Biannual meeting with the Information Commissioner
November 2008

January 2009

Report No. 69
LEGAL, CONSTITUTIONAL AND ADMINISTRATIVE REVIEW COMMITTEE

52nd Parliament

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CHAIR’S FOREWORD

The Committee’s biannual meeting with the Office of the Information Commissioner is one of the main mechanisms that it utilises to monitor and review the performance of the functions of the Office, as well as the ongoing implementation of recommendations made in the latest strategic management review of the Office.

This biannual meeting was timed to include consideration of the Office’s annual report for 2007-2008, as well as performance information for the second six months of that financial year. Importantly, it also gave the Committee an opportunity to consider the progress that the Office has made towards preparing for the implementation of the landmark reforms recommended by the Freedom of Information Independent Review Panel in its report, The Right to Information: Reviewing Queensland’s Freedom of Information Act.

This report sets out, for the consideration of the Legislative Assembly, information on these matters.

I thank Ms Julie Kinross who was Acting Information Commissioner during this biannium. I also thank the staff of the Office of the Information Commissioner who assisted with the provision of data and information to the Committee.

As always, the timely and accurate assistance provided by Hansard for the transcription of Committee hearings is very much appreciated. The transcript provides an accurate record of the meeting with the Information Commissioner and objective information about the Committee’s enhancement of the accountability of public administration in Queensland.

I also thank my fellow Committee members for their attention to committee responsibilities regarding the Office of the Information Commissioner and the Committee’s secretariat for assisting the Committee perform this important function.

Mrs Dianne Reilly MP
Chair
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1. **INTRODUCTION**

**THE COMMITTEE**

1.1 The Legal, Constitutional and Administrative Review Committee (the Committee) is a multi-party standing committee of the Queensland Parliament. It is established by the *Parliament of Queensland Act 2001* and has a broad range of law reform responsibilities, including administrative review reform, constitutional reform, electoral reform, and legal reform. In addition, the Committee has responsibilities conferred by the *Electoral Act 1992*, the *Freedom of Information Act 1992* and the *Ombudsman Act 2001*.

1.2 From 1 July 2009 the Committee may have additional responsibilities in relation to the new Freedom of Information regime. These responsibilities were recommended by the Freedom of Information Independent Review Panel in its report, *The Right to Information, Reviewing Queensland’s Freedom of Information Act*¹ (the Solomon Report) in June 2008 and subsequently substantially endorsed by the Queensland Government. This is outlined in further detail below.

**THIS REPORT**

1.3 This report provides information to the Legislative Assembly regarding the performance of the Information Commissioner of functions under the *Freedom of Information Act*. The report includes findings on the recent biannual meeting process and a meeting of the Committee with the Acting Information Commissioner, Ms Julie Kinross, on 25 November 2008. It includes responses both to questions on notice and to questions without notice.

1.4 In the first part of 2005, the Office of the Information Commissioner was created as a separate entity to the Office of the Ombudsman and a stand-alone Information Commissioner was appointed. Subsequent amendments to the *Freedom of Information Act* conferred on the Committee responsibilities in respect of monitoring and reviewing the performance of the functions of the Information Commissioner.

1.5 The meeting on 25 November 2008 was the seventh biannual hearing of the Committee (and the second with the current Acting Information Commissioner) since the relevant amendment to the *Freedom of Information Act*. It provided an opportunity for the Committee to receive performance information for the second six months of the 2007-2008 financial year.

1.6 During this biennium the Committee had an opportunity to consider the Solomon Report, as well as the Queensland Government’s response to the recommendations of the Solomon Report², the Committee’s own recommendations in its recent report, Report No. 64: *The Accessibility of Administrative Justice*³ (AAJ Report), and the subsequent Government response.⁴

1.7 Concurrently with the finalisation of this biannual meeting the Premier, the Honourable Anna Bligh MP, released the exposure drafts of the *Right to Information Bill 2009* and the *Information Privacy Bill 2009* for community consultation.⁵ As these two Bills provide for reforms integral to one of the core roles of this Committee, it will be tabling its views on these reforms in the near future. In the meantime, the Committee will continue to report on the performance of its existing statutory functions.

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¹ Delivered on 10 June 2008 by the Panel Chair, Dr David Solomon AM, to the Honourable Anna Bligh MP, Premier of Queensland and the Honourable Kerry Shine MP, Attorney-General and Minister for Justice and Minister Assisting the Premier in Western Queensland. This report is available from http://www.foireview.qld.gov.au/.


⁵ These Bills are available from http://www.qld.gov.au/righttoinformation/.
2. COMMITTEE RESPONSIBILITIES

OVERVIEW

2.1 The Legal, Constitutional and Administrative Review Committee is a standing committee of the Queensland Parliament with a broad range of law reform responsibilities. The Committee is established under the Parliament of Queensland Act.

2.2 The Act provides that the Committee has the following areas of responsibility:

- administrative review reform;
- constitutional reform;
- electoral reform; and
- legal reform.

2.3 Administrative review reform includes considering legislation about access to information, review of administrative decisions, anti-discrimination and equal opportunity employment. However, the Committee's jurisdiction does not extend to investigating particular conduct, or reviewing a decision to, or not to, investigate a particular complaint or decision.

2.4 Constitutional reform includes considering any bill for an Act that expressly or impliedly repeals any law relevant to Queensland's Constitution.

2.5 Electoral reform includes monitoring generally the conduct of elections under the Electoral Act 1992 and the capacity of the Queensland Electoral Commission to conduct elections.

2.6 Legal reform includes the recognition of Aboriginal tradition and Island custom under Queensland law and proposed national scheme legislation referred to the Committee by the Legislative Assembly. National scheme legislation refers to a bill for an Act that is intended to be substantially uniform with or complementary to legislation of the Commonwealth or another State and whose operation may, under the Act, be changed by amendment of a law of the Commonwealth or another State.

2.7 The Committee has a number of other statutory responsibilities in relation to the Queensland Ombudsman, the Information Commissioner and senior officers of the Electoral Commission of Queensland.

2.8 In addition, the Committee must deal with issues which are referred to it by the Legislative Assembly or under another Act, whether or not the issue is within the Committee's areas of responsibility.

COMMITTEE’S PARTICULAR RESPONSIBILITY REGARDING FREEDOM OF INFORMATION

2.9 In addition to the jurisdiction conferred by the Parliament of Queensland Act, the Freedom of Information Act also confers on the Committee responsibilities regarding the Information Commissioner.

2.10 The Committee has statutory responsibilities in relation to monitoring and reviewing the operation of the Freedom of Information Act, the legislation that regulates people's right to access and to amend information held by Queensland government agencies.

2.11 The importance of Parliamentary oversight of the operation of the freedom of information legislation was first recognised by the Electoral and Administrative Review Commission (EARC) in its 1990 Report on Freedom of Information. In this report, EARC considered that the Information Commissioner should be required to report to a Parliamentary Committee as an accountability mechanism.

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2.12 The Committee's particular responsibilities under the Freedom of Information Act include the following:

- monitor and review the Information Commissioner's performance of the functions conferred by the Freedom of Information Act including the following functions:
  - investigating and reviewing decisions of agencies and Ministers regarding the release of documents under the Freedom of Information Act; and
  - providing information and help to agencies and members of the public on matters relevant to the external review of decisions by the Information Commissioner or the Office of the Information Commissioner.

- 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 Assembly's attention;

- examine each annual report tabled in the Legislative Assembly under the Freedom of Information Act and, if appropriate, comment on any aspect of the report; and

- report to the Legislative Assembly on any changes to the functions, structures and procedures of the Office of the Information Commissioner that the Committee considers desirable for the more effective operation of the Freedom of Information Act.

2.13 In addition to these particular responsibilities, the Committee has a role in relation to the regular five yearly strategic reviews of the Office of the Information Commissioner. This role is outlined below. The Committee is also to be consulted on the appointment of a person as Information Commissioner (and on the process for such appointment).

Monitoring the Implementation of Strategic Review Recommendations

2.14 The Freedom of Information Act requires a strategic review to be conducted at least every five years of:

- the Information Commissioner's functions; and

- the Information Commissioner's performance of those functions to assess whether they are being performed economically, effectively and efficiently.

2.15 After first consulting with the Committee and the Information Commissioner, the Governor in Council appoints a strategic reviewer and decides the terms of reference for the strategic review. Each such review must be undertaken by an appropriately qualified person, who provides a report on the review.

2.16 The responsible Minister must table the strategic review report in the Legislative Assembly and it is referred to the Committee to deal with. The Committee may provide a report on it.

2.17 In the Committee's Report No. 56 in which the Committee considered the Report of the Strategic Management Review – Office of the Information Commissioner, April 2006, the committee noted that:

The Committee commends the strategic review report to the Parliament as a framework for the continuing structural and operational effectiveness of the Office of the Information Commissioner as an accountability mechanism. [The Committee] endorses the recommendations of the strategic

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8 Freedom of Information Act 1992, s 108C.
9 Freedom of Information Act 1992, s 101C.
10 Freedom of Information Act 1992, s 101H.
11 Freedom of Information Act 1992, s 108A(2) and (8).
12 Freedom of Information Act 1992, s 108A(4), (5) and (6).
15 Parliament of Queensland Act 2001, s 84(3).
The next strategic review process was due to commence in 2010. However, the Solomon Report recommended that the next one should commence four years after the commencement of the new legislation, namely after 1 July 2013 and then subsequent reviews would occur at five yearly intervals.

The Recommendations of the Solomon Report

Should the Parliament pass the Right to Information Bill 2009 and the Information Privacy Bill 2009 (exposure drafts of which were released for consultation on 4 December 2008), the Committee’s jurisdiction in relation to the Information Commissioner will be expanded in line with that recommended by the Solomon Report in June 2008, and subsequently endorsed by the Queensland Government.

This expansion will give the Committee jurisdiction over the new freedom of information regime, which the Solomon Report defined as including the new right to information framework, information privacy, information management policy and administrative release practices.

The Government has announced that these reforms will take effect from 1 July 2009. Until the Parliament passes these bills and the provisions commence, the Committee will continue to exercise its current jurisdiction under the Freedom of Information Act.

