2013-14 and demand for external review continued to significantly exceed levels of demand prior to commencement of the RTI Act and IP Act.<sup>47</sup>

In the public hearing, the Information Commissioner attributed the office's ability to address the external review demand in 2013-14 to temporary additional funds in that year, which ensured: '*...no applications were 12 months or older at 30 June, and 73 per cent and 45 per cent were closed within six and three months respectively*'.<sup>48</sup> Whilst noting the impact of gains made in 2013-14 continued to be felt in early 2014-15, assisting timeliness in the first part of that year, she expressed concern for the future:

*...the lack of temporary resources for the additional demand in 2014-15 and resulting loss of external review staff has affected the number of closed applications in 2014-15, and the impact on timeliness will continue into 2015-16.<sup>49</sup>*

The committee is concerned with the funding and resourcing challenges experienced by the OIC and their impact on the OIC's ability to discharge its role. As expressed in both the 2013 and 2014 Reports, the very overdue strategic review of the OIC should take place to ensure the Commissioner's functions, and performance of those functions, continue to meet the RTI Act's objectives and needs of stakeholders.

The Annual Report states that, it is clear from five years of experience since the commencement of the IP Act, that:

*...there is an ongoing and increasing demand for independent authoritative advice for government agencies to ensure key policies, projects and services are delivered in an efficient and effective manner that meets community expectations about responsible use, disclosure and storage of personal information.<sup>50</sup>*

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<sup>45</sup> Office of the Information Commissioner, *Annual Report 2013-14*, p 4.

<sup>46</sup> *Record of Proceedings (Hansard)*, Public Hearing, Legal Affairs and Community Safety Committee, 15 July 2015, p 3.

<sup>47</sup> Office of the Information Commissioner, *Annual Report 2013-14*, pp 1 & 4; *Record of Proceedings (Hansard)*, Public Hearing, Legal Affairs and Community Safety Committee, 15 July 2015, p 2.

<sup>48</sup> *Record of Proceedings (Hansard)*, Public Hearing, Legal Affairs and Community Safety Committee, 15 July 2015, p 2.

<sup>49</sup> *Record of Proceedings (Hansard)*, Public Hearing, Legal Affairs and Community Safety Committee, 15 July 2015, p 2.

<sup>50</sup> Office of the Information Commissioner, *Annual Report 2013-14*, p 5.

In 2013-14, the OIC:

- included an additional service objective in recognition of the substantial demand from agencies for assistance to achieve compliance with the privacy principles
- focused on privacy obligations in complaints management, conducting a review of how effectively agencies incorporated privacy into their complaint management systems and identifying good practices that other agencies could adapt and adopt
- promoted better practices in relation to dealing with complaints specifically about privacy concerns, through our online training and by engaging with senior management to encourage greater resolution of privacy complaints by agencies in the first instance.<sup>51</sup>

The committee acknowledges the OIC's efforts in relation to the privacy aspects of its role.

### 3.1 Performance

In relation to the OIC's performance for 2013-2014 in providing an independent, timely and fair review of decisions, the committee notes:

- the OIC finalised a record 500 external review applications while also receiving 451 new applications<sup>52</sup>
- 89% of external review applications were resolved informally without a formal decision.<sup>53</sup> This was very similar to 2012-2013
- 72% of applicants were satisfied overall with the external review service provided in 2013-14.<sup>54</sup> This was down from 78% in 2012-13
- no reviews more than 12 months old remained open at 30 June 2014<sup>55</sup>
- 73% of finalised applications were closed in less than six months.<sup>56</sup>

With respect to the OIC's performance in providing an independent and timely privacy complaint resolution service, the committee notes:

- the OIC received 32 privacy complaints made under the IP Act and finalised 41<sup>57</sup>
- 100% of complainants were satisfied with the mediation service provided<sup>58</sup>
- 100% of agencies were satisfied with the privacy service provided<sup>59</sup>
- as at 30 June 2014, no privacy complaint was more than 12 months old.<sup>60</sup>

In fostering improvements in the quality of practice in right to information and information privacy in public sector agencies, the committee notes that the OIC:

- conducted 47 performance monitoring and compliance activities, including reporting on the compliance of agencies with legislative obligations<sup>61</sup>

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<sup>51</sup> *ibid*, p 5.

<sup>52</sup> *ibid*, p 10.

<sup>53</sup> *ibid*, p 11.

<sup>54</sup> *ibid*, p 11.

<sup>55</sup> *ibid*, p 12.

<sup>56</sup> *ibid*, p 12.

<sup>57</sup> *ibid*, p 13.

<sup>58</sup> *ibid*, p 13.

<sup>59</sup> *ibid*, p 13.

<sup>60</sup> *ibid*, p 13.

<sup>61</sup> *ibid*, p 17.

- published new information resources and reviewed existing resources for the community and government agencies<sup>62</sup>
- provided 36 training activities, trained 8,479 people and launched four new online training courses<sup>63</sup>
- provided integral privacy advice to government agencies about incorporating responsible personal information management into a wide range of new technologies and initiatives, including the Queensland Government's Open Data scheme and the increasing movement to adoption of cloud services<sup>64</sup>
- provided formal written submissions to a number of parliamentary committees, inquiries and reviews at both state and federal level, including comprehensive submissions on the reviews of the RTI Act and IP Act.<sup>65</sup>

In relation to promoting the principles and practices of right to information and information privacy in the community and within government, the committee notes that the OIC:

- continued to enhance its website to increase usability and accessibility. The website received 97,216 visits which is an increase of 27% from 2012 – 13<sup>66</sup>
- actively engaged through meetings, presentations and media with agencies and the community across Queensland, in particular regional and rural centres, in order to raise awareness of privacy and RTI issues<sup>67</sup>
- participated in 2014 Privacy Awareness Week and raised awareness of privacy issues featuring the theme of 'Privacy. Take charge' and 'Privacy. Handle with care'<sup>68</sup>
- promoted 2013 Right to Information Day and Solomon Lecture through a number of activities to raise awareness in the community and across government about information rights and responsibilities. The lecture was delivered by Griffith University's Professor Anna Stewart on 'Finding Gold in Mountains of Administrative Data'<sup>69</sup>
- provided timely advice in response to 3,974 enquiries received by telephone and in writing.<sup>70</sup>

### 3.2 Future priorities

The OIC identified the following priorities for 2014-15:

- Review training, information resources and knowledge management systems to reflect legislative changes
- Promote and encourage greater use of online access to information and administrative access schemes
- Improve regional awareness and compliance with respect to information rights and responsibilities

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<sup>62</sup> *ibid*, p 18.

<sup>63</sup> *ibid*, p 18.

<sup>64</sup> *ibid*, p 19.

<sup>65</sup> *ibid*, p 20.

<sup>66</sup> *ibid*, p 23.

<sup>67</sup> *ibid*, p 23.

<sup>68</sup> *ibid*, p 24.

<sup>69</sup> *ibid*, p 24.

<sup>70</sup> *ibid*, p 24.

