

Oversight of the Office of the Information Commissioner

Report No. 34, 57th Parliament
Legal Affairs and Safety Committee
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Legal Affairs and Safety Committee

Chair	Mr Peter Russo MP, Member for Toohey
Deputy Chair	Mrs Laura Gerber MP, Member for Currumbin
Members	Ms Sandy Bolton MP, Member for Noosa
	Ms Jonty Bush MP, Member for Cooper
	Mr Jason Hunt MP, Member for Caloundra
	Mr Jon Krause MP, Member for Scenic Rim

Committee Secretariat

Telephone	+61 7 3553 6641
Email	lasc@parliament.qld.gov.au
Technical Scrutiny Secretariat	+61 7 3553 6151
Committee webpage	www.parliament.qld.gov.au/LASC

All web address references are current at the time of publishing.

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Abbreviations

annual report	Office of the Information Commissioner, 2020-21 Annual Report
CCC	Crime and Corruption Commission
committee	Legal Affairs and Safety Committee
IP Act	<i>Information Privacy Act 2009</i>
OIC	Office of the Information Commissioner
public hearing	Public hearing with the OIC held on 23 May 2022
QCAT	Queensland Civil and Administrative Tribunal
QPS	Queensland Police Service
RTI	Right to information
RTI Act	<i>Right to Information Act 2009</i>
Standing Orders	Standing Rules and Orders of the Legislative Assembly (Queensland)

Chair's foreword

The Legal Affairs and Safety Committee has oversight responsibility for the Information Commissioner under section 88 of the *Parliament of Queensland Act 2001* and Schedule 6 of the *Standing Orders of the Legislative Assembly*.

This report presents a summary of the committee's oversight of the Office of the Information Commissioner for the 2020-21 financial year period.

The committee reviewed the 2020-21 Annual Report of the Office of the Information Commissioner. The committee also held a public hearing with representatives from the Office of the Information Commissioner on 23 May 2022.

On behalf of the committee, I thank the Information Commissioner, the Right to Information Commissioner, the Privacy Commissioner and other staff of the Office of the Information Commissioner who assisted the committee with fulfilling its oversight responsibilities. I also thank the Parliamentary Service staff.

I commend this report to the House.



Peter Russo MP

Chair

Recommendation

Recommendation

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The committee recommends that the House notes the contents of this report.

1 Introduction

1.1 This report

The Legal Affairs and Safety Committee (committee) prepared this report as part of its statutory oversight of the Office of the Information Commissioner (OIC) with a primary focus on the 2020-21 financial year.

1.2 Role of the committee

The committee is a portfolio committee of the Legislative Assembly which commenced on 26 November 2020 under the *Parliament of Queensland Act 2001* and the Standing Rules and Orders of the Legislative Assembly (Standing Orders).¹

The committee's primary areas of responsibility include:

- Justice and Attorney-General
- Women and the Prevention of Domestic and Family Violence
- Police and Corrective Services
- Fire and Emergency Services.

In addition to the OIC, the committee also has oversight responsibilities in relation to the:

- Electoral Commissioner of Queensland
- Queensland Ombudsman
- Queensland Family and Child Commission.²

1.3 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 *Information Privacy Act 2009* (IP Act) with the aim of promoting access to government-held information and protecting people's personal information held by the public sector. The OIC's functions include giving information and help to agencies and members of the public on matters relevant to the RTI Act; conducting reviews into personal information handling practices of certain entities; investigating and reviewing decisions of agencies and Ministers; and reviewing and reporting on agencies in relation to the operation of the RTI Act and the IP Act.³

The OIC consists of the Information Commissioner, who is an officer of the Parliament, and the staff of the office.⁴ The current Information Commissioner is Ms Rachael Rangihaeata. The current joint acting Right to Information Commissioners are Ms Katie Shepherd and Ms Anna Rickard. The current Privacy Commissioner is Mr Paxton Booth.

1.4 The committee's responsibilities regarding the Information Commissioner

The committee's functions relating to the Information Commissioner are to:

- monitor and review the performance by the Information Commissioner of the Information Commissioner's functions under the RTI Act and IP Act
- report to the Legislative Assembly on any matter concerning the Information Commissioner, the Information Commissioner's functions or the performance of the Information Commissioner's functions that the committee considers should be drawn to the Legislative Assembly's attention

¹ *Parliament of Queensland Act 2001*, section 88 and Standing Order 194.