3. BIANNUAL MEETING – NOVEMBER 2008

OUTLINE OF THE PROCESS

To fulfil the monitoring and reviewing responsibilities conferred by the Freedom of Information Act, the Committee of the 51st Parliament commenced the following process with the Information Commissioner:

- two general meetings with the Information Commissioner each year, one preceding the Estimates process and the other following the tabling of the Information Commissioner’s annual report;
- written questions on notice to the Information Commissioner, with a request for responses to be provided prior to the meeting;
- consideration of the Information Commissioner’s responses by the Committee;
- a meeting with the Information Commissioner to discuss the responses to the questions on notice and to ask questions without notice; and
- a report to Parliament on that meeting incorporating a transcript of the meeting.

The Committee of the 52nd Parliament was appointed by the Legislative Assembly on 11 October 2006 and has continued this process with the Information Commissioner.

For this biannual period the Committee decided to build on its previous approach in three respects:

- consideration of a wider range of information, including information not publicly available, prior to the formulation of questions on notice;
- in addition to monitoring and reviewing the usual performance information, detailed consideration of a particular aspect of the Office’s performance; and

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17 Recommendation 140. See also the Consultation Draft Right to Information Bill 2009 s 183.
to manage the proximity in timing between the provision of the Office’s Annual Report 2007-2008 and the meeting, the Office was initially provided with draft questions on notice which were later finalised.

3.4 For this biannual period the Committee decided to include a detailed consideration of a particular aspect of the Office’s performance. The aspect chosen was the impact of the implementation of the Government response to the Solomon Report.

3.5 The Committee was of the view that there was some risk to the Office’s ability to maintain and even build upon its usual standard of performance during a period in which it was also undertaking implementation of such landmark reforms as those recommended by the Solomon Report. In addition, the Committee was aware that the Office had not had the leadership of a permanently appointed Information Commissioner for some time and had experienced some difficulty retaining staff during the review period.

3.6 The Committee sought preliminary information before preparing its questions on notice, and used this information to assist in the development of those questions. The Committee then further explored the issues during the meeting.

3.7 By letter dated 10 September 2008, the committee advised the Acting Information Commissioner of its decision to focus on the implementation of the Government response to the Solomon Report and requested copies of the following documents relating to the Office:

- implementation plan and associated documents such as financial and other project plans;
- recruitment plan; and
- change management plan and associated strategies to support staff through this process.

3.8 On 15 September 2008, the Acting Information Commissioner provided a copy of the implementation plan which is attached in Appendix A. The Acting Information Commissioner later advised that the Cabinet Budget Review Committee had approved a proposed budget for the implementation phase as follows:

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3.9 The additional funding was for the recruitment of an implementation team comprising 10.5 full time equivalent positions to be employed for varying periods of up to 18 months to finalise the implementation of any functions and responsibilities attributed to the Office. It also included provision for temporary office accommodation.

QUESTIONS ON NOTICE

3.10 By letter dated 9 October 2008, the Committee forwarded to the Acting Information Commissioner draft questions on notice. These were informed by a range of material including:

- the Solomon Report;
- the Queensland Government Response to the Solomon Report;
- the AAJ Report;
- the Government response to the AAJ Report;
- the Office’s implementation plan;
- the Committee’s Report No. 66: Biennial Review of the Office of the Information Commission, May 2008; and
• information available on the Office of the Information Commissioner’s website, including the complaints policy and website privacy statement.

3.11 Once the Committee had considered the Office’s Annual Report 2007-2008, it provided final questions on notice by letter dated 6 November 2008. The final questions on notice included all of the draft questions on notice (without change) and three additional questions. The final questions on notice are included in this report at Appendix B.

3.12 The questions on notice focused on the twelve-month and six-month periods up to 30 June 2008, and included comparison data with the two previous financial years, namely 2005-2006 and 2006-2007.

3.13 The questions related to the following matters:

• the timeliness of the completion of external reviews, the method of completion and the basis of applications for external review;
• the details of appeals from external review decisions, including the outcomes of these appeals and the costs involved;
• accessibility of decisions for applicants and for freedom of information decision-makers;
• human resources issues;
• budget issues;
• privacy issues; and
• issues regarding the implementation of the Government Response to the Solomon Report.

THE ACTING INFORMATION COMMISSIONER’S RESPONSE

3.14 In accordance with the Committee’s request, the Acting Information Commissioner responded to the questions on notice by 12 November 2008. The Acting Information Commissioner’s response and a copy of the Office of the Information Commissioner’s Privacy Plan are included in this report at Appendix C.

3.15 The response was comprehensive and all questions were addressed.

3.16 The response highlighted that the performance of the functions of the Office has generally steadily improved despite some under-staffing and also uncertainty about the future direction of the Office resulting from the then pending response of the Government to both the Committee’s AAJ Report and the Solomon Report.

3.17 The Committee considered the Acting Information Commissioner’s response prior to the meeting on 25 November 2008. Committee members used the response as the basis for further examination of the performance of the functions of the Office.

MEETING WITH THE ACTING INFORMATION COMMISSIONER ON 25 NOVEMBER 2008

3.18 On 25 November 2008, the Committee met with:

• Ms Julie Kinross, Acting Information Commissioner;
• Ms Rachael Rangihaeata, First Assistant Information Commissioner; and
• Ms Kylie Puller, Acting Manager, Corporate and Executive Services.

3.19 The Committee’s meeting was transcribed by Hansard. The transcript is included in this report at Appendix D.

3.20 The Acting Information Commissioner provided an opening statement to the Committee commenting that the 2007-2008 year had been a watershed year for freedom of information in light of the recommendations of the Solomon Report, and flagging that this had caused the Office to focus its attention on preparing for its new
roles by mid 2009. Another consequence had been the delay in preparing a new Strategic Plan for the Office, which was held off until there was greater clarity as to the implications of the Solomon Report recommendations for the Office.

3.21 The Acting Information Commissioner mentioned that the Office had received almost ten per cent more applications for external review than the previous year and that, despite this increase, the timeliness of finalising applications increased. The median time taken to finalise reviews dropped from 115 days to 85 days, resulting in the Office meeting its target of 90 median days to finalise reviews for the first time since that target was introduced.

3.22 The Committee focused its questions on the implications of the implementation of the Government response to the Solomon Report, including the following:

- the timeframe for the development of new strategic and operational plans for the Office;
- the project management of the implementation phase, including timeframes, staffing and the provision of office accommodation for the implementation team; and
- the adequacy of the additional funding provided for the implementation phase.

4. COMMITTEE COMMENTS

4.1 The Committee is pleased to report that generally some performance improvements were continuing to be made in the 2007-2008 financial year compared to the 2005-2006 and 2006-2007 financial years. The Committee commends the Acting Information Commissioner, the former Acting Information Commissioner and the staff of the Office for the efforts taken during the 2007-2008 year, and notes that improvements in performance were achieved during a challenging period operationally as the Office prepared to implement the Solomon Report recommendations.

4.2 For the 2007-2008 financial year (with the corresponding statistics for the 2006-2007 financial year contained in brackets for comparison) changes in performance included the following:

- The number of applications for external review received by the Office increased to 289 (264).
- The number of applications for external review finalised by the Office decreased to 284 (308).
- The number of applications for external review finalised within 12 months of receipt decreased to 255 (262) but increased as a proportion of the number finalised to 90% (85%).
- The number of applications for external review that were informally resolved decreased to 225 (233) but increased as a proportion of the number finalised to 79% (76%).
- The number of applications for external review that were not finalised within 12 months increased to 11 (7).

In addition, the following improvements in performance are noteworthy:

- The average time taken to deal with applications for external review reduced to 141 days (176 days).
- The median time taken to finalise applications for external review reduced to 85 days (115 days).

4.3 The number of finalised reviews for the financial year did not reach the target of 300. The Office finalised 284 reviews in 2007-2008. The Acting Information Commissioner stated that the primary reasons for this were an increase in the number of reviews received by the Office combined with a decrease in the number of available staff (due to the uncertainty regarding the appointment of a permanent Information Commissioner) and a decision not to backfill temporary vacancies so as not to exceed the Office’s budget.

4.4 Of interest to the Committee, the performance improvements of the previous biannual period were not maintained consistently for all performance measures in this current biannual period. The above data is broken down for the current biannual period, namely the six months to 30 June 2008 (with the corresponding
statistics for the previous biannual period, namely the six months to 31 December 2007, provided in brackets for comparison:

- The number of applications for external review received by the Office decreased to 131 (158).
- The number of applications for external review finalised by the Office decreased to 136 (148).
- The number of applications for external review finalised within 12 months of receipt decreased to 118 or 87% (137 or 93%).
- The number of applications for external review that were informally resolved marginally decreased to 111 or 82% (114 or 77%).
- The number of applications for external review that were not finalised within 12 months marginally increased to 11 (10).
- The average time taken to deal with applications for external review increased to 156 days (127.85 days).
- The median time taken to finalise applications for external review increased to 105 days (74 days).

4.5 Whilst the number of applications for external review had decreased from 158 in the six months to 31 December 2007 to 131 in the six months to 30 June 2008, the median time to finalise a review increased from 74 days to 105 days for the respective six-month periods. In addition, the proportion of applications finalised within 12 months also decreased from 93% to 87% for the respective six-month periods.

4.6 There was an increase in the number of applications for external review received by the Office from 264 in 2006-2007 to 289 in 2007-2008. The number of reviews finalised dropped from 308 in 2006-2007 to 284 in 2007-2008. This is below the target of 300. The Committee notes that for the six-month period to 30 June 2008 the Office finalised five more reviews than it had received and that the Office has a number of initiatives underway to improve this outcome in the future.

4.7 The Committee notes that the Cabinet Budget Review Committee approved additional funding of $1.6 million for the 2008-2009 year. This will fund an implementation team comprising 10.5 full time equivalent positions, led by the First Assistant Information Commissioner. At the time of the November meeting, five staff members had commenced and two were expected to commence in December 2008.

4.8 The Committee notes the implementation plan provided by the Office (attached in Appendix A) and the response to questions on notice 14 and 15 (attached in Appendix C), particularly:

“…Workload for the new OIC functions under a new Queensland legislative model, is to an extent, unknown so this is a significant challenge in any estimate of resources to ensure effective functioning in the early years.”

“…if the proposed legislation were to commence shortly after assent, the implementation task is intensified and timeliness and quality control will be paramount.”

**Recommendation 1:** In light of the performance measures for this biannual period and the challenges of the implementation phase, the Committee recommends that the Queensland Government maintain the adequacy of funding and support for the Information Commissioner to allow the Office to effectively carry out its existing and expanded future functions.

4.9 The Committee is concerned that delays in processing applications by some Queensland Government agencies are resulting in a problem for the Office, in that the number of external review applications concerning deemed decisions has increased by 50% (as reported in the Office’s Annual Report 2007-2008, page 19). Such applications are more time consuming and resource intensive for the Office to process.