- Encourage agency leaders to champion a strong culture of openness and respect for protecting personal information
- Support agencies to meet right to information and information privacy obligations and apply good practices in implementing initiatives such as outsourcing, open data, the 'one-stop shop' portal and increased information sharing across government and with contracted service providers.<sup>71</sup>

At the committee's public hearing, the Information Commissioner spoke of the future:

*The imminent recruitment process for a Privacy Commissioner, the recent long-term reappointment of the right to information commissioners and myself to the office for a period of five years and the commitments by the government to progress the strategic review of the office and the legislative review are very encouraging for restoring stability and certainty to the office, and in turn assisting to maximise the efficiency and effectiveness of the office in performing the statutory functions. So 2015-16 will be an important year for the office and presents many challenges and opportunities.*<sup>72</sup>

The committee notes the OIC's expectation that stability and certainty will be restored to the OIC and the committee considers that implementation of the recommendations in this report will provide some assistance in this regard.

The committee takes this opportunity to express its continued support of the OIC in promoting government accountability, openness and transparency.

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<sup>71</sup> ibid p 7.

<sup>72</sup> *Record of Proceedings (Hansard)*, Public Hearing, Legal Affairs and Community Safety Committee, 15 July 2015, p 3.

## **Appendix A - Written Responses to Questions on Notice**

# OVERSIGHT MEETING WITH THE OFFICE OF THE INFORMATION COMMISSIONER

July 2015

## WRITTEN RESPONSES TO QUESTIONS ON NOTICE

### Performance

- 1. The Committee notes that the actual median number of days for the OIC to finalise a review was 106 days. This timeframe is nearly 18% longer than the OIC's target of 90 median days (2013-2014 Annual Report, page 10). Can you please provide details regarding why the target number of days was exceeded in 2013-14?**

Each year, OIC measures its performance against a 90 median day closure rate. Timeliness in resolving matters is a major factor affecting applicant satisfaction. Agencies in response to OIC surveys have also consistently commented on the need for quick resolution of external reviews. Setting a timeframe of 90 median days to finalise a review is one of a number of ways OIC measures its timeliness.

OIC investigates the reason or reasons why the target number of days is not met as well as why there is a variance between years.<sup>1</sup>

The median days to finalise a review fluctuates between the years, but OIC considers that it remains a useful 'yardstick' among other measures to evaluate its timeliness, discern trends, allocate resources and compare workloads between financial years.

Often however, the time taken to close an external review is not within OIC's control. Timeliness in closing external reviews often depends on the willingness and capacity of the parties to engage in the external review and in particular the informal resolution process. It also is dependent on the nature of the review.

Factors that impact on timeliness include the:

- number of documents;
- complexity of the issues
- time taken by agencies and parties to provide responses and submissions;
- involvement of and number of third parties in the external review and
- attitude of the participants.

OIC mentioned in its response to the previous Committee in May 2014 when discussing the 59 median days result in the 2012-2013 financial year, that it expected there would not be any improvement on the median days outcome in the 2013-2014 financial year.<sup>2</sup>

The reasons then proffered was because a large number of related applications for the 2013-2014 financial year had involved corporate applicants requiring consideration of a large volume of

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<sup>1</sup> As outlined in figure 5 of the 2013-2014 Annual Report at page 10, the median days in 2012-13 was 59 days and 106 days in 2013-2014.

<sup>2</sup> OIC's written response in May 2014 the previous Committee's, Question on Notice 3.

documents regarding significant infrastructure projects or proposals. Whilst very few of these matters have resulted in written decisions, they do take several months to resolve. This has proven to be correct.

While a high number of external review matters continued to be resolved informally, in 2013-14, over 100 more matters were not settled until a preliminary view was issued by OIC than in the year before.<sup>3</sup> A review of the 2012-2013 matters indicates that 45 matters were closed as the OIC determined they were out of jurisdiction. In 2013-2014, only 20 matters were closed for this reason.<sup>4</sup>

In some instances, delays have been due to staff movement, particularly as a proportion of external review funding in 2013-14 allowed for a number of staff to only be employed on a temporary basis. This meant that, there was a turnover of external review staff, resulting in vacancies for periods of the financial year, additional recruitment, training and supervision of new staff. Such issues have impacted on timeliness in 2013-14.

OIC has sought to identify early in the external review, whether informal resolution is not possible and to allocate it as soon as possible to a review team for formal processing.

**2. The total number of external review applications received in the 2013-14 period was 451 which represented a decrease from 533 external review applications received in 2012-13. Do you know why there has been a decrease in the actual number of external review applications received? (Annual Report, page 11).**

OIC can only speculate about why there has been a decrease in the actual number of external review applications received in the 2013-2014 financial year.

It may be due to a number of factors. For example, OIC through its performance monitoring function has observed and reported on improvements in compliance with *Right to Information Act 2009* (RTI Act) and *Information Privacy Act 2009* (IP Act) obligations across all sectors of Queensland government agencies.<sup>5</sup> Accordingly, it may be that agencies are making available information outside the formal RTI process through publication schemes, administrative access schemes, and other informal release processes, without the need for members of the community to make formal access applications to agencies for information.

OIC's training and other resources have also contributed to agencies allowing greater administrative access to its information holdings as well as assisting agencies to process access applications in a more successful manner by such things as promoting early contact with applicants to discuss what information is requested.

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<sup>3</sup> In 2012-2013, 172 matters were informally resolved after a preliminary view was issued. In 2013-2014, 287 matters were informally resolved after a preliminary view had been issued by OIC.

<sup>4</sup> While the majority of out of jurisdiction matters can be settled quickly, for example, the external review was not filed within time and does not have merit or was made to an agency that is not an entity under the RTI Act.

<sup>5</sup> See page 4 OIC Annual Report 2013-2014.

As mentioned earlier, this decrease in external reviews may be due to fewer access applications being made to agencies in this period. External Reviews have always represented a very small percentage of the number of access applications received by agencies.

Unfortunately OIC has no data on the number of access applications made in 2013-2014 as the Annual Report for this period is not yet tabled in Parliament.<sup>6</sup> The most recent data available is for the 2012-13 financial year.<sup>7</sup> In that financial year, 13,381 access applications were received by agencies.<sup>8</sup> In that same financial year, OIC received 533 external review applications. While 533 represented a large increase in applications from the previous year, the 2012-13 Annual Report showed that the broader sector had not experienced a similar increase in initial applications to access documents.

Also, it has been observed, that a controversial government decision or a decision that has an impact on a large number of the community can generate a good deal of community interest and consequently a large number of requests for information from agencies. This subsequently leads to an increase in external reviews to OIC. This is to some extent outside the control of the agencies and OIC.

- 3. It is also noted the number of external reviews finalised over the year was a total of 500 in 2013-14, compared with 458 from the previous reporting period (Annual Report, page 10). It is noted that this was a record number of applications finalised. What factors can be attributed to this increase? (Annual Report, page 10)**

This high closure rate can be attributed to a combination of factors including the temporary external review staffing resources, the continued emphasis on early resolution and ongoing efforts to project manage files, and groups of associated files, during the reporting period. Notably, 2013-14 was also the first year that OIC had commenced the financial year without an application on hand that was over 12 months old, which facilitated overall outcomes of timely resolution for the external review function.