² Standing Orders, schedule 6.

³ RTI Act, ss 128-131; IP Act, ss 135-137.

⁴ RTI Act, s 123.

- decide, in consultation with the Information Commissioner, the statistical information (including statistical information about giving access to information other than on an access application) agencies and Ministers are to give the Information Commissioner for the reports under the RTI Act
- examine each annual report tabled in the Legislative Assembly under the RTI Act and the IP Act and, if appropriate, to comment on any aspect of the reports and to make recommendations
- examine each strategic review report tabled in the Legislative Assembly under the RTI Act and, if appropriate, to comment on any aspect of the report and to make recommendations
- 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
- carry out any other functions conferred on the committee by the RTI Act or the IP Act.⁵

1.5 The committee's process

In conducting its oversight of the OIC, the committee adopted the following process:

- examined the 2020-21 Annual Report of the OIC (annual report) (see section 2 of this report)
- held a public hearing with representatives from the OIC on 23 May 2022 (public hearing) (see section 3 of this report).

The following representatives participated in the public hearing:

- Mr Paxton Booth, Privacy Commissioner
- Ms Rachael Rangihaeata, Information Commissioner
- Ms Katie Shepherd, Acting Right to Information Commissioner

The transcript of the public hearing is available on the committee's webpage.

⁵ RTI Act, s 189; IP Act, s 195. Amongst other things, the RTI Act and the IP Act also require that the committee be consulted on the selection process for appointment, and the appointment of, a person as the Information Commissioner, the Right to Information Commissioner or the Privacy Commissioner. 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: RTI Act, s 135 (Information Commissioner), s 151 (Right to Information Commissioner); IP Act, s 145 (Privacy Commissioner).

2 Examination of Annual Report 2020-21

The OIC tabled its annual report on 28 September 2021.

The annual report is made pursuant to s 184 of the RTI Act and s 193 of the IP Act. It is prepared in accordance with the *Financial Accountability Act 2009* and the annual report requirements for Queensland Government agencies.⁶

The annual report provides information about the OIC's financial and non-financial performance, as measured against its 2020-2024 Strategic Plan,⁷ including:

- an account of revenue and how it has used public funds
- a description of the challenges and opportunities that influenced its actions, as well as priorities for the year ahead
- an assessment of achievement in meeting corporate and operational plans as measured against a range of performance indicators.⁸

The annual report advises on the OIC's performance in relation to the following service areas:

- external review
- privacy advice and complaint mediation
- assistance and monitoring.⁹

The OIC's performance against each of these service areas is summarised below.

2.1 External review service

Under s 130 of the RTI Act, one of the Information Commissioner's functions is to investigate and review decisions of agencies and Ministers made under the RTI Act, including whether agencies and Ministers have taken reasonable steps to identify and locate documents applied for by applicants.

With respect to the OIC's objective to provide independent, timely and fair review of decisions made under the RTI Act and IP Act, the annual report advised:

- the OIC received 685 external review applications in 2020-21, (a decrease of 102 from the previous year)
- the OIC finalised 753 external review applications, (exceeding the target of external reviews finalised to received by addressing the high number of external review applications carried over from 2019-20)
- the OIC was slightly under its target of 150 mean average days to finalise external reviews, with a mean time for completion of 155 days
- of the total number of finalised external reviews, 90% were resolved informally without a written decision (exceeding the target of 75%)¹⁰
- the number of external review applications to be finalised was reduced from 358 to 291 as at 30 June 2021; 6% of these open reviews (16) being more than 12 months old (a significant increase from 0.3% in 2019-20 and 0.1% in 2018-19)

⁶ Annual Report, p i.

⁷ Annual Report, p i.

⁸ Annual Report, p ii.

⁹ Annual Report, pp 4-5.

¹⁰ Annual Report, p 13.