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4.10 The Committee notes the response provided by the Office to question on notice 20 (attached in Appendix C) and also the pending implementation of the Solomon Report’s recommendations regarding the reduction in the timeframe for the making of original decisions to 25 days\textsuperscript{19}, the reduction in the timeframe for making internal review decisions to 20 days\textsuperscript{20}, and regarding the shift to a non-mandatory internal review process.\textsuperscript{21}

**Recommendation 2:** The Committee recommends that all Queensland Government agencies ensure that sufficient resources are dedicated to the timely processing of freedom of information applications with a view to ensuring that the number of deemed decisions is reduced to an absolute minimum and that any remaining backlog of undecided applications is processed as soon as possible.

4.11 The Committee is pleased to note that the Office no longer has any current applications for declarations of vexatious applicants and appreciates the Office’s timely implementation of two related recommendations of the Committee in its most recent previous biannual report.\textsuperscript{22}

4.12 The Committee is pleased to report to the Parliament on the significant activities of the Acting Information Commissioner and her staff in extending as far as possible the right of the community to have access to information held by Queensland Government agencies and local governments, and for such information to be corrected where appropriate. The Committee looks forward to meeting with the Information Commissioner and team again in May 2009.

4.13 The Committee commends the information in this report to the Parliament.

\textsuperscript{19} Recommendation 50. See also the *Consultation Draft Right to Information Bill 2009* s 29 (definition of ‘processing period’).

\textsuperscript{20} Recommendation 91. See also the *Consultation Draft Right to Information Bill 2009* s 80.

\textsuperscript{21} Recommendation 89. See also the *Consultation Draft Right to Information Bill 2009* s 77(1).

Appendix A

Implementation Plan
IMPLEMENTATION PLAN

RIGHT TO INFORMATION: REVIEW OF THE
FREEDOM OF INFORMATION ACT 1992
1. INTRODUCTION AND BACKGROUND

During 2007–08 the Queensland Government appointed an independent panel chaired by Dr David Solomon AM to review Queensland's FOI regulatory framework and to report on changes to improve community access to information. The Report, The Right to Information: Reviewing Queensland's Freedom of Information Act ("the Report") was delivered to the Queensland Government on 10 June 2008. In addition to recommendations that affect all public sector agencies, the Report included a number of recommendations allocating new or enhanced responsibilities to the Office of the Information Commissioner (OIC).

The Government Response, issued on 20 August 2008, committed to extending the role of the OIC beyond the current single function of external review to assume a number of new and enhanced functions including those set out below.

Privacy Commissioner
The Government has announced that it will put in place new privacy legislation. A new Privacy Commissioner will be appointed within OIC. OIC will conduct reviews of complaints regarding breaches of privacy and applications for access to, and amendment of, personal information under the new legislation.

Guidance and awareness
OIC will perform functions to provide guidance and promote awareness about the Right to Information (RTI) and privacy, including a range of guidelines, training programs, and a helpline for agencies and the community.

Audit and reporting
OIC will conduct audits of agency performance of FOI and produce annual report cards on agencies for examination by the parliamentary Legal, Constitutional and Administrative Review Committee (LCARC).

The Information Commissioner will also have a collaborative role in strategic information policy and fostering cultural change within the public sector. There are also changes to the scope and application of the FOI Act that will require enhancements to the existing external review function.

The Information Commissioner will also be responsible for making decisions regarding applications from non-profit organisations for the waiver of charges on the basis of financial hardship, and applications from agencies for extensions to the time specified in the Time and Harm Weighting Guide schedule to the new Act.

The Government Response states that responsibility for a number of additional functions attributed to the Information Commissioner by the Report recommendations are under consideration by the Government. The Information Commissioner may therefore assume further functions following such consideration.

Key issues for readiness are the development of guidelines, procedures and training for agencies to be ready from 1 July 2008 as far as practicable, accommodation for staff and facilities, systems development and the recruitment of a large number of staff by or shortly after implementation date. The Government Response commits the OIC to produce an
extensive number of guidelines and deliver training to decision making agencies for commencement of the legislation.

2. OBJECTIVE

The objectives of the implementation project are:

- to ensure that on commencement of the new legislation the OIC is ready to perform new and enhanced functions allocated to OIC in the Government Response
- to provide training and assistance to agencies to operate under new legislation on commencement
- to undertake collaborative roles in partnership with the Queensland Government in development of the Strategic Information Policy, reuse of Government information and promotion of appropriate records management.

3. SCOPE & ASSUMPTIONS

The scope of the implementation project is in accordance with the Government Response to the Report and any funding approval for the initial implementation of the Government Response. The scope of the project and funding is based on the assumption that the privacy legislation will apply only to Queensland Government agencies, excluding Queensland Health, and local government, not private sector organisations, consistent with advice from Department of the Premier and Cabinet.

The Report attributes a range of additional responsibilities to OIC not incorporated into the formal recommendations. This project deals only with responsibilities attributed to OIC in the Government Response to the Report’s Recommendations.

Substantial work is required to implement new or enlarged functions and to ready approximately 700 decision making agencies for commencement of the new legislation. This project focuses on the preparation required for implementation to ensure the OIC is operational to the extent practicable from commencement of the legislation in mid-2009 and the development of those initiatives essential to agencies administering the legislation.

Ongoing resources required by the agency from 2009-10, including staff and ongoing accommodation, will be identified for consideration as part of the 2009-10 budget process.

4. DURATION

The Project will commence on 1 October 2008, in accordance with anticipated funding approval. Specific project activities and tasks will start on commencement of required project team staff. The project is expected to end in December 2009, with transition to ongoing functions of the new organisation. A number of activities will end prior to, or on, commencement of the legislation.
5. PROJECT TEAM & GOVERNANCE

The project sponsor is the Acting Information Commissioner.

The project team will be led by First Assistant Commissioner Ms Rachael Rangihaeata. The project team will report regularly to the project sponsor who will approve individual project plans, time frames, ensure priorities are identified and attended to and monitor progress against time frames.

The Acting Information Commissioner will report on performance of the implementation project to the Legal, Constitutional and Administrative Review Committee (LCARC) through existing reporting arrangements, including biannual meetings.

The FOI Review CEO Steering Committee, chaired by the Director General, DPC has been established to monitor and coordinate implementation of the Government Response across the public sector. The Acting Information Commissioner is a member of the Steering Committee. The project team will liaise with the Review team established within the Department of Premier and Cabinet to implement key recommendations and coordinate the whole of government response.

It is anticipated the Project team, subject to funding being approved will comprise:

- Project Leader (SO1)
- FOI policy, publications and procedures -SO2, AO8, AO7
- Privacy policy, publications and procedures - SO2, AO7
- Training – AO8 (start 01/01/09), AO6 (start 01/04/09)
- Project staff – systems, website, accommodation, contracts etc – AO8, AO6 (start 14/02/09)
- Business/systems analyst – AO8 (6 months in 2008-09)

A small group of experienced FOI practitioners will be established to provide expert input from an agency point of view.

6. PROPOSED PROJECT BUDGET

OIC is waiting on advice from executive government in relation to supplementary funding.
# 7. KEY DELIVERABLES