- 4. In 2013-14, the target for finalised review applications was 100%. However, the OIC achieved 110% due to carry-over from the previous period (Annual Report, page 10). Are you anticipating a similar carry-over in the next reporting period?**

It is possible that there will be a closure rate greater than 100% due to carry over into this next reporting period as, due to applications being at varying stages of the external review process at any time, there will always be some amount of applications on hand at the end of the financial year. As at 19 June 2015, OIC had finalised 98% of applications to those received.

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<sup>6</sup> At the end of each financial year the Minister is responsible for preparing a report on the operation of the RTI Act and tabling the report in the Assembly (section 185 of the RTI Act). This report includes the number of access applications received by each agency or Minister in the financial year to which the report relates.

<sup>7</sup> Tabled on 10 December 2014.

<sup>8</sup> *Right to Information Act 2009 and Information Privacy Act 2009 Annual Report 2012-13*, tabled 10 December 2014.



- 5. The Annual Report advises that “[t]he continued high closure rate can be attributed primarily to increased temporary resources in 2013-14” (Annual Report, page 10). Would you please clarify the reference to “temporary resources” as it is noted that the same comment was made in the 2012-13 Annual Report (page 19).**

Since the commencement of the RTI and IP legislation in July 2009, OIC has been given access to additional resources to employ temporary staff in the External Review unit to meet the unfunded additional demand. The additional external review demand has remained at a high level subsequent to the introduction of the legislation. The additional funding was to be on-going, initially until data was available on the established level of demand, and now pending the required review of the RTI and IP Acts.

Although the review of the legislation has not been finalised, temporary funding from surplus cash reserves was not approved for the 2014-2015 financial year. Temporary staff with considerable training and experience were not been able to be retained by OIC. The number of applications closed in 2014-15 is lower than in 2013-14 as a result of the decrease in available resources.

Temporary funding allowing for the employment of temporary review officers in external review has been approved for the 2015-2016 financial year. OIC is currently recruiting temporary staff. There will necessarily be some impact on closure rates as new staff initially are trained and need to become familiar with the legislation and the processes and practices of the OIC.

OIC is continuing to seek a permanent solution to address the additional external review demand experienced since the introduction of the RTI Act and the IP Act in 2009. Managing with short-term temporary resources for several years has led to considerable inefficiencies for external review services due to the issues associated with a temporary workforce.

The Information Commissioner made a written submission in response to public consultation in 2013 recommending to the former Attorney-General a number of options that may reduce demand or assist in resolving reviews be considered by Government as part of the review of the RTI Act and the IP Act. It is hoped that the legislative review will be finalised in 2015-16 to enable a solution to be progressed.

- 6. The Annual Report advises that 72% of applicants were satisfied with the conduct of reviews of decisions made under the Right to Information Act 2009 (RTI Act) and the Information Privacy Act 2009 (IP Act) (Annual Report, page 10). While this rate of satisfaction is slightly higher than the target of 70%, it is noted that this indicates a 28% dissatisfaction rate. Could you please briefly address, in general, why applicants have been dissatisfied, and what actions have been taken, if any, to address the issues complained about?**

This figure is derived from responses given by applicants who are surveyed once their external review has been finalised. Each survey response is viewed by the Information Commissioner and Right to Information Commissioner on its receipt by OIC in order for senior management to be aware of the concerns or issues raised by applicants as well as reviewing any compliments on staff or good practice.

This is done to ascertain whether these concerns and issues are substantiated and if so, what can be done to address them.

Those 28% who are dissatisfied, are often disappointed with the decision of the OIC to refuse them access to information they have requested or third parties who objected to release of information that was subsequently released. Unfortunately in any review, one or other of the participants is likely to be unhappy with the outcome. In these circumstances, OIC looks to see if the survey contains comments on how the external review was conducted, for example, if communications were in plain English; if staff were courteous; and whether the process and the role of the OIC were made clear. In most cases, even dissatisfied applicants were not unhappy with these aspects of the review process.

Applicants have however over the years continued to raise timeliness as an issue. This remains a focus for OIC. It continues to assess its processes, keep all parties updated on the progress of external reviews and seek to explain how long the external review might take in order to manage the expectations of parties.

**7. In terms of privacy complaints received, it is noted that there were 32 complaints received during 2013-14, compared to 51 in 2012-13 and 61 in 2011-12 (Annual Report, page 13). It is also noted that this year's total of 32 complaints is similar to 2010-11 levels when 33 complaints were received. Are you able to provide any information (additional to that provided at page 13 of the Annual Report) to explain the spike in complaints received during the 2011-13 to 2012-13 reporting periods? Also, what is the projected number of privacy complaints for 2014-15?**

There are a number of factors that may have contributed to an apparent spike in privacy complaints in 2012-13 and 2011-12.

Section 166(3) of the IP Act requires that before a complainant can lodge their privacy complaint with OIC they must make a complaint to the relevant agency and at least 45 business days must have elapsed. In 2012-2013 and previously, a failure to comply with these requirements was the single biggest reason why complaints were not accepted by the OIC. In 2013-14, only 4 complaints were not accepted for these reasons.

OIC had taken a number of measures to try to decrease the number of complaints failing for technical reasons including revising the online complaint form and publication of additional resources explaining the process. The revision of the online complaint form has contributed significantly to the apparent reduction.

It should also be noted that whilst the IP Act commenced generally in 2009, it did not apply to local governments until July 2010. Examination of other privacy jurisdictions shows similar fluctuations in complaint levels in the initial years of the privacy jurisdiction. It is also noted that Victoria experienced a similar drop in the number of complaints received in the 2013-14 year as compared to previous years, however it is unclear if there is any particular reason for drop in both States.<sup>9</sup>

OIC has an educative role in privacy and privacy complaints and has continued its efforts to assist agencies to improve their complaints processes. OIC conducted a review of and reported on agencies complaint handling procedures which highlighted best-practice examples. OIC also

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<sup>9</sup> The Victorian Privacy Commissioner received 116 complaints in 2011-12; 131 complaints in 2012-13, and 68 complaints in 2013-14.

developed a resource to assist agencies identify suitable remedial action when dealing with a privacy complaint.

As at 19 June 2015, 50 privacy complaints have been received by the OIC. As agencies are not required to report separately on the number of privacy complaints received, it is unclear what the complaint levels to OIC represent as a proportion of overall complaints.

It would seem that the 32 received in 2013-14 was the aberration rather than the previous years.

- 8. It is noted that the 2013-14 target for the number of mean average days to make a decision whether to accept a privacy complaint was 14 days. This target was not met as the mean average days taken to decide whether to accept a privacy complaint was 25 days in 2013-14. The Annual Report states “[w]e will monitor how realistic this target is and/or whether there are opportunities for improving the assessment process” (Annual Report, page 14). Do you have any additional information since the Annual Report was issued regarding how realistic the target is and whether any opportunities for improving the assessment process have been identified?**

This measure was introduced in the 2013-14 year so there will be two years data at the close of the financial year. At the time the 14 day measure was determined most matters which were not accepted were able to be quickly identified on clear grounds. There has been an increase in complexity in the complaints received which has made this increasingly difficult.