- as in previous years, the satisfaction survey return rate was very low
- 51% of applicants who provided feedback were satisfied with the conduct of reviews (not meeting the target of 70%, and down from 67% satisfaction in the previous year)
- similar to previous years, 96% of agencies that provided feedback were satisfied with the conduct of reviews (exceeding the target of 75%).¹¹

The annual report also advised:

- 73 formal written decisions were made, 24 less than the previous year
- 13 appeals to Queensland Civil and Administrative Tribunal (QCAT) were lodged and 20 were finalised
- there were no applications for judicial review of written decisions of the Information Commissioner made to the Supreme Court during 2020-21
- 14 (out of 18) applications from non-profit organisations for financial hardship status were granted
- that the application to declare an applicant vexatious under the RTI Act or IP Act received from an agency was refused.¹²

The OIC reported that challenges to timely completion of external reviews included:

- ongoing substantial demand, relative to available resources
- complexity of matters
- delay from agencies in complying with the review processes due to increasing demand
- unreasonable and sometimes abusive behaviour from a small but time-consuming cohort of applicants.¹³

2.2 Privacy advice and complaint mediation service

In relation to the OIC's objectives to provide an independent, timely and fair privacy complaint mediation service and to assist agencies to adopt privacy by design and achieve compliance with the privacy principles, the annual report advised:

- 94% of agencies were satisfied with the privacy complaint mediation service provided (exceeding the target of 75% and a decrease from 100% achieved in the previous 2 years)
- it took 278 mean average days to finalise an accepted privacy complaint (exceeding the target of 140 days and longer than 185 mean average days in 2019-20)
- the OIC provided 11 consultations and submissions (down from 25 in 2019-20)
- the OIC provided 383 advices and meetings with agencies (down from 412 in the previous year)
- the OIC received 81 privacy complaints (15 fewer than the previous year) and finalised 84 privacy complaints (11 fewer than the previous year)
- 15 accepted privacy complaints were closed during the financial year, with 4 being resolved through mediation
- the OIC referred one complaint to QCAT in 2020-21

¹¹ Annual Report, pp 12-14.

¹² Annual Report, pp 14-15.

¹³ Annual Report, p 13.

- there were 86 voluntary notifications from agencies of privacy breaches during the year, more than double the number of data breach notifications in 2019-20.¹⁴

The annual report also advised that:

- the most common subject of privacy complaints continues to be dissatisfaction with the provision by agencies of personal information to third parties
- for some privacy complaints in 2020-21, there were significant delays in communication from complainants and respondent agencies
- to address increasing demand for advice about privacy breaches, the OIC upgraded its resources in 2020-21, including updated guidance material, an online risk assessment tool, and new forms to enable notification.¹⁵

2.3 Assistance and monitoring service

The annual report stated the following in regard to the OIC's objectives to promote greater awareness of right to information and information privacy in the community and within government and to improve agencies' practices in right to information and information privacy:

- 99% of agencies were satisfied with the information and assistance provided (exceeding the target of 80%)
- 98% of agencies were satisfied with the quality of information resources provided (exceeding the target of 80%)
- 8,738 people completed the OIC's online training courses (exceeding the target of 4,000 but lower than 12,997 in the previous year)
- 97% of course participants were satisfied with sessions (exceeding the target of 75%)
- 321 awareness activities were conducted (exceeding the target of 250 but lower than 353 in the previous year)
- 5,693 enquiry responses (written and oral) were provided to agencies and the community (exceeding the target of 4,500)
- 317,186 website visits (exceeding the target of 150,000 and an increase from 283,715 in the previous year).¹⁶

The annual report also advised:

- 60% of most enquiries were about access to, or amendment of, documents under the RTI and IP Acts
- 12 new resources (7 guidelines, 4 information sheets, 1 training video) were published in 2020-21, including resources concerned with privacy rights and obligations during a pandemic
- 28 guidelines and 8 information sheets were updated
- the reported 33% decrease in participants completing the OIC's online training courses. The OIC reported that the decrease might be because more agencies are implementing their own tailored training programs, removing the need to access the OIC's general online training

¹⁴ Annual Report, pp 16-20.

¹⁵ Annual Report, pp 19-20.

¹⁶ Annual Report, p 22.

- the OIC promoted awareness through:
 - International Access to Information Day (28 September 2020) – the Solomon Lecture which is normally part of this activity was not held in 2020 due to COVID-19 restrictions
 - Privacy Awareness Week (3 - 9 May 2021)
 - the OIC website, social media, and multimedia (OIC YouTube channel)
 - engagement with rural and regional agencies to increase awareness of information rights and responsibilities and improve compliance.
- the OIC tabled 5 reports to Parliament in 2020-21:
 - Privacy and public data – Managing re-identification risk
 - Disclosure logs – Queensland Government departments
 - Follow up audit – Awareness of privacy obligations
 - Follow up audit – Bundaberg Regional Council
 - Minimum reporting requirements – Personal interests, gifts and benefits, overseas travel.¹⁷