<table>
<thead>
<tr>
<th>Key task</th>
<th>Completion date</th>
<th>Activity/work to be undertaken</th>
<th>Responsibility</th>
<th>Specific Report Recommendation</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>1. Guidelines</strong> (required for commencement)</td>
<td></td>
<td>Preparation of specific guidelines below including research, consultation as required, consistent with the new legislation, caselaw and pending Government decisions as appropriate</td>
<td>FOI team</td>
<td>84</td>
</tr>
<tr>
<td>FOI Processing and access decisions</td>
<td>1 July 2009</td>
<td>Prepare guidelines on new legislation processes and requirements</td>
<td>FOI team</td>
<td>84</td>
</tr>
<tr>
<td>Fees</td>
<td>1 July 2009</td>
<td>Prepare guidelines on new legislation processes and requirements</td>
<td>FOI team</td>
<td>84</td>
</tr>
<tr>
<td>Develop scheme for topic/sectoral guidelines</td>
<td>1 July 2009</td>
<td>Develop a scheme for guidelines focused on a particular issue or sector, drawing on and adapting the UK approach</td>
<td>FOI team</td>
<td>84</td>
</tr>
<tr>
<td>Public interest test</td>
<td>1 July 2009</td>
<td>Research, prepare guidelines on public interest test based on new legislation, caselaw, OIC decisions</td>
<td>FOI team</td>
<td>43</td>
</tr>
<tr>
<td>Schedule of relevant documents</td>
<td>1 July 2009</td>
<td>Prepare guidelines, taking into account decisions made following Government consideration of recommendation 51 and legislative provisions</td>
<td>FOI team</td>
<td>52</td>
</tr>
<tr>
<td>Disclosure logs</td>
<td>1 July 2009</td>
<td>Prepare guidelines to assist agencies to develop disclosure logs, taking into account decisions made following QGCIO report referred to regarding recommendation 3, and legislative provisions</td>
<td>FOI team</td>
<td>87</td>
</tr>
<tr>
<td>Statements of reasons</td>
<td>1 July 2009</td>
<td>Prepare guidelines based on new legislation, caselaw, guidance and relevant legislation such as the Acts Interpretation Act 1954</td>
<td>FOI team</td>
<td>86</td>
</tr>
<tr>
<td>Charges for provision of non-paper sourced data</td>
<td>1 July 2009</td>
<td>Prepare recommendations for charges for the provision of non-paper-sourced data</td>
<td>FOI team</td>
<td>85</td>
</tr>
<tr>
<td>Administrative Access</td>
<td>1 July 2009</td>
<td>Prepare guidelines on the development and implementation of administrative access schemes by agencies</td>
<td>FOI team</td>
<td>119</td>
</tr>
<tr>
<td>Dealing productively with requesters</td>
<td>30 Sept 2009</td>
<td>Prepare guidelines as a basis for a training program for agencies, based on those developed by the NSW Ombudsman, to help agencies to engage productively with requesters and share practical strategies for dealing with unreasonable requester conduct</td>
<td>FOI team</td>
<td>76</td>
</tr>
<tr>
<td>External review</td>
<td>1 July 2009</td>
<td>Prepare guidelines explaining the way external reviews are conducted</td>
<td>FOI team</td>
<td>101</td>
</tr>
<tr>
<td>Task Description</td>
<td>Start Date</td>
<td>Task Details</td>
<td>Responsible Team</td>
<td>Priority</td>
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<tr>
<td>Vexatious applicant declaration</td>
<td>1 July 2009</td>
<td>Research and prepare guidelines to assist agencies in determining whether to make an application that a requester be declared vexatious</td>
<td>FOI team</td>
<td>75</td>
</tr>
<tr>
<td>Privacy - new complaint process and decisions</td>
<td>1 July 2009</td>
<td>Prepare guidelines based on new legislation and drawing on similar jurisdictions</td>
<td>Privacy team</td>
<td>12</td>
</tr>
<tr>
<td>Privacy - new access and amendment process and decisions</td>
<td>1 July 2009</td>
<td>Prepare guidelines based on new legislation and drawing on similar jurisdictions</td>
<td>Privacy team</td>
<td>11, 12</td>
</tr>
<tr>
<td>Community information</td>
<td>1 July 2009</td>
<td>Prepare brochures and other information products</td>
<td>FOI &amp; Privacy teams</td>
<td>130</td>
</tr>
<tr>
<td><strong>2. Training</strong></td>
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<tr>
<td>New FOI &amp; Privacy legislation</td>
<td>1 July 2009</td>
<td>Develop training modules</td>
<td>Training team</td>
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<td></td>
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<td>Deliver to agencies</td>
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<td></td>
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<td>Develop computer assisted learning tool</td>
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<tr>
<td>Dealing productively with requesters</td>
<td>December 2009</td>
<td>Prepare a training program for agencies, based on those developed by the NSW Ombudsman, to help agencies to engage productively with requesters and share practical strategies for dealing with unreasonable requester conduct</td>
<td>Training team</td>
<td>76</td>
</tr>
<tr>
<td><strong>3. Organisational planning and new accommodation</strong></td>
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<tr>
<td>New organisational structure and roles</td>
<td>1 May 2009</td>
<td>Design new organisational structure and specific roles and responsibilities of staff including position descriptions, drawing on similar jurisdictions</td>
<td>Project team</td>
<td></td>
</tr>
<tr>
<td>New ongoing accommodation</td>
<td>1 July 2009</td>
<td>Secure accommodation and fit out for ongoing operational needs of new organisation comprising enhanced external review function and new functions</td>
<td>Project team</td>
<td></td>
</tr>
<tr>
<td><strong>4. Systems review and enhancement/replacement</strong></td>
<td>1 July 2009</td>
<td>Map new procedures and processes for all OIC functions, including case management, statistical reporting, helpline, new process requirements Review existing systems to determine whether enhancement is possible or replacement required Enhance or replace systems to meet operational requirements consistent with new legislative requirements and new and enhanced functions</td>
<td>Business/systems analyst</td>
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<td>Project team</td>
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<tr>
<td><strong>5. Website review and enhancement/replacement</strong></td>
<td>1 July 2009</td>
<td>Review website to determine whether enhancement is possible or replacement required Enhance or replace website to meet requirements consistent with legislative requirements and new and enhanced functions</td>
<td>Project team</td>
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<td>6. Develop procedures, criteria, etc</td>
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<tr>
<td>Privacy complaints, applications concerning access to and amendment of personal information</td>
<td>1 July 2009</td>
<td>Establish processes and procedures for dealing with complaints about breaches of privacy rights, applications concerning access to and amendment of personal information and public interest determinations</td>
<td>Privacy team 12</td>
<td></td>
</tr>
<tr>
<td>Other privacy functions</td>
<td>31 December 2009</td>
<td>Depending on the model decided by government, develop processes and procedures for auditing, privacy report cards, approving datasharing arrangements or schemes that might otherwise be in breach of the privacy legislation. Establish risk assessment framework. Develop standards and guidelines for agencies.</td>
<td>Privacy team</td>
<td></td>
</tr>
<tr>
<td>External review</td>
<td>1 July 2009</td>
<td>Review procedures consistent with legislative requirements and changes arising from changes to new regime</td>
<td>FOI team 99</td>
<td></td>
</tr>
<tr>
<td>Applications for extension of time for document on public interest grounds</td>
<td>1 July 2009</td>
<td>Establish procedures for dealing with applications from agencies for an extension of the time specified in the Time and Harm Weighting Schedule regarding public interest</td>
<td>FOI team 48</td>
<td></td>
</tr>
<tr>
<td>Reading room</td>
<td>1 July 2009</td>
<td>Establish procedures for use and supervision of reading room, handling of material, ICT infrastructure required</td>
<td>Project team 69,70,82</td>
<td></td>
</tr>
<tr>
<td>Financial hardship waiver determinations</td>
<td>1 July 2009</td>
<td>Establish process, criteria for dealing with applications from not for profit organisations for waiver of charges based on financial hardship</td>
<td>FOI team 67</td>
<td></td>
</tr>
<tr>
<td>Complaints process</td>
<td>(i) 1 July 09 (ii) 31 Dec 09</td>
<td>(i) Establish process for dealing with complaints regarding way agency deals with applications for access, including timeliness. (ii) Establish risk assessment framework and guidelines for own motion investigations.</td>
<td>FOI team 53</td>
<td></td>
</tr>
<tr>
<td>Monitoring/Audit/Reporting functions already assigned to OIC, including Annual Report cards</td>
<td>1 July 2009</td>
<td>Establish procedures, audit standards, strategy, methodology Develop plan and data sets required for 2009-10</td>
<td>FOI team 54</td>
<td></td>
</tr>
<tr>
<td>Helpline scripts and procedures</td>
<td>1 July 2009</td>
<td>Establish procedures, scripts for more frequently asked questions</td>
<td>FOI team Privacy team 135</td>
<td></td>
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<tr>
<td>7. Collaboration role</td>
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<tr>
<td>Report on reuse of government information</td>
<td>TBA</td>
<td>QGCIO in collaboration with IC, OESR, DTRDI to prepare report for government on reuse of public sector information, including click use and Qld Government licensing framework</td>
<td>FOI team</td>
<td>9</td>
</tr>
<tr>
<td>Strategic information policy</td>
<td>1 July 2009</td>
<td>Contribute to development of Strategic Information Policy project led by DPC</td>
<td>FOI team</td>
<td>1, 2</td>
</tr>
<tr>
<td>Promotion of records management</td>
<td>TBA</td>
<td>Work with QGCIO and QSA to drive initiatives to ensure awareness of and compliance with requirements for the handling of public records</td>
<td>FOI team</td>
<td>79</td>
</tr>
<tr>
<td>Legal entitlement to raw data and metadata</td>
<td>TBA</td>
<td>Planning and capability regarding initiatives regarding</td>
<td>FOI team</td>
<td>81</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>8. Recruitment</th>
<th></th>
<th></th>
<th></th>
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</tr>
</thead>
<tbody>
<tr>
<td>Recruit ongoing staff</td>
<td>30 August 2009</td>
<td>Following funding approval of ongoing budget for 09-10 and outgoings</td>
<td>Project team</td>
<td></td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>9. Champion role</th>
<th></th>
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</tr>
</thead>
<tbody>
<tr>
<td>ongoing</td>
<td>Implement to the extent possible through current decision making, delivering presentations to key stakeholder groups, develop publications, and arranging gatherings of key segments of the FOI community.</td>
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</tbody>
</table>
8. STAKEHOLDERS

Key external stakeholders in the implementation project include LCARC, the CEO Steering Committee, partner agencies in the broader implementation (DPC, DPW (including QSA, QGCIO), JAG, PSC).

Agencies with responsibilities under the FOI and privacy legislation, including decision making, will have particular needs in terms of assistance, guidance and training in the implementation stage and beyond. The nature of the interaction with such agencies will broaden from external reviewer to include FOI champion, advice and assistance, and audit, monitoring and complaints roles of OIC in the new regime.

People seeking access to documents from public sector, including current and prospective external review applicants, people who may be affected by disclosure of information that concerns them, whether in a private or business/professional capacity, and community groups are also stakeholders for OIC in this implementation project.

9. COMMUNICATION MANAGEMENT

The Communication Plan will be developed by the Project team. The Communication Plan will include details of how changes will be communicated with various segments of the FOI community, the consultation mechanisms to be established.

The Report has been a standing item on the fortnightly all staff meeting agenda for several months. This is the primary vehicle of internal communication for information giving and consultation purposes. The implications of the government response will continue to be a standing agenda item on the fortnightly staff meeting agenda.

10. CHANGE MANAGEMENT

Significant changes will occur within OIC with the implementation of the Government Response. OIC will move from conducting the single function of external reviews to performing several new and diverse functions including:

- role as champion of FOI in new regime
- resolving complaints about breaches of privacy
- providing assistance to agencies in their roles under the new FOI and privacy legislation
- monitoring and auditing, including producing Annual Report Cards on agency performance in FOI
- dealing with complaints about the way an agency deals with applications for access, including the timeliness of its process.

Such changes will result in significant change in a short period of time.

To manage the change process for internal existing staff, a number of measures will be taken including:
• all staff workshops on specific issues regarding new and enhanced responsibilities of the OIC
• FOI Review Implementation as a standing agenda item for fortnightly all staff meetings to provide updates and forum for discussion, staff consultation, queries from staff, including regarding the broader changes across the public sector
• training, assistance and resources for staff on new legislation, responsibilities, new or enhanced systems and procedures
• informal and formal communication and consultation throughout the implementation stage and ongoing regarding changes affecting the OIC and its staff
• consultation with staff regarding the changing of existing roles, new opportunities within the Office, and implications for existing positions and staff
• consultation with staff about changes to existing external review processes
• all staff workshop to develop a new strategic plan for 2009-2012.

A change management plan will also be developed by the Project team in relation to the new champion role of the Information Commissioner to assist in cultural changes envisaged by the Report, specific changes for agency decision makers and the sector on a broader scale, in conjunction with other implementation agencies including DPC and DPW. The change management plan will include communication with agencies regarding nature and timing of the delivery of guidance and training for agency readiness to operate under new regime and the new role of the OIC.

11. RECRUITMENT

The project team will manage the organisational planning tasks associated with the implementation project, including the development of a new organisation structure, creation of specific roles, identification of necessary competencies, development of position descriptions, and recruitment and selection of required staff for the ongoing organisational requirements. Recruitment of ongoing staff will be merit based and in accordance with public service requirements and undertaken following approval of funding for 2009-10 and ongoing years in the 2009-10 budget. The recruitment activities of the project team will exclude all activity associated with the appointment of statutory office holders.