The mean average days for acceptance of a privacy complaint, at 19 June 2015, is 19 days. As the number of complaints received is statistically insignificant, it can be skewed by one or two aberrant matters. For example, if two particularly complex matters are removed the mean average day figure drops to 15 days.

However, an analysis of the files demonstrates that increasingly a significant factor in the delays in this area is the inability of agencies to provide the necessary information within a reasonable time frame. Almost invariably OIC now needs further information from the agency before making a decision about acceptance of a complaint.

Given that the delays in this area are caused by issues outside the control of OIC, there are limited opportunities to improve the assessment process. OIC continues to work with agencies to improve the timeliness of their response to our initial inquiries which in turn should improve timeliness in this area.

For the 2014 -15 year, OIC accepted 36% of complaints received, the highest level ever.

OIC intends reviewing this measure in conjunction with the anticipated strategic review of the office under section 186 of the RTI Act.

- 9. The Committee notes the following commitment of the OIC at page 15 of the Annual Report: “We will continue to examine our mediation processes to identify further improvements to ensure timely management of complaints.” Since the Annual Report was issued, have you identified and made any improvements to the mediation process to ensure the timely management of complaints?**

The role of OIC under the IP Act in relation to privacy complaints is to provide a mediation service. The OIC does not have a determinative or recommendation function to finalise complaints. Neither does OIC have any powers to direct parties as to process and timeliness. The finalisation of privacy complaints is therefore substantially affected by the participation of the parties i.e. the complainant and the agency. Mediations involving multiple delays throughout the process due to complainants and agencies result in more complicated and less timely processes.

Frequently privacy complaints are intertwined with other issues that a complainant has with an agency and in many cases one or both of the parties are reluctant to progress an aspect of the complaint or to reach a compromise until these other issues are resolved.

The most successful mediation processes often take a long time. Until this year the most common reason for mediation to fail has been the refusal of the agency to apologise or to recognise that a privacy breach has occurred. However, this year there has been a significant increase in the number of complainants seeking financial compensation. This is understandably a significant issue for many agencies. In many cases the complainants demands are unreasonable for the type of privacy breach that has occurred.

OIC is currently developing an information resource to be given to all complainants upon acceptance of the complaint which will detail the process, the timeframes, the role of OIC in the process, possible outcomes and OIC's expectations with respect to complainant behaviour in the course of conducting the mediation. It is hoped that this resource will assist to further manage complainant's expectations of the process and perhaps lead to more realistic demands in the mediation process. This will be in addition to the verbal discussions which OIC has with all complainants upon receipt of a complaint where we detail what to expect from the process. Where appropriate OIC staff meet with complainants at an early stage to further facilitate their understanding of the mediation process and improve both timeliness and outcomes.

OIC is also currently updating a resource for agencies detailing what to expect when a privacy complaint is received by OIC about their agency. This is in addition to a suite of existing resources for agencies relating to privacy complaints. Again where appropriate OIC meets with agencies who are frequent responders to discuss strategies for managing and responding to privacy complaints.

**10. The Committee notes that 8,479 people received training over the last financial year against a target of 500 (Annual Report, page 17). This represents a significant increase on the 2,983 people trained in 2012-13. Can you please advise regarding what contributed to this increase? Additionally, do you need to revise the target of 500 to a more realistic level for the next reporting period?**

The significant increase in the number of people trained in 2013-14 compared with the previous period can be attributed to the further roll out of OIC's online training courses. OIC released its first online course, *Information Privacy Act-general awareness*, in May 2012. In the two subsequent reporting periods, OIC developed, released and promoted a further five online courses offering training in core competencies in right to information and information privacy:

- *Information Privacy for Queensland health agencies*
- *Right to Information Act-general awareness*

- *Information Obligations for public sector employees*
- *Privacy Complaint Management; and*
- *Access Training for Decision Makers.*

All online courses are offered free of charge and can be integrated with an agency's existing Learner Management System. Online training allows OIC to provide flexible and low-cost training accessible to metropolitan and regional areas, wherever and whenever it is required. Feedback to date indicates that these factors have contributed significantly to the strong uptake of this mode of training. OIC continues to develop and deliver high quality face to face training in key areas. This ensures training is provided in response to agency requests for support as well as risks identified by OIC's operational areas. Face to face training is resource intensive but targeted for specific and limited audiences.

The target of 500 people trained annually was introduced when the training function commenced in 2009. OIC actively promotes awareness of its training services and encourages agencies to participate in training, including incorporating the general awareness online training for RTI and privacy in induction programs and annual compliance training. However, the number of people trained from year to year is impacted by a range of factors including further uptake of existing OIC online courses, whether any new online courses have been developed in response to identified areas of need as well as demand for face to face training. As these are matters which are largely outside of OIC's control, it is difficult to determine a meaningful target. However, it is considered that if there is a steady ongoing demand for the online training it is likely that training participants will continue to exceed 1000 people annually. OIC will give further consideration to the performance reporting framework for training in 2015-16, noting that this is also expected to coincide with the Strategic Review of the OIC.

**11. The Annual Report provides that the OIC conducted 47 monitoring and compliance activities over the reporting period, against a target of only 10. However, in the previous reporting period (2012-13), there were 106 monitoring and compliance activities. Are you able to provide further information to explain the discrepancies in these figures (i.e., target (10) vs. actual this year (47) vs. actual last year (106))(Annual Report, page 17)?**

OIC's Performance Monitoring and Reporting (PMR) program is ongoing and uses a number of different review processes to monitor and review agency compliance with the RTI and IP Acts. These processes have been developed and refined since the PMR function was first enacted in 2009 and includes agencies using OIC's self-assessment tools to self-report compliance, OIC desktop audits of agency websites as well as in-depth compliance reviews. This approach ensures that the PMR program reports a range of information on agency compliance to Parliament and also supports agencies to improve compliance, achieving both a breadth of agency coverage and a depth of review for those agencies identified for audit through an annual risk analysis. The target of 10 activities was introduced when the PMR function commenced. The different types of reviews and associated activities undertaken require quite different levels of resourcing.

For example, a number of desktop audits can be completed within a week, whereas full compliance reviews can require up to twelve months to conduct. Compliance reviews are comprehensive reviews of a particular agency's performance against a range of RTI and privacy obligations and result in detailed findings and recommendations where appropriate.

Each year a range of review activities are undertaken, including a number of in-depth reviews. However, there is significant variation from year to year, depending on the number of desktop audits undertaken, and the extent of work involved. In 2013-14 and 2014-15, OIC has focused on compliance reviews more than previous years. In addition, desktop audits of Queensland Government departments in 2013-14 involved the most comprehensive test program to date, due to additional legislative and other requirements applying to departments and their advanced maturity. The desktop audit program for the departments in 2013-14 involved at a minimum assessment of 729 compliance obligations, and up to 914 items. It is therefore important that the number of review activities is considered in context of the nature of review work undertaken in the particular year.