2.4 Financial management

The budget appropriation for the OIC for 2020-21 was \$7.289 million. Expenditure during the financial year totalled \$6.857 million, resulting in an operating surplus of \$457,000. Employee expenses (salaries, superannuation, long-service leave and payroll tax) accounted for 79% of expenditure (\$5.385 million), and day-to-day costs (including corporate service charges, office accommodation, computer costs such as software licensing, and contractors and consultants) amounted to \$1.446 million in 2020-21.¹⁸

These figures are a significant reduction on the expenditure in 2019-20 (\$7.687 million) which resulted in an operating deficit of \$366,000, largely as a result of ICT transition project expenditure in that year. The decrease in overall expenditure in 2020-21 was due to reduced employee expenses because of impediments to specialised staff recruitment and restrictions on temporary appointments.¹⁹

¹⁷ Annual Report, pp 23-27.

¹⁸ Annual Report, pp 41-42.

¹⁹ Annual Report, p 41.

3 Oversight public hearing

3.1 The Information Commissioner

In her opening statement, Ms Rangihaeata, the Information Commissioner, highlighted the following in relation to the work of the OIC during 2020-21:

- From 2021, the OIC moved its strategic focus to building agency capability to allow a focus of resources on strategic and emerging areas, issues of high risk and impact on community.
- During 2021, the two key awareness campaigns focused on trust and culture.
- Five audits were conducted in 2021.
- The OIC continues to actively monitor timeliness and use various strategies and tools across all of its functions to address the drivers of demand within the push model of right to information and key issues that that OIC has identified.
- The 2020 Working for Queensland survey results showed a substantial impact of challenging demand and interactions, with about a 30 percentage point increase in staff being overloaded and burnt out.
- The OIC supported agencies in the community with advice related to COVID-19 through 2021.
- Despite the challenges of 2021, the OIC finalised record numbers of reviews and achieved strong performance across its functions.
- COVID-19 also affected the workforce and functions of the OIC in 2022.²⁰

The Information Commissioner also noted that the OIC team was also affected by the February 2022 floods.²¹

3.2 The Privacy Commissioner

In his opening statement, Mr Booth, the Privacy Commissioner, advised that during 2021, training had been provided to over 8,000 participants over the course of 321 events. Mr Booth also discussed how the privacy champion network was being used 'to promote good privacy practices and privacy by design'.²²

Mr Booth also confirmed that during 2021, all of the recommendations made by the Crime and Corruption Commission (CCC), other than those that require legislative amendment, had been implemented. The remaining recommendations, including mandatory notification of data breaches, cannot be progressed without legislative amendment. In this regard, Mr Booth noted:

We currently promote and encourage a voluntary reporting breach scheme in Queensland. Some agencies notified the OIC of data breaches. Last year we received 86 such notifications, mostly the result of human error.²³

Mr Booth also advised that two audits were finalised and tabled last year which involved privacy issues:

The first audit of privacy and public data examined how well two government agencies managed the risks associated with the identification of published datasets and the privacy risks associated with de-identifying those which contained personal information to start with. The audit made a number of key findings, including the need to carefully assess the risk of re-identification from the data that has been

²⁰ Public hearing transcript, Brisbane, 23 May 2022, pp 1-3.

²¹ Public hearing transcript, Brisbane, 23 May 2022, pp 1-3.

²² Public hearing transcript, Brisbane, 23 May 2022, p 3.

²³ Public hearing transcript, Brisbane, 23 May 2022, p 3.

de-identified. Simply removing obvious personal identifiers such as names and addresses is often not sufficient.

The second audit looked at awareness of privacy obligations, which was a follow-up audit from 2018 into how three government agencies educated and trained staff about their privacy obligations. All three agencies had undertaken significant improvements in their training of staff and fully implemented the 12 recommendations that had been made. We also have a follow-on audit examining how a number of other agencies are informing their staff of privacy obligations at the moment.²⁴

3.3 The Acting Right to Information Commissioner

In her opening statement, Ms Shepherd, the Acting Right to Information Commissioner commented that the OIC continues to experience high demand for its review services and noted that 'this is consistent with the trend over the past five years'. The Acting Right to Information Commissioner also noted that during the last financial year, a record number of 753 applications were finalised. Ninety per cent of those matters were resolved informally without a formal decision being necessary.²⁵

In relation to the timelessness of finalising matters, the Acting Right to Information Commissioner explained:

There is a small percentage of complex cases which do take longer to finalise. We can generally attribute this to three key challenges: delays in obtaining information from agencies; allegations of missing documents raised by applicants; and entrenched participants who demonstrate difficult and high-conflict behaviour. A legislative tool we use to tackle agency delay is to issue a notice to produce document. Last year we issued 11 of these notices and this year we have issued 15. The agency we issue most of the notices to is the Queensland Police Service. We are aware that this agency experiences very high demand for its RTI [right to information] services and suffers resulting resourcing issues.