Recruitment of temporary staff for the project team will be required in a short timeframe due to the compressed period in which the project must be conducted. To engage staff to commence work as soon as possible after funding approval is obtained, short-term project staff will be selected using merit lists from suitable recent selection processes, transfer of staff within OIC and backfilling on temporary basis, and the transfer from other agencies of highly skilled individuals with policy, FOI/Privacy, complaints, public sector and operational skills, knowledge and experience from other public sector agencies and the private sector as appropriate.
### 12. RISK ASSESSMENT & MANAGEMENT

<table>
<thead>
<tr>
<th>Risk</th>
<th>Likelihood</th>
<th>Impact</th>
<th>Risk management strategy</th>
</tr>
</thead>
</table>
| Delay in finalisation of legislation/short period between assert and commencement | Medium     | Medium | • Prioritise key tasks for readiness  
• Progress guidelines and training modules etc as far as possible without final details  
• Close contact with DPC to ensure earliest possible notification of changes/final details  
• Prioritise first training sessions for agency staff with frequent and high volume of applications  
• Use helpline to assist agency decision makers in initial period prior to training for agencies with low frequency and volume of applications |
| Legislative risk                                                     | Medium     | High   | • Close liaison with DPC to influence development of policy and legislation to maximise effectiveness of proposed regulatory models and tools. |
| Delay in staffing project team                                       | Medium     | Medium | • Use range of recruitment options to recruit temporary staff ASAP  
• Prioritise and allocate key tasks to other project team members to progress in interim |
| Underestimation of resources for implementation project              | Medium     | High   | • Close monitoring of project timeframes  
• Prioritising critical tasks  
• Appropriate staging of the implementation |
| New functions attributed to OIC at late stage of implementation period | Low        | Medium | • Close contact with DPC to ensure earliest possible notification of changes/final details  
• If practicable, staged approach to operationalising added functions |
| Delay in accessing operational accommodation for project team        | Medium     | Medium | • Contingency plan to use short-term alternative accommodation  
• Prioritise order of staff commencement consistent with most urgent tasks |
| Delay in accessing operational accommodation for new organisation    | Medium     | Medium | • If possible, co-locate project team in 300 Adelaide to provide easier access and security within new organisation on 1 July  
• Contingency plan for 1 July to be operational within existing and temporary accommodation |
<table>
<thead>
<tr>
<th>Risk</th>
<th>Likelihood</th>
<th>Impact</th>
<th>Risk management strategy</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unexpected leave of absence within project team</td>
<td>Low</td>
<td>Medium</td>
<td>• Reprioritise tasks and allocation within team</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>• Recruit temporary replacement if possible due to</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>period and nature of leave taken</td>
</tr>
<tr>
<td>Reduction in output of external review function associated with the</td>
<td>Medium</td>
<td>Medium</td>
<td>• Run expeditious recruitment processes</td>
</tr>
<tr>
<td>transfer of staff to the project team</td>
<td></td>
<td></td>
<td>• Manage party expectations by providing early advice</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>on timeliness</td>
</tr>
</tbody>
</table>

13. APPROVAL

Approved by: Julie Kinross, Acting Information Commissioner

Signature: [Signature]

Date approved: 15/9/08
Appendix B

Questions on Notice
QUESTIONS ON NOTICE

Performance of External Reviews

1. Please provide the Committee with the external review statistics for the six month period to 30 June 2008 including:
   (a) applications received and finalised;
   (b) the proportion of applications finalised within 12 months;
   (c) the proportion of applications more than 12 months old;
   (d) the average time taken to deal with applications;
   (e) the median days to finalise a review;
   (f) the number of open reviews more than 12 months old and (as per ‘strategic review’ recommendation 17) an explanation of why each file could not be dealt with in the prescribed time frame and a target completion date;
   (g) the proportion of reviews resolved informally compared to reviews resolved by written determination;
   (h) the number of external review decisions subject to an appeal (either under the Freedom of Information Act 1992 or the Judicial Review Act 1991) and the basis upon which appeals have been brought;
   (i) the outcomes of appeals heard in this period, including any cost orders, and any resulting changes made to the procedures of the Information Commission; and
   (j) the cost to the Information Commission of obtaining any external legal advice in connection with appeals (heard during this period and costs incurred during this period).

   In each case, please provide a year-to-year comparison with statistics from the 2005-06, 2006-07 and 2007-08 financial years.

2. What proportion of all applications for external review in the six month period to 30 June 2008 relate to fees and charges, and what issues were raised by these applications? How does this compare with statistics from the 2005-06, 2006-07 and 2007-08 financial years?

3. What were the closure targets in the six month period to 30 June 2008, and also compared to the 2005-06, 2006-07 and 2007-08 financial years? Please outline any actions taken to improve performance in relation to this performance indicator.

Accessibility of the Office and its Decisions

4. Please outline any further improvements made to the accessibility of written communication with applicants and agencies, and the educative material available on the Information Commission website, including the proportion of decisions which are published.
5. Have all formal decisions made in the six month period to 30 June 2008 been published and how many were published within one month of the decision being made? How many were published in summary, and how many in full? How does this compare to the 2005-06, 2006-07 and 2007-08 financial years.

6. Following up on question 5 in the previous biannual review process, how does the Information Commissioner ensure that any notations on its website relating to decisions, which become subject to appeal, and then the appeal outcome, come to the attention of all decision-makers as soon as possible? Does this apply to all decisions which are subject to appeal, or only those with summaries published on the website?

7. Has there been an increase in the number of references to the law in other jurisdictions in decisions of the Information Commissioner in 2006-07 and 2007-08?

Questions relating to the Annual Survey

8. How many applicant and agency surveys were sent out during the 2007-2008 financial year? What was the response rate to the survey?

9. Please provide the Committee with copies of the applicant survey and the agency survey, as well as an outline of the process that the Information Commissioner undertook to test the veracity of the survey questions so as to ensure that the survey is a useful survey instrument.

Human Resource Issues

10. Please provide details of staff turnover for the 2006-07 and 2007-08 financial years and for the six month period to 30 June 2008.

11. What staff training and development activities were undertaken in the six month period to 30 June 2008 and what proportion of the overall budget was spent on these activities?

12. Is your office experiencing any recruitment and retention difficulties given the skills shortage generally, and if so, what plans and resourcing do you expect to need in the short and medium term to manage this?

Budgetary Issues

13. Are there any significant budgetary issues you wish to raise with the Committee?

Implementation of the Queensland Government response to the Solomon Report

14. Please provide the details of any issues or matters in relation to those components of the Solomon Report that you and your office have responsibility for implementing.

15. Please provide the details of any issues or matters in relation to those components of the Solomon Report that relate to other agencies and the implications for you and your office?

16. How many staff members recruited to the Project Implementation Team will be recruited from existing staff within the Office? Do you propose to backfill the existing positions, and if so, how and when?

17. How will the existing levels of performance within the Office be maintained during the implementation phase and on into the first four years of operation?
Other

18. Please provide the Committee with a copy of your Office’s Privacy Plan. When was the Privacy Plan last updated and is it available on the website?

19. Please provide the Committee with statistics relating to privacy complaints for the six month period to 30 June 2008 and an outline of the nature of any complaints and how you resolved each one. Please provide a comparison of the financial years 2005-06, 2006-07 and 2007-08.

Additional Questions

20. The Committee notes the 50% increase from the previous financial year in the number of external review applications concerning deemed decisions as reported in the Office’s Annual Report 2007-2008 (p19). Can you advise the Committee which agencies were identified as generating a disproportionate number of deemed decisions, the remedial action suggested by the Office and the response from those agencies?

21. Can you please explain the discrepancy between the number of applications for declarations of vexatious applicants advised to the Solomon Report (p206) and the number mentioned in the Annual Report 2007-2008 (p21).

22. Can you please provide the details of what additional information was requested in relation to the three new applications, as well as the timeframes involved?
Appendix C

Response to Questions on Notice
Responses to Questions on Notice

Performance on External Reviews

1. Please provide the committee with the external review statistics for the six month period to 30 June 2008 including:

   a. Applications received and finalised

<table>
<thead>
<tr>
<th></th>
<th>1 Jan-30 June 2007-08</th>
<th>2005-06</th>
<th>2006-07</th>
<th>2007-08</th>
</tr>
</thead>
<tbody>
<tr>
<td>Received</td>
<td>131</td>
<td>342</td>
<td>264</td>
<td>289</td>
</tr>
<tr>
<td>Finalised</td>
<td>136</td>
<td>336</td>
<td>308</td>
<td>284</td>
</tr>
</tbody>
</table>

   b. the proportion of applications finalised within 12 months

<table>
<thead>
<tr>
<th></th>
<th>1 Jan-30 June 2007-08</th>
<th>2005-06</th>
<th>2006-07</th>
<th>2007-08</th>
</tr>
</thead>
<tbody>
<tr>
<td>Finalised</td>
<td>136</td>
<td>336</td>
<td>308</td>
<td>284</td>
</tr>
<tr>
<td>Finalised &lt; 12 months</td>
<td>118</td>
<td>287</td>
<td>262</td>
<td>255</td>
</tr>
<tr>
<td>%</td>
<td>87</td>
<td>85</td>
<td>85</td>
<td>90</td>
</tr>
</tbody>
</table>

   c. the proportion of applications more than 12 months old

<table>
<thead>
<tr>
<th></th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
</tr>
</thead>
<tbody>
<tr>
<td># &gt;12 months old at 30 June</td>
<td>26 of 136</td>
<td>11 of 141</td>
<td>7 of 97</td>
<td>11 of 104</td>
</tr>
<tr>
<td>%</td>
<td>19</td>
<td>8</td>
<td>7</td>
<td>10.5</td>
</tr>
</tbody>
</table>

   d. the average time taken to deal with applications

<table>
<thead>
<tr>
<th></th>
<th>1 Jan-30 June 2008</th>
<th>2005-06</th>
<th>2006-07</th>
<th>2007-08</th>
</tr>
</thead>
<tbody>
<tr>
<td>Average days</td>
<td>156</td>
<td>212</td>
<td>176</td>
<td>141</td>
</tr>
</tbody>
</table>

   e. the median days to finalise a review

<table>
<thead>
<tr>
<th></th>
<th>1 Jan -30 Jun 2007-08</th>
<th>2005-06</th>
<th>2006-07</th>
<th>2007-08</th>
</tr>
</thead>
<tbody>
<tr>
<td>Median days</td>
<td>105</td>
<td>109</td>
<td>115</td>
<td>85</td>
</tr>
</tbody>
</table>
f. the number of open reviews more than 12 months old and (as per ‘strategic review’ recommendation 17), an explanation of why each file could not be dealt with in the prescribed time frame and a target completion date

<table>
<thead>
<tr>
<th></th>
<th>30 June 2006</th>
<th>30 June 2007</th>
<th>30 June 2008</th>
</tr>
</thead>
<tbody>
<tr>
<td># of reviews &gt; 12 Months old</td>
<td>11</td>
<td>7</td>
<td>11</td>
</tr>
</tbody>
</table>

As at 30 July 2008 there were 11 open reviews more than 12 months old. These applications for external review were not finalised within a 12 month period because:

- Two external reviews have been on hold since 31 July 2007 pending judicial review on point
- extensive ‘sufficiency of search’ issues that required the office to request a number of searches by the respondent agency for many documents and repeated requests for searches as the existence of further documents comes to light during the course of a review
- the large number of documents in contention; and
- the circumstances of some of the applicants, such as illness or overseas travel.

Of the 11 reviews older than 12 months at 30 June 2008:

- five have since been finalised
- one involves a large number of documents in issue and is expected to be finalised in December 2008
- one is expected to be finalised in December 2008
- two are expected to be finalised in January 2009
- two reviews await a judicial review decision on point.

g. the proportion of reviews resolved informally compared to reviews resolved by written determination

<table>
<thead>
<tr>
<th></th>
<th>1 Jan-30 June 2007-08</th>
<th>2005-06</th>
<th>2006-07</th>
<th>2007-08</th>
</tr>
</thead>
<tbody>
<tr>
<td># Finalised</td>
<td>136</td>
<td>336</td>
<td>308</td>
<td>284</td>
</tr>
<tr>
<td>Informal Res</td>
<td>111 (82%)</td>
<td>264 (79%)</td>
<td>233 (76%)</td>
<td>225 (79%)</td>
</tr>
<tr>
<td>s89 Decision</td>
<td>25 (18%)</td>
<td>72 (21%)</td>
<td>75 (24%)</td>
<td>59 (21%)</td>
</tr>
</tbody>
</table>

h. the number of external review decisions subject to an appeal (either under Freedom of Information Act 1992 or the Judicial Review Act 1991) and the basis upon which appeals have been brought

Decisions of the Information Commissioner can be appealed on questions of law to the Supreme Court under the Judicial Review Act 1991 (Qld). One appeal was initiated during 2007-08. The number of appeals initiated in corresponding periods appear in the table below.
The only appeal under the Judicial Review Act 1991 remaining on foot is the appeal lodged during 2007-08.

The basis on which the 2007-08 appeal was brought concerns a possible error of law concerning the application of section 42(1A) of the FOI Act (Matter relating to law enforcement or public safety – a matter is exempt matter if it consists of information given in the course of an investigation of a contravention or possible contravention of the law (including revenue law) and the information was given under compulsion under an Act that abrogated the privilege against self incrimination).

i. the outcomes of appeals heard in this period, including any cost orders, and any resulting changes made to the procedures of the Information Commissioner.

No appeals were heard in the six month period to 30 June 2008.

j. the cost to the Information Commission of obtaining any external legal advice in connection with appeals (heard during this period and costs incurred during this period).

Prior to 2006-07, the Office was not supported by the Queensland Parliamentary Service. The current accounting software shows an expense of $66,618.07 for the period 01/01/06 to 30/06/06, the only available breakdown of legal costs for the 2005-06 period.

In this response, external legal advice includes representation by Counsel and solicitors in Supreme Court proceedings under the JR Act.

2. What proportion of all applications for external review in the six month period to 30 June 2008 relate to fees and charges, and what issues were raised by these applications? How does this compare with statistics from the 2005-06, 2006-07 and 2007-08 financial years?

<table>
<thead>
<tr>
<th>% of applications relating to fees and charges</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Jan-30 June 2007-08</td>
</tr>
<tr>
<td>8% (11 of 131)</td>
</tr>
</tbody>
</table>
The primary issue raised in 2007-08 was whether the applications related to documents concerning the personal affairs of the applicant and whether the applicant was required to pay an application fee. This is consistent with the issues raised in previous years. The higher proportion of applications in the 2007-08 period is comprised by an additional eight applications. Seven of these can be attributed to applications by an individual and their associate.

3. What were the closure targets in the six month period to 30 June 2008, and also compared to the 2005-06, 2006-07 and 2007-08 financial years? Please outline any actions taken to improve performance in relation to this performance indicator.

<table>
<thead>
<tr>
<th>Financial Year</th>
<th>Target</th>
<th># finalised</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Jan-30 June 2008</td>
<td>150</td>
<td>136</td>
</tr>
<tr>
<td>2005-06</td>
<td>250</td>
<td>336</td>
</tr>
<tr>
<td>2006-07</td>
<td>300</td>
<td>308</td>
</tr>
<tr>
<td>2007-08</td>
<td>300</td>
<td>284</td>
</tr>
</tbody>
</table>

Past initiatives with continued application include:

- a revision of the Office goals, strategies and performance measures to focus on timely resolution of reviews
- the adoption of a commitment to resolve all applications for external review within 12 months of receipt and where that does not occur, an explanation in the annual report
- implementation of the staff development plan to enhance decision making and informal resolution
- the improvement of legal and other resources to support timely decision making
- the implementation of a case management system with regular meetings of review officers with the respective Assistant Information Commissioner for supervision and regular meetings on all cases with the Information Commissioner; the regular monitoring of throughput with priority setting taking place at an Office level and case officer file load level
- the development of practices (such as communication by email where possible) and tools (such as decision templates) to assist in boosting productivity
- the increased availability of information about the Queensland FOI Act, including information material and access to Information Commissioner decisions on the website led to a downward trend in the number of applications for external review where the Office did not have jurisdiction to conduct an external review. Initiatives of this kind mean resources can be re-directed.

New and future initiatives include:

- Monitoring applications for external review concerning ‘deemed decisions’. It is the experience of the Office that reviews of deemed decisions can take longer
- Improved management information system through the introduction of a variety of management reports including a weekly “Age Report” to enable the Commissioner to identify reviews at risk of becoming more than 12 months old enabling remedial action; providing review officers with individual and team closure statistics at the end of each month, and a month by month chart of applications received and closed
Appendix C

- Piloting of an early assessment system where quick turn around applications and applications suitable for mediation are identified on receipt and allocated to a dedicated officer. Increased use of phone contact and meetings with the review participants to resolve issues at an earlier stage
- The development of guidelines for the conduct of external review
- The development of review process stages and enhancement of the case management system to enable monitoring of reviews by process stage.

Accessibility of the Office and its Decisions

4. Please outline any further improvements made to the accessibility of written communication with applicants and agencies, and the educative material available on the Information Commission website, including the proportion of decisions which are published.

The Committee is aware of the particular emphasis the Office has placed on reviewing the accessibility of written communication with applicants and agencies. Those initiatives included:

- the engagement of a consultant to conduct a review of documents produced by the Office and provide recommendations and guidance on Clear and Precise Decision Writing
- making stylistic, formatting and structural changes to documents commonly produced by the Office including preliminary view letters and decisions, and templates for correspondence typically used in reviews
- making changes to the presentation of technical legal arguments, particularly references to court cases, or previous decisions of the Information Commissioner to assist the readability of the document
- increasing the use of plain English throughout all documents produced by the Office, including documents published on the website
- updating the Office style guide to ensure consistent and efficient application of the changes across all documents produced by the Office.

The Office’s Annual Report documents a large improvement in review participant satisfaction levels with the Office’s correspondence and information. 90% of applicants indicated Office communications including decisions were clear and in plain English, compared with 75% in 2006-07.

The Office is continuing with this focus and as a part of the Staff Development Plan will run further training in clear and precise decision writing. The Office has recently introduced a new FOI Concept for applicants entitled ‘Vexatious Applicants’, the application form and notes to applicants have been updated, an information brochure on time frames has been updated and its template initiating correspondence has been revised.

All section 89 decisions finalising an external review in 2007-08 were published on the website. Historically, external review decisions were published in full text, as an edited version or in summary format, as appropriate for the particular review. From May 2008 all decisions are being written with full publication in mind and have been published in full together with a summary format, except in special circumstances. Work was initiated to address any privacy implications arising out of the decision to publish all decisions in full.

5. Have all formal decisions made in the six month period to 30 June 2008 been published and how many were published within one month of the decision being made? How many were published in summary, and how many in full. How does this compare to the 2005-06, 2006-07 and 2007-08 financial years?
Section 89 of the FOI Act requires the Information Commissioner to make a written decision after conducting a review. Twenty-six section 89 decisions were made in the six month period to 30 June 2008. Over 60% were published within one month of the decision being made.

### 6. Following up on question 5 in the previous biannual review process, how does the Information Commissioner ensure that any notations on its website relating to decisions which become subject to appeal, and then the appeal outcome, comes to the attention of all decision-makers as soon as possible? Does this apply to all decisions which are subject to appeal, or only those with summaries published on the website?

Question 5 of the May 2008 Biannual Review QON asked how the Information Commissioner ensure that all decision makers are aware when a review decision is subject to an appeal. The Committee was advised that decision makers were made aware that a review decision was subject to appeal through a notation being made on the decision summary on the website when a decision is subject to an appeal and that the outcome of all judicial reviews is reported on the judicial review page of the website.

This follow up question is how the Information Commissioner ensures the notations on the website come to the attention of all decision makers as soon as possible.

The FOI Act applies to more than 600 agencies within which there are multiple decision makers. The vast majority of those agencies and their decision makers do not make FOI decisions from year to year. The grounds for filing applications for a statutory order of review or for a prerogative writ vary. The filing of an application for judicial review and the outcome of a judicial review are not always relevant to all decision makers. For these two reasons, immediate notification of all decision makers in every case is not necessary and would not be an economical use of public sector resources. The nature of a particular application for judicial review and the nature of the outcome of a judicial review will determine what other communication strategies the Office puts into place. The communication strategy for all decision makers via the website is appropriate.

The previous advice to the Committee that a notation is made on the decision summary on the website when a decision is subject to an appeal and that the outcome of all judicial reviews is reported on the judicial review page of the website, applies to all decisions which are subject to appeal.

In the Office’s 2007-08 Annual Report it was reported that the Office had initiated a project to implement further enhancements to the website. These enhancements will include:

<table>
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<tr>
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<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>16</td>
<td>4</td>
<td>26*</td>
<td>44</td>
<td></td>
</tr>
<tr>
<td>26</td>
<td>72</td>
<td>75*</td>
<td>59</td>
<td></td>
</tr>
<tr>
<td>S89 Total # decisions made</td>
<td>26</td>
<td>72</td>
<td>75*</td>
<td>59</td>
</tr>
</tbody>
</table>

* These numbers include section 89 decisions only. The numbers differ from the numbers included in the response to the QON to the May 2008 Biannual Review as those numbers included formal written decisions under sections 73 and 77 of the Act.
Appendix C

• a ‘What’s New’ section providing greater visibility to latest developments in FOI decision making. It is anticipated this part of the web will take the form of a one way blog which can also fulfil the role of a newsletter
• a subscription list so that FOI practitioners and other interested parties can be automatically notified of latest developments in their email boxes.

The anticipated enhancements will improve the Office’s communication capabilities and support the Information Commissioner’s new champion role, once commenced.

7. Has there been an increase in the number of references in the law in other jurisdictions in decisions of the Information Commissioner in 2006-07 and 2007-08.

Recommendation 12 of the 2006 Report of the Strategic Management Review (the Report) recommended that the ‘preliminary views’ and decisions issued by the Office of the Information Commissioner should reference the most recent relevant higher court cases where possible in the first instance, then decisions of tribunals from other jurisdictions and if still necessary and currently applicable, previous decisions of the Information Commissioner.

The Report noted that there had been criticism in the past that decisions were too long, complex and too legalistic. The Report noted that the “Office needs to be alert to the need to use the most recent precedents and principles of relevant courts and tribunals when formulating ‘preliminary views’ and decisions for applicants and agencies”.

In response to the Strategic Management Review, the Office has significantly changed the style and presentation of decisions so that they are shorter, less complex and less legalistic. As a consequence, it may be that where appropriate, fewer cases are mentioned and discussed within decisions.

The Report captured one of the principles of quality decision making – the citing of the most relevant higher court cases where possible in the first instance – and highlighted the hierarchy of precedent authority.

Decisions of the Information Commissioner use this principle and the hierarchy of precedent authority as they are fundamental to good decision making. As higher authorities become available, reference to precedence of lesser authority decreases. Where novel issues are raised, extensive research is undertaken and this may lead to references to law in other jurisdictions, including international jurisdictions.

Case officers have access to highly effective online legal research databases to support them in efficiently accessing the most recent case law relevant to specific reviews.

Questions Relating to the Annual Survey

8. How many applicant and agency surveys were sent out during the 2007-08 financial year? What was the response rate to the survey?

<table>
<thead>
<tr>
<th></th>
<th>2007-08</th>
<th># of Responses</th>
<th>Response Rate %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agency Surveys sent</td>
<td>74</td>
<td>48</td>
<td>64.9%</td>
</tr>
<tr>
<td>Applicant Surveys sent</td>
<td>118</td>
<td>45</td>
<td>38.1%</td>
</tr>
</tbody>
</table>
9. Please provide the Committee with copies of the applicant survey and the agency survey, as well as an outline of the process that the Commissioner undertook to test the veracity of the survey questions so as to ensure that the survey is a useful survey instrument.

The Committee was provided with a copy of the survey instruments used in 2007-08 for the May 2008 Biannual meeting. A copy of the revised applicant survey instrument to be used during the 2008-09 financial year is attached.

The following process was followed in reviewing the applicant survey instrument.

Selection of expert advice

A range of expert sources of advice was identified to assist in assuring the validity of the survey instrument. The Office of Economic and Statistical Research (OESR), a part of Queensland Treasury was selected on the basis that it had the necessary expertise, it has a role in assisting government agencies, its advice was free of charge and it was available.

Role of OESR

An initial meeting was held with OESR which advised that the Office needed to identify the things the Office wanted to measure and to propose questions for review by OESR.

Actions taken

The Office also carried out its own research in relation to qualitative research and consumer satisfaction surveys after consultation with an expert in survey methodology within the Department of Justice and Attorney General. That research determined that there is a body of research on consumer satisfaction surveys which has found that the service dimensions of importance to consumers remain fairly stable across different service delivery systems. Many customer satisfaction surveys are based upon a survey instrument called SERVQUAL whose service dimensions and survey questions have been empirically tested and validated. The research also uncovered a more recent survey instrument called FAIRSERV which identified that consumers were not only interested in service quality but also fairness. Because of the nature of the work of the Office, a decision was made to be guided by this valid instrument to select both the service dimensions to be measured and valid survey questions.

Staff were surveyed to identify those dimensions of service quality they thought it was important to focus on in quality improvement exercises and those dimensions they were interested in learning how consumers viewed the services of the Office.

All previous survey instruments were analysed to identify the service dimensions previously measured.

A draft survey instrument was prepared identifying the service dimensions and corresponding questions to be measured and circulated to staff for any feedback.

Outcome of review

The draft survey instrument was then forwarded to OESR for its review and feedback on validity. OESR made comment on each of the proposed questions and the Office made all of the recommended changes. The approach taken provides a framework within which changes to survey questions can easily be made to collect quality improvement data on particular aspects of the Office’s service delivery.
Appendix C

Process changes for 2007-08

In 2007-08 the Office surveyed each external review applicant once per period. Those applicants having multiple external review applications finalised within the financial year were only surveyed once. This practice, driven by applicant feedback, will continue in 2008-09.

In 2007-08 certain review applicants were not surveyed. This occurred in applications which did not proceed to formal review. In 2008-09 these applicants will be surveyed, to obtain qualitative feedback on the Office’s overall service. The impact of this change will have a significant impact on the number of applicants surveyed and is likely to have a significant impact on the overall applicant satisfaction rating because of the response bias effect. The 2008-09 figures will not be comparable with previous years’ figures.

In previous years the application file number was included on the survey instrument allowing the applicant feedback to be matched to the individual review. This year the survey recipient will respond anonymously unless they elect to provide identifying details.

Human Resource Issues

10. Please provide details of staff turnover for the 2006-07 and 2007-08 financial years and for the six month period to 30 June 2008.

In the six month period to 30 June 2008 one review officer resigned.

In 2006-07 two Assistant Commissioners and three review officers resigned primarily to take up career opportunities. One administrative assistant took voluntary early retirement.

In 2007-08 the Information Commissioner, the Manager, Corporate and Executive Services and a Review Officer left employment with the Office.

11. What staff training and development activities were undertaken in the six month period to 30 June 2008 and what proportion of the overall budget was spent on these activities?

One review officer received financial assistance in support of tertiary studies. Two review officers attended the 5 day mediation course run by the Department of Justice and Attorney-General. Four staff attended professional development coordinated by the Australian Institute of Judicial Administration on decision making. Three staff attended the Queensland Law Society Government Lawyers Conference with segments on developments in privacy, and government decision making. Other professional development opportunities were sponsored by the Office including the purchase of QLS Continuing Practice Development DVDs. Five staff were provided with training on the Microsoft suite of software. A number of membership fees were paid to professional associations.

2% of the overall budget for the six month period to 30 June 2008 was spent on these activities.

12. Is your office experiencing any recruitment and retention difficulties given the skills shortage generally, and if so, what plans and resourcing do you expect to need in the short and medium term to manage this?

While there are no mandatory qualifications in relation to any position with the Office, most staff are legally qualified. Occupational demand and supply of legal practitioners is a significant factor affecting the availability of labour. In April 2007 the Labour Economics Office within the Department of Education, Employment and
Workplace Relations assessed there to be a shortage in the legal practitioner market in Queensland due to the growth in Queensland supporting a growing demand for legal practitioners. This may be ameliorated by the recent deterioration in economic conditions. In Queensland, many law graduates do not end up practising law and the Labour Economics Office has shown that interstate migration is a significant supplement to the supply of legal practitioners in Queensland.

The Office’s recent experiences in recruitment match the reported experiences of industry engaging legal practitioners. That is, a small percentage of applicants are considered suitable by employers because of limited skills and experience. Demand by industry is for legal practitioners with two to five years experience. The entry level case review officer position competes with this demand.

In addition to industry reports that there are recruitment difficulties in some specialty areas of law, recent Office experiences could reflect a skills shortage in the specialty area of administrative law because of the increasing volume of administrative law work in the past decade. A recruitment challenge for the Office is that it is a niche area of administrative law and a small agency offering limited promotional opportunities compared to those on offer in larger agencies. FOI Units across government, which are a potential source of supply for the Office, almost universally report difficulties in attracting new staff into the FOI area for a range of reasons. In government this is exacerbated by the ageing of the public sector workforce more generally.

The age profile of the Office is significantly younger than that of the public sector as a whole. This can be attributed to a range of factors including recruitment strategies, the number of private legal practitioners who are women looking for more flexible working conditions, the low job satisfaction of young legal practitioners who seek to leave the private profession.

In relation to retention, the past three years have been a period of change for the Office of the Information Commissioner. A degree of turnover in this period was inevitable. A challenge for the Office in the next few years will be to implement further significant change without heightened turnover.

There are a number of offsetting factors to the demand and supply factors discussed above. Firstly, there are no mandatory qualification requirements for positions within the Office. This maximises the pool of applicants. Secondly, flexible public sector employment conditions are appealing to a number of legal practitioners working in the private sector. In particular the Office is a family friendly employer.

A risk for Office is that the entry level position of review officer requires a level of knowledge and experience in administrative law that is not commensurate with the skill level of new entrants to the job market and the Office is a small niche agency. The implementation of the Government’s Response to the Solomon Report will assist the Office with the latter issue. To deal with the former issue, the Office has piloted a ‘para-legal’ position to attract and retain young professionals looking to commence a career. This approach to recruitment and retention will be further examined when the structure of the organisation is mapped to accommodate the new functions being adopted by the Office.

A strong supervisory structure and an investment in professional development are key to the retention of staff. Lastly, the Office implements other whole of government strategies aimed at the skills shortage such as the simplification of the position descriptions and job application processes.

**Budgetary Issues**

13. **Are there any significant budgetary issues you wish to raise with the Committee?**

The Government’s Response to the Report of the Independent FOI Panel enlarges the role of the Committee. The Committee’s future views on how the Office performs its functions and those in support of the Committee’s role may have budgetary implications.
Implementation of the Queensland Government response to the Solomon Report

14. Please provide the details of any issues or matters in relation to those components of the Solomon Report that you or your office have responsibility for implementing.

The Right to Information (RTI) Report recommended that a large number of new or enhanced functions and responsibilities be allocated to OIC. The Government Response, issued on 20 August 2008, committed to extending the role of OIC beyond the single function of external review of freedom of information decisions to assume a number of those functions and responsibilities including:

- **Champion of RTI and Privacy** – OIC will promote awareness of RTI and Privacy, leadership in best practice
- **Privacy Commissioner** – The Government has committed to putting in place new privacy legislation. A new Privacy Commissioner will be appointed within the OIC. OIC will conduct reviews of complaints regarding breaches of privacy and decisions concerning applications for access to, and amendment of, personal information under the new legislation.
- **Information and Assistance** – OIC will perform functions to provide information and assistance, including an extensive range of guidelines, training and education, and a RTI and Privacy helpline for applicants, agencies and other members of the community
- **Audit and Reporting** – OIC will monitor agency performance in complying with the new legislation, including administrative release, through auditing and reporting using tools such as annual agency report cards. OIC will also recommend data to be collated by the Minister on RTI and administrative release, analyse the data report and prepare analytical report to provide to LCARC and the Minister.
- **OIC will also make decisions about applications from:**
  - not for profit organisations for waiver of charges based on financial hardship and
  - agencies for an extension of the time specified in the Time and Harm Weighting Schedule.

The RTI Report attributed additional functions and responsibilities to the Information Commissioner related to, for example, dealing with complaints and publication schemes. The Government Response stated that those recommendations were supported in principle and it would further consider options for implementing those recommendations.

Other recommendations affecting the existing external review function included proposed changes to the external review process, including timeframes and early mediation, and publication of all decisions with specific exceptions. The Government Response stated that the Information Commissioner would develop guidelines about the external review process which set out steps to be taken in, and appropriate guidelines for the completion of external reviews. OIC will also publish detailed guidelines about the conduct of external reviews. OIC will review the external review process and assess what changes can be made to address issues raised in the RTI Report. The OIC is committed to the publication of external review decisions, subject to specific exceptions, and is considering options for mitigating the impact of such an approach on the privacy of individual members of the community.

Funding was obtained in mid-October 2008 to implement the commitments related to OIC contained in the Government Response. Five members of the project team had commenced work on the implementation by November 2008. There is a considerable amount of work to be completed prior to commencement of the legislation proposed by Government. The implementation team is responsible for a range of tasks to ensure that on commencement of the legislation OIC can perform the proposed functions and responsibilities, and

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1 Responsible for the legislation.
agencies subject to the legislation are assisted, through guidelines and training, to adapt to the new RTI and Privacy legislative requirements including proactive disclosure and decisions about access applications. OIC is also working collaboratively with agencies such as the Queensland State Archivist, the Queensland Government Chief Information Office, the Office of the Public Service Commissioner and the Department of the Premier and Cabinet on specific initiatives in accordance with recommendations of the RTI Report.

The Government has indicated it intends to introduce new RTI and Privacy legislation early in 2009 to achieve commencement by mid-2009. Compressed timeframes provide challenges for completion of many tasks for OIC due to the tight timeframe for implementation between a successful passage of the proposed legislation through Parliament and commencement. In particular, guidelines about the new legislation will need to be finalised and training delivered. To ensure OIC can perform required functions on commencement of the new legislation, new staff will need to be recruited to perform new functions, accommodation located, secured and appropriately fit out to meet OIC requirements including security of sensitive documents, and procedures for new OIC functions developed and internal staff training provided.

Workload for the new OIC functions under a new Queensland legislative model is, to an extent, unknown so this is a significant challenge in any estimate of resources to ensure effective functioning in the early years. Initial uncertainty, as with any new legislative scheme may increase demand for information and assistance, and external review in the initial 2-3 years. The removal of the mandatory requirement for internal review could also significantly increase external review workload, by approximately 50%, or an additional 150 applications per year. Applications that have not been through the internal review process are also generally more resource intensive, as the issues are less refined, and often there are significantly larger numbers of documents remaining in issue.

15. Please provide the details of any issues or matters in relation those components of the Solomon Report that relate to other agencies and the implications for you and your office.

One of the important roles that the Information Commissioner will assume is that of champion of the new RTI and Privacy regime. The Independent FOI Panel identified the challenge associated with the significant cultural change required to give appropriate effect to implementation across the public sector of the RTI reforms. As champion, the Information Commissioner, will in partnership with other key agencies, be instrumental in leading and supporting that cultural change, through the range of functions attributed to OIC. In particular, OIC will identify and promote best practice through its information and assistance, audit and reporting roles. The audit and reporting roles will also enable OIC to monitor compliance and facilitate accountability and transparency regarding individual agency compliance.

The RTI Report recommended that the OIC develop an extensive suite of guidelines ranging from administrative release through to complex decision making about applications for access to documents that may contain sensitive information requiring consideration of competing public interests regarding disclosure. Training is also required on the majority of the guidelines. As set out above, if the proposed legislation were to commence shortly after assent, the implementation task is intensified and timeliness and quality control will be paramount.

16. How many staff members recruited to the Project Implementation Team will be recruited from existing staff within the Office? Do you propose to backfill the existing positions, and if so, how and when?

Four OIC staff have been recruited to the implementation team. Positions were immediately backfilled to ensure continuity of external review work. One position on the implementation team is filled by a review officer recalled from a secondment to another agency. One position was backfilled from within the Office and the advertising of the consequent temporary vacancy was used to recruit three officers, two of whom are backfilling behind two OIC staff now on the implementation team. A fourth officer was to be replaced by a candidate
ranked suitable for appointment in a recent merit selection process for that position however the candidate was not released by his agency. Subsequently the transfer of a suitable officer was arranged from a government department.

17. How will the existing levels of performance within the Office be maintained during the implementation phase and on into the first four years of operation?

Minimising disruption to the continuity of external review work within OIC is critical. OIC has invested considerable resources and commitment to overcoming a backlog since 2005 and it is important that the RTI developments and implications for the OIC do not become a barrier to the steady processing of external review work. The level of supplementary funding sought recognised that current positions were dedicated to a single function of performing external reviews of freedom of information decisions and that all positions were necessary to meet performance targets.

The implementation project team will be dedicated to the implementation task. Both the external review team and the implementation team should not disrupt each other's performance.

The anticipated impacts on workload have been identified and to the greatest extent practicable quantified based on available data and comparative models in other jurisdictions. Resources will be sought to ensure additional ongoing funding from 2009-10 can support the increase in demand to ensure the high level of performance by OIC can be maintained through the implementation phase and into the ongoing operation of the expanded organisation.

Other

18. Please provide the Committee with a copy of your Office's Privacy Plan. When was the Privacy Plan last updated and is it available on the website?

The Privacy Plan was reviewed in May 2008 and was subsequently revised. It is available on the website.

19. Please provide the Committee with statistics relating to privacy complaints for the six month period to 30 June 2008 and an outline of the nature of any complaints and how you resolved each one. Please provide a comparison of the financial years 2005-06, 2006-07 and 2007-08.

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* No written complaints have been located.

In late 2007 one applicant contacted the Office to have a decision anonymised as an internet search of his name would return a link to a decision of the Office. The applicant believed this association to be detrimental to his reputation. After consideration of the content of the decision, the Office took immediate action to have the decision anonymised and clear the relevant search engine cache of any reference to the applicant.

Additional Questions

21. The Committee notes the 50% increase from the previous financial year in the number of external review applications concerning deemed decisions as reported in the Office's Annual Report 2007-08 (p19). Can you advise the Committee which agencies were identified as generating a disproportionate
number of deemed decisions, the remedial action suggested by the Office and the response from those agencies?

All the applications for received for external review between July and December 2007 concerning a Department of Justice and Attorney General FOI decision concerned deemed decisions. As this pattern continued in the second half of the year the practices of the FOI Unit were discussed with it and no further deemed applications have been received.

After the receipt of applications for the review of two Department of Child Safety deemed decisions in quick succession in June 2008, the FOI Unit was contacted. Upon discussion it became apparent that the Department had a significant backlog of FOI applications. The Director-General’s Office was alerted to the backlog and resources were shifted to assist the FOI Unit. This situation continues to be monitored by the Office.

22. Can you please explain the discrepancy between the number of applications for declarations of vexatious applicants advised to the Solomon Report (p206) and the number mentioned in the Annual Report 2007-08 (p21)

The figures contained in the Office’s 2007-08 Annual Report and the figures contained in a letter from the Office to the Independent FOI Review Panel dated 20 May 2008 refer to different applications over different timeframes so it would not ordinarily be expected that the numbers should be the same. The figures in the Office’s Annual Report deal only with the applications relevant to the reporting period. The figures advised to the Independent FOI Review Panel concern the total number of applications for declarations of vexatious applicants made since the commencement of section 96A, the relevant provision in the FOI Act.

The part of the Office’s letter subsequently quoted by the Independent FOI Review Panel in its report referred to there being seven applications on foot as at May 2008 when there were six applications on foot. These figures were not subject to the same quality assurance measures the annual report figures are subject to.

23. Can you please provide the details of what additional information was requested in relation to the three new applications, as well as the timeframes involved?

The applications were received on 7 September 2007. On 24 July 2008 the agency was advised of the elements of section 96A of which the Information Commissioner needed to be satisfied of before a Declaration could be considered, the factors that might be relevant to a decision on each of the grounds claimed, the need for the agency to provide particulars of the bases claimed, associated evidence and submissions as to the how the elements of section 96A have been met. By letter dated 25 August 2008 the agency indicated it would not be pursuing the applications at this time due to pending legal action.

Because of the nature of the applications, it is not possible to provide the Committee with specific details of the additional information sought without the distinct possibility of the participants involved being made identifiable.

The Office has no applications for a declaration of a vexatious person on foot.
The Office of the Information Commissioner values feedback on your experience of the external review process and your dealings with this Office.

Name (optional)________________________________________  OIC ref no: (optional) ______________________

Please provide your response to the following statements by circling your answer.

1 = strongly disagree   2 = disagree   3 = undecided   4 = agree   5 = strongly agree   N/A = Not applicable

Overall, I am satisfied with the service provided by the Office of the Information Commissioner

OIC staff were courteous

OIC staff had the knowledge to answer my questions

OIC publications I read were clear

OIC letters were written in plain English

I understood OICs decision

I was kept informed about the progress of the review

The process of the review seemed fair

The review outcome would have been the same regardless of who the applicant was

The next time I need an external review, I will ask for it

The time taken to resolve the external review was in line with my expectations

When OIC promised to do something by a certain time, it did

YOUR COMMENTS

Do you