**12. The Annual Report also states that the OIC conducted 303 awareness activities over the reporting period, against a target of 190. However, in the previous reporting period (2012-13) there were 341 awareness activities. Are you able to provide further information to explain the discrepancies in these figures (i.e., target (190) vs. actual this year (303) vs. actual last year (341)) (Annual Report, page 23)?**

OIC presentations, communications, communication channels and methods are tailored to ensure the right message is reaching the intended audience in an effective and engaging way. Changes in OIC's focus, including target audiences and priorities, due to relevant risks, trends and issues, necessitates an adjustment in the number, method and type of activities conducted. For these reasons there has and will continue to be differences in the reported figure year-on-year.

### **Community engagement**

**13. The Committee notes that there was a 27% increase in traffic to the OIC website during the reporting period (Annual Report, page 23). Can you elaborate on the measures that the OIC has undertaken to successfully enhance its online profile or otherwise attract more visitors to the website?**

OIC's functions include providing information and assistance to agencies and members of the community on the interpretation and application of the RTI and IP Acts. Encouraging agency staff and members of the community to access the significant resources available through OIC's website is an important strategy in assisting and supporting our stakeholders to understand, apply and use the right to information and information privacy legislation.

A dedicated YouTube Channel, Twitter feed and LinkedIn presence has increased communication opportunities for OIC and reach to Queensland public sector agencies and the community. The creation and use of animation as well as video has also allowed for previously static or flat content to be delivered in a dynamic and highly engaging manner.

OIC continues to use web based technologies such as social media and multi-media to enhance the profile of OIC's online resources. Dissemination of our resources as well as key messages through these technologies affords opportunities to direct users to OIC's website through a 'call to action'. For example, 'For more information visit OIC's website' or 'Read more here', directs the user back to OIC's website via an embedded hyperlink. This communication strategy has enabled OIC to easily distribute online resources while driving traffic back to the website. It is the combination of web based technologies with a call to action that has continued to contribute to an increase in website visitors.

Awareness raising campaigns, including Privacy Awareness Week and Right to Information Day, also afford significant opportunities for OIC to engage with all public sector agencies and, in doing so, to direct traffic to information and resources on OIC's website. OIC also uses other engagement opportunities, such as the quarterly RTI/IP practitioner forum, presentations to Chief Executive Officers, agency officers and the community, media interviews throughout the State and our current stakeholder engagement project to highlight relevant OIC resources available online.

**14. The Committee notes that OIC officers contacted 126 agencies to ensure agency officers were aware of their responsibilities and offer support and assistance. Can you please outline the types of questions or issues raised by local areas when OIC officers met with the chief executive officers, mayors, councillors and senior officers of local government and health services across Queensland (Annual Report, page 4)?**

OIC's telephone contact with 126 regional agencies revealed that many do not have a dedicated RTI or IP officer because they receive few or no applications and/or complaints; and the Chief Executive deals with these issues directly. Interest was expressed in the support offered by the OIC's Enquiries Service, website, Annotated Legislation and online training. Some agencies indicated their preference for face to face training where possible.

Questions and issues raised in meetings between the Information Commissioner or Acting Privacy Commissioner and chief executive officers, mayors, councillors and senior officers of local government and Hospital and Health Services across Queensland focused on:

- the extent to which personal information could be shared with other entities due to requirements under the IP Act, or confidentiality provisions under other legislation
- technology and privacy requirements, including cloud storage, camera surveillance, particularly CCTV
- training and assistance available to agency staff;
- findings of OIC performance monitoring and reporting activities; and
- managing community expectations about access to information and privacy matters.

## **Appeals**

**15. During 2013-14, three appeals were made to QCAT. At the time the Annual Report was issued, two appeals were pending (Annual Report, page 11). Can you please briefly outline the issues in these cases and advise whether there has been any progress in their finalisation?**

The following is a brief outline of the issues in two appeals that were pending at the time of the 2013-2014 Annual Report and their progress to date.

***Stanaway and Frederick Marsden Youth Centre Inc (4 June 2014) OIC Decision  
QCAT Appeal APL259-14 filed 10 June 2014***

***Issue: Does the RTI Act apply to this entity? Does an entity originally incorporated by Letters Patent granted by the Governor in Council fit within the definition of a "public authority" and constitute an agency subject to the RTI Act?***

The applicant applied to the Frederick Marsden Youth Centre (FMYC) for access to various documents including minutes and financial reports. FMYC determined it was not an agency subject to the operation of the RTI Act.

FMYC is a former orphanage, originally incorporated as the 'Marsden Home for Boys' on 22 December 1932, by way of Letters Patent granted by the Governor in Council (that is, the Governor acting with the advice of the Executive Council) under the former *Religious, Educational and Charitable Institutions Act 1867* (RECI Act). The orphanage was established by a group of concerned citizens associated with the Congregational Church, on land donated by a private citizen (Mr Frederick Marsden). Orphanage operations were later discontinued, and a name change reflecting the organisation's shift away from residential care was effected by a grant of further Letters Patent on 2 March 2000, restyling the entity the 'Frederick Marsden Youth Centre Inc'. FMYC now operates under the auspices of the Uniting Church.

Section 23 of the RTI Act confers on persons a legally enforceable right of access to documents of an 'agency'. 'Agency' is defined in section 14 of the RTI Act to include 'public authorities'. Section 16 of the RTI Act defines a public authority as an entity either:

- a) established by government under an Act for a public purpose,<sup>10</sup> or
- b) created by the Governor in Council or a Minister.<sup>11</sup>

The issue to be determined was whether FMYC comprises a public authority of one or both of the kinds described in Section 16, and therefore is an agency subject to the RTI Act. If so, then FMYC would be subject to the obligations imposed on agencies by the RTI Act, and, pursuant to section 23, the applicant would have a legally enforceable right<sup>12</sup> to be given access to documents held by FMYC.

The applicant's submission was that FMYC, as an entity incorporated by way of Letters Patent granted by the Governor in Council, fell within one or both of the categories of public authority specified in Section 16 of the RTI Act.

The RTI Commissioner did not accept that FMYC was established by government under an act for a public purpose, or created by the Governor in Council. While acknowledging that the issuing of Letters Patent gave FMYC its ultimate legal form, the Commissioner adopted a practical approach, and considered that for an entity to be regarded as 'established by government' or 'created by the Governor in Council or a Minister', the entity should have been substantively founded or set up<sup>13</sup> by government and/or the Governor in Council or a Minister. FMYC was not set up or founded by government or the Governor in Council – neither of which took any practical initiative in bringing FMYC into being – but by the community interests responsible for the opening of the original orphanage.

The RTI Commissioner therefore affirmed the decision of the FMYC that it was not an agency subject to the RTI Act. Accordingly, the RTI Commissioner decided that the Information Commissioner did not have jurisdiction to deal further with the applicant's application for external review.

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<sup>10</sup> Section 16(1)(a)(ii) of the RTI Act.

<sup>11</sup> Section 16(1)(b) of the RTI Act.

<sup>12</sup> Subject to the application of other provisions of the RTI Act, e.g., the grounds for refusal of access prescribed in section 47 of the Act.

<sup>13</sup> And not merely granted final legal form.



This decision was appealed to the Queensland Civil and Administrative Tribunal (QCAT) on 10 June 2014. An appeal can only be on a question of law. On appeal, OIC does not take on the active role of a contradictor. It appears to assist the tribunal and abides by its orders. OIC was given leave to withdraw with the consent of all the parties on 1 September 2014. The matter was listed for hearing on 20 November 2014. It is understood that a decision is still pending.

***Darlington and Queensland Police Service (11 April 2014) OIC Decision  
QCAT Appeal: APL 230-14 filed 19 May 2014***

***Issue:***

***Is information in an Ethical Standards Command investigation of the applicants' complaints about the conduct of QPS officers, information "about" the applicants and therefore within the exception to the Law enforcement (Crime and Corruption Commission) exemption in the RTI Act.***

Mr and Mrs Darlington (the Applicants) applied to Queensland Police Service (QPS) under the IP Act for access to information relating to investigation of their complaints to QPS about the conduct of QPS officers.

QPS granted the Applicants access to some information but refused access to the remaining information on the basis that it was exempt information, relying on sections 47(3)(a) and 48, and schedule 3, section 10(4) of the RTI Act (Crime and Corruption Exemption). The Applicants sought an internal review of this decision. On internal review, QPS released some further information but otherwise affirmed the original decision.

The Applicants applied to the Office of the Information Commissioner (OIC) for external review of QPS's internal review decision. The Applicants submitted that they are entitled to the information as they were the complainants and the investigations concerned their personal information.

On external review, the issue to be determined was whether the exception to the Crime and Corruption Exemption applied, that is, has the investigation been finalised and is the information about the applicant. The relevant parts of Crime and Corruption Exemption are:

***10 Law enforcement or public safety information***

...

(4) *Also, information is exempt information if it consists of information obtained, used or prepared for an investigation by a prescribed crime body, or another agency, in the performance of the prescribed functions of the prescribed crime body.*

...

(6) *However, information is not exempt information under subsection (4) or (5) in relation to a particular applicant if—*

- (a) it consists of information about the applicant; and*
- (b) the investigation has been finalised.*

...

In accordance with the reasoning in previous OIC decisions, such as *G8KPL2*, on 11 April 2014, the Information Commissioner issued a decision affirming QPS's decision to refuse access to the information<sup>14</sup>, on the basis that it comprises exempt information. It was agreed that the Ethical Standards Command (ESC) investigation had been finalised. OIC found that while the Applicants were aggrieved by actions of QPS officers and their complaints initiated the investigation process, they were not the subject of the ESC investigation and the information was therefore not about the Applicants.

The Applicants appealed to QCAT on 19 May 2014. There have been a number of directions hearings and a compulsory conference was held with QPS joined as a party. OIC has filed its submissions and the documents it relied upon in making its decision. OIC does not seek to argue its decision, but has assisted the Tribunal where necessary and will abide by its orders. At a directions hearing on 28 April 2015, OIC was given leave to withdraw and have no further involvement in the matter. The appeal has been set down for hearing on 25 August 2015.

## **State Budget**

**16. In the State Budget for 2014-15, the following were listed as the major deliverables for the OIC:**

- **supporting agencies to meet right to information and information privacy obligations and apply good practices in implementing initiatives such as outsourcing, open data, the 'one stop shop' portal and increased information sharing;**

OIC supports agencies in meeting right to information and information privacy obligations in a range of ways. OIC continues to provide expert and constructive advice on the operation of the privacy principles to agencies. OIC has been and is actively involved in the development of Queensland's Open Data regime, the One-stop shop program and the whole-of-government Customer Relations Management Project. In addition, in the 2014-15 year OIC has been consulted about or participated as a member of a project team on 80 government initiatives or projects. This included such diverse things as the deployment of body-worn cameras for the Queensland Police Service, the roll-out of the Department of Tourism, Major Events, Small Business and the Commonwealth Games Customer Relationship Management system, the provision of information to Universities for research purposes and the whole-of-government grants information portal.

OIC provides advice to local governments across a range of areas including advice about information sharing generally and the provision of CCTV footage to the Queensland Police Service.

In addition, the Privacy Team have responded to 180 enquiries from agencies about specific one-off privacy issues.

Similarly, OIC's Enquiries Service, which has experienced RTI and IP practitioners available to answer questions and guide agencies and the community through the RTI and privacy processes,

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<sup>14</sup> Under section 67(1) of the IP Act and section 47(3)(a) of the RTI Act and under section 48 and schedule 3, section 10(4) of the RTI Act.

responded to more than 3600 enquiries in the period to June 2015 as well as continuing to publish guidelines and information sheets to support agencies in meeting their obligations under the RTI and IP legislation.

In addition to OIC's online training programs discussed at Question on Notice No.10 above, OIC provided face-to-face information sessions, workshops, live webinars and tailored courses in a range of topic areas, for specific sectors both locally and in regional areas. Quarterly RTI/IP practitioner forums also cover a range of topics which support agency officers to understand and meet their agencies' right to information and information privacy obligations.

In March 2015, in partnership with the Australian and New Zealand School of Government, OIC launched the Transparency and the Performance of Outsourced Government Services paper, the fifth instalment of a series examining the impact of transparency and how it can be used as a strategic management tool. The paper, authored by Richard Mulgan, Emeritus Professor, Crawford School of Public Policy at the Australian National University, discusses three aspects of outsourcing; value-for-money efficiency, effectiveness of performance, and publicity of performance information and explores a number of lessons for both government and public sector managers on how to increase the extent of transparency and, thereby, the quality of performance of outsourced services.

- **reviewing training, information resources and knowledge management systems to reflect any legislative amendments which may arise from the review of the RTI Act and IP Act;**

While the review of the RTI and IP Acts has not yet been conducted, OIC monitors legislative amendments that impact on our training and information and knowledge resources to ensure they are up to date and reflect any legislative changes.

- **encouraging agency leaders to champion an open culture to maximise information access;**

The importance of leadership within all government agencies in order to achieve open government has been a repeated finding in OIC reviews and the self-assessed electronic audit. In 2014–15 OIC engaged with a range of agency leaders across Queensland and different sectors, including Hospital and Health Services, local government and universities to champion an open culture to maximise information access. At each meeting the Information Commissioner or her representative took the opportunity to emphasise the importance of leadership in fostering an open culture supportive of the push model. In these discussions, OIC draws on the findings of our performance monitoring and reporting work, and the evidence from our Transparency series of Occasional Papers published in partnership with the Australian and New Zealand School of Government. The importance of leadership is also promoted, using relevant examples of our performance monitoring reviews, when notifying agency leaders of the tabling of such review reports in Parliament.

In the lead up to Right to Information Day 2014, the Information Commissioner wrote to Queensland public sector agency leaders inviting them to participate in the OIC's 2014 Right to Information Day Partner Program. Partnering agencies helped to promote information rights and responsibilities in Queensland, and were able to highlight their organisation's commitment to right to information including greater openness, transparency and accountability in government.

- **promoting greater use of online access to information and administrative access schemes;**

The importance of making information accessible online and through administrative access schemes is a theme of much of OIC's work and it is regularly highlighted when we present to, or engage with, agency staff and leaders. It is also a key aspect of our audit program.

In 2014, OIC marked Right to Information Day under the theme 'Easier access. Better decisions. Greater accountability', emphasising the importance of openness and transparency and making information accessible, including through administrative access. The Information Commissioner promoted RTI Day on regional ABC radio to raise community awareness about the push model, encouraging listeners to use online and administrative access before the last resort of the formal application process. Similarly, agencies were encouraged to promote and facilitate easier access through greater use of online publication and administrative access schemes. The 2014 Solomon Lecture featured digital technology commentator Ms Anni Rowland-Campbell, who explored 21st century government as a "social machine" and considered how such machines harness digital technologies in order to deliver better business practices and enable better accountability and transparency.

OIC also published the following resources in 2014-15 to assist agencies in implementing key aspects of the push model:

- a detailed checklist designed to assist agencies to identify information that may be suitable for administrative access, implement an administrative access scheme and monitor performance; and
  - an online resource highlighting the tools and resources OIC makes available to agencies to ensure their publication schemes are well managed.
- **continuing to improve regional awareness and compliance; and**

OIC continues to identify effective and efficient ways to promote understanding of right to information and privacy rights and responsibilities in the community, particularly in regional areas. Through the Enquiries Service, OIC provides regular guidance to regional agencies and assists those who have not previously received an application, or who may receive them only occasionally, through the RTI decision making process.

Following on from the regional engagement project which aimed to address a low level of compliance with the RTI Act and IP Act identified in OIC's 2013 Self Assessment Electronic Audit (SAEA), OIC provided intensive face to face training to a number of regional agencies during this period. OIC recently commenced a project to work with one of these regional agencies to develop a 'tool kit' of resources specifically designed to assist regional councils.

OIC also addresses compliance issues and highlights good practice through the ongoing program of performance monitoring and reporting. For example, OIC has recently reported on an in-depth compliance review of Cairns and Hinterland Hospital and Health Service (CHHHS) and is presently undertaking a compliance review of the Council of the City of Gold Coast. OIC's current Desktop audit process is focussed on Councils and Hospital Foundations, many of which are regional. OIC also seeks out opportunities to raise awareness of report findings in regional agencies, particularly within specific sectors. For example, the Information Commissioner recently

gave a presentation on the findings of the CHHS review at a Hospital Service Chief Executive Forum.

Annual events such as Right to Information Day and Privacy Awareness Week also provide opportunities for OIC to engage with all agencies, including regional agencies to raise awareness of right to information and information privacy obligations and to highlight the resources and support OIC can provide in meeting these obligations. OIC engaged with regional media to promote to the community RTI Day in 2014 and community consultation on two compliance reviews in 2014-15 in Cairns and Hinterland Hospital and Health Service region and the City of Gold Coast. These activities assist in raising community awareness.

- **continuing to finalise external reviews and privacy complaints in a timely manner.**<sup>15</sup>

**The Committee would be grateful for an update on the OIC's progress against these deliverables.**

#### *External Reviews*

OIC continues to finalise external reviews in a timely manner. A record number of matters were closed in this financial year. While the 90 median day timeframe was not met in the 2013-2014 financial year, as discussed in response to Question One, this was due to a number of factors outside the control of this Office. However, as shown on page 12 of the 2013-14 Annual Report, the vast majority (73%) of external review matters were completed in under 6 months with over 89% finalised within 9 months. OIC recognises the importance of finalising matters as soon as possible and it continues to closely monitor each review file to ensure that it was being dealt with in the most effective and expeditious manner. Staff throughout each external review constantly consider possible options and offer alternative solutions to participants in an attempt to resolve matters as early as possible.

#### *Privacy Complaints*

Timeliness of privacy complaints is measured in two ways. The first is by the time taken to accept a privacy complaint and the response to Question 8 addresses this in detail.

The second measure is the mean average to finalise those complaints that are accepted. The mean average time to close privacy complaints for the 2014-15 year, at 19 June 2015, is 124.

There are a number of factors that may contribute to the mean average days to finalise an accepted privacy complaint exceeding 90 days. In particular, where the complaint numbers are relatively low, a mean average is vulnerable to wide variations in individual matters.

Once a complaint is accepted the mediation of the complaint commences. Invariably mediation requires lengthy negotiation between the parties comprising offers and counter offers and associated delays while authorisations and responses are considered. As set out in response to question 9, mediation of complaints can involve significant delays by agencies and complainants particularly where the complaint is eventually successfully mediated.

In general, OIC has been able to finalise privacy complaint processes in a timely manner in 2014-15, however an analysis of the accepted complaints for the year shows that one complainant

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<sup>15</sup> State Budget, Service Delivery Statement, 2014-15, page 74.

became ill for a significant period of time in the mediation which delayed the outcome. In two other cases, the complainants took extended vacations during the mediation which again delayed the process. If these three complaints were removed to illustrate the impact of a small number of long processes on the small number dealt with, the mean average days to finalise an accepted privacy complaint reduces from 124 days to 85, below the target of 90 days.

**17. The Annual Report indicates that the OIC continues to maintain 33 FTE staff, as was also the case in 2012-13 (Annual Report, page 27). Please advise whether you anticipate any change in OIC staffing numbers during the year and the reasons for such change, if any?**

The OIC maintained its permanent establishment of 33 FTE for 2014-15 and does not anticipate any change in 2015-16. Temporary staff external review staff employed in 2013-14, due to approval of carry forward funding from cash reserves, were unable to be retained in 2014-15 as the request for such funding was denied. In 2015-16, temporary external review staff will be employed to meet the additional demand as the Attorney-General has approved the use of surplus cash reserves.

#### **Reports and desktop audits**

**18. Eight reports on reviews under the RTI Act or the IP Act were tabled in the Legislative Assembly in 2013-14 (Annual Report, page 20). In relation to the eight reports:**

- **What proportion of recommendations were accepted by agencies?**
- **How many of those recommendations have been implemented?; and**
- **Can you provide any additional follow-up information regarding these reviews since the Annual Report was issued?**

Reports of the Right to Information and Information Privacy Agency Electronic Audit and the Results of Desktop Audits provide statistical or aggregated information about compliance across all agencies and particular sectors respectively and do not contain recommendations.

Only three of the eight reports tabled in 2013-14 contained recommendations. Two related to full compliance reviews of a specific agency. Both the Department of Education, Training and Employment and Rockhampton Regional Council accepted all OIC recommendations, of which there were 19 and 14 respectively. Follow-up reviews of implementation of these recommendations will be reported on during 2015-16.

OIC's review of Privacy in Complaint Handling Systems recommended that all agencies review their complaint handling to incorporate good privacy practice.

Follow-up reviews of the Queensland Police Service, Department of Health and the Department of Transport and Main Roads tabled in Parliament in 2013-14 found that at the time of the review the:

- Queensland Police Service had fully implemented 24 of the 28 recommendations and four were in progress to implementation
- Department of Health had fully implemented 17 of the 20 recommendations and three were in progress to implementation; and

- Department of Transport and Main Roads had fully implemented five of the six recommendations and one was in progress to implementation.

### **Privacy Commissioner**

- 19. Regarding your letter of 28 November 2014 and subsequent communications concerning the Privacy Commissioner appointment and acting arrangements, can you please provide the Committee with an update on this situation?**

The Attorney-General has advised that a selection process will be commenced shortly, with the position of Privacy Commissioner to be advertised in a national newspaper, as required under the IP Act. Ms Jenny Mead, Right to Information Commissioner has been reappointed as Acting Privacy Commissioner until 9 October 2015.

### **Strategic Review**

- 20. What is your understanding of the current state of progress of the strategic review of the OIC due under the RTI Act?**

The strategic review of the OIC is required to be conducted under section 186 of the RTI Act. I have been advised by the Attorney-General that the process will commence in the near future.

### **Legislative Review**

- 21. What is your understanding of the current status of the legislative review of the RTI Act and the IP Act?**

The legislative review of the RTI Act and the IP Act is required to be conducted under section 183 of the RTI Act and section 192 of the IP Act. The current status of the legislative review is a matter for the Attorney-General.

### **Financial Statements**

- 22. The Committee notes that the Total Comprehensive Income figure for 2014 was \$44,000 whereas the previous year it was \$513,000 (2013) and the year before that it was \$640,000 (2012). Can you please briefly explain the main contributors to this decrease in income? What is the current anticipated projection for the Total Comprehensive Income figure for the 2014-15 reporting period?**

The Total Comprehensive Income figure represented an operating surplus at 30 June in each financial year due to lower expenses than income received for the relevant period. Expenses were higher in 2013-14 than previous years, particularly in employee expenses. The current anticipated projection for the Total Comprehensive Income figure for the 2014-15 reporting period is an operating surplus of approximately \$280,000, primarily due to an underspend in supplies and services.

## Outlook for 2015-16

### 23. What do you see as the biggest challenges for the OIC in the next 12 months?

#### *Encouraging greater leadership to champion a strong culture of openness and respect for privacy*

Findings across our performance monitoring activities support our view that it is critical that the legislative framework be supported by strong leadership and clear expectations of the agency to create an open culture and respect for privacy. Agencies with strong leadership perform stronger across a range of RTI and privacy obligations. It is therefore important for leaders to build a strong organisational culture that favours proactive release of information and that is respectful of privacy.

While many agencies are progressing well in meeting their obligations, greater understanding and adoption of the push model and privacy obligations would improve compliance, reduce demand for external review of decisions and mediation of privacy complaints, and assist agencies to meet community expectations in relation to access to information and privacy.

It is OIC's experience that leadership and culture in this area are influenced significantly by senior executives that support the Chief Executive of an agency in communicating and modelling the culture of the agency. OIC therefore intends to focus on both chief executives and senior executives in encouraging agency leaders to champion a stronger culture of openness and privacy in 2015-16.

#### *Budget uncertainty with ongoing additional demand for external review*

OIC is continuing to seek a permanent solution to address the additional external review demand experienced since the introduction of the RTI Act and the IP Act in 2009. Managing with short-term temporary resources for several years has led to considerable inefficiencies for external review services due to the issues associated with a temporary workforce. Such inefficiencies include constant turnover as people seek out permanent opportunities, carrying vacancies when OIC has been unable to recruit to temporary positions, a high burden on supervisors of constant training and supervision of inexperienced and new staff who could reasonably be expected to take at least 3 months before they are able to perform effectively in review roles. When resources were not approved for 2014-15, temporary staff with considerable training and experience were not able to be retained by OIC and the number of external review applications finalised decreased.

The Information Commissioner made a written submission in response to public consultation in 2013 recommending to the former Attorney-General a number of options that may reduce demand or assist in resolving reviews be considered by Government as part of the review of the RTI Act and the IP Act. It is hoped that the legislative review will be finalised in 2015-16 to enable a solution to be progressed.





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3 July 2015

The Hon Mark Furner MP  
Chair  
Legal Affairs and Community Safety Committee  
Parliament House  
BRISBANE QLD 4000

Dear Mr Furner

**Meeting with the Office of the Information Commissioner**

I refer to my letter of 30 June 2015, providing the response of the Office of the Information Commissioner (OIC) to Questions on Notice provided by the Legal Affairs and Community Safety Committee.

I have been advised that the '*Right to Information Act 2009 and Information Privacy Act 2009 Annual Report 2013-14*' (**DJAG 2013-14 Annual Report**) was tabled in Parliament on 30 June 2015. The availability of this report affects part of our response to Question on Notice number 2. I provide the following information for the Committee to supplement our response.

Question on Notice number 2 asked whether OIC knew why there had been a decrease in the actual number of external review applications received in 2013-14 (451) compared to 2012-13 (533). Our response noted that the DJAG 2013-14 Annual Report was not yet available.

The 2013-14 DJAG Annual Report shows a decrease in applications made across Queensland public sector agencies in 2013-14 compared to 2012-13.<sup>1</sup> The number of external reviews made to the OIC also show a decrease between these two years. The DJAG 2013-14 Annual Report states that some agency figures are lower in 2013-14 due to an anomaly related to different reporting practices in the previous year.<sup>2</sup>

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<sup>1</sup> Page 7.

<sup>2</sup> Page 7.

OIC notes that the external review statistics reported as provided by agencies to the Department of Justice and Attorney-General for the DJAG 2013-14 Annual Report are not consistent with OIC's own statistics, resulting in significantly different totals than OIC for the relevant years.<sup>3</sup> Consequently, it would appear that the DJAG 2013-14 Annual Report data is not comparable with OIC statistics for external review and not a meaningful indicator for the purpose of understanding the reason for the decrease between the two years.

I trust that this updated information is of assistance to the Committee.

Yours sincerely



Rachael Rangihaeata  
**Information Commissioner**

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<sup>3</sup> DJAG 2013-14 Annual Report total external reviews (page 8): 2013-14 (395); 2012-13 (429).  
OIC 2013-14 Annual Report total external reviews: 2013-14 (451); 2012-13 (533).

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9 July 2015

The Hon Mark Furner MP  
Chair  
Legal Affairs and Community Safety Committee  
Parliament House  
Brisbane QLD 4000

Dear Mr Furner

**Office of the Information Commissioner Strategic Plan 2015-2019**

I provide for the Legal Affairs and Community Safety Committee copies of the Office of the Information Commissioner Strategic Plan 2015-2019 for your reference. As outlined in the Strategic Plan, and discussed at our recent meeting with the Committee, a key priority for this period is engaging with senior managers and executives to improve awareness and support critical changes to practices throughout agencies.

I would also like to clarify our response to Question on Notice 18 provided to the Committee on 30 June 2015. Rockhampton Regional Council "partially agreed" to six of the 14 recommendations of the relevant compliance review report. Rockhampton Regional Council provided comments which explained the context of a partial agreement. For example, where the Chief Executive Officer was not in a position to guarantee at that time that a specific approach would be adopted by Council in approving changes to the Corporate Plan in future. However, the CEO also advised in detail other actions being taken to implement the objective of the recommendation. I also note that Rockhampton Regional Council was considered to be meeting its legislative obligations well and in many respects provided a model of good practice for other agencies.

Yours sincerely



Rachael Rangihaeata  
Information Commissioner