The number of deemed refusal of access decisions is also an indicator of agencies unable to meet statutory time frames. This accounts for about 20 per cent of our external review matters. Again the Queensland Police Service has the most deemed refusal decisions, reiterating the resourcing issues I referred to earlier. However, we have made efforts to engage with senior leadership to encourage more timely outcomes for applicants.²⁶

In relation to external review applications, the Acting Right to Information Commissioner spoke of a concerning trend:

There is a small but growing number of external review applicants who exhibit high-conflict behaviour. We are conscious of the impact this has on our staff in terms of burnout, stress and vicarious trauma. We provide training to our staff and encourage staff to debrief within the office and virtually in a hybrid working environment. Staff also have access to our employer assistance provider, Benestar.²⁷

The topic of missing documents was also discussed:

Lastly, I would just like to touch on the issue of missing documents, which is regularly raised by applicants on review. Unfortunately, this is an area where the community can lose trust in government, particularly where further documents are located through the external review process. What these matters highlight for us is that there are opportunities for improved information management across government in order to build that community trust and find documents in the first instance.²⁸

²⁴ Public hearing transcript, Brisbane, 23 May 2022, p 3.

²⁵ Public hearing transcript, Brisbane, 23 May 2022, p 3.

²⁶ Public hearing transcript, Brisbane, 23 May 2022, p 4.

²⁷ Public hearing transcript, Brisbane, 23 May 2022, p 4.

²⁸ Public hearing transcript, Brisbane, 23 May 2022, p 4.

3.4 Questions from the committee

Questions from the committee during the public hearing focused on:

- The number of requests to review right to information outcomes received in the last 12 months and related issues.
- The main reason right to information requests are being refused within government departments and related issues.
- Whether cabinet-in-confidence is being used more than previously to restrict right to information releases.
- The nature of the challenging interactions in the inquiry service, privacy and complaints area and external review service.
- How the OIC is handling the current workload and employee resource levels.
- The strategies in place to deal with response delays by agencies.
- The difficulties facing the OIC in terms of recruitment of employees.
- The various reasons for the delay in getting information from the Queensland Police Service.
- The different methods available to the public for obtaining information concerning a motor vehicle accident.
- Whether there a role for the OIC to play in monitoring the decisions to refuse an RTI request from agencies and a discussion of related trends and issues.
- The level of data availability around privacy and related issues.
- An explanation of the meaning of privacy by design and its role in projects.
- Whether the OIC is aware of any information that would indicate that RTI officers are not acting independently of government.
- Whether the OIC's annual report is reviewed by the department or the minister's office before it is tabled.
- Whether the OIC has ever had an IT device removed from its office by the Public Service Commission or any other body.
- Whether the OIC had made a submission to the Coaldrake review and related issues.
- Whether there is a central portal or a page on the government website that clearly outlines or articulates the avenues for accessing information.
- How the OIC collates data as part of the review of its services and related issues.²⁹

²⁹ Public hearing transcript, Brisbane, 23 May 2022, pp 4–11.

4 Committee comment

The committee appreciates the work that the OIC does and its performance in 2020-21 especially in light of some significant challenges, such as increased workload, COVID-19 and employee recruitment difficulties.

The committee also specifically acknowledges the concerning increase in applicants who exhibit high-conflict behaviour and the impact that this has on the OIC staff.

The committee commends the OIC on its work in implementing all the recommendations of the CCC's Operation Impala which did not require legislative amendment.

The committee appreciates the assistance provided to it by the Information Commissioner and the OIC staff as the committee performed its oversight role. The committee also welcomes Mr Booth to his new role as Privacy Commissioner.

We take this opportunity to express our continued support of the OIC in promoting accountability, openness and transparency.

Recommendation

The committee recommends that the House notes the contents of this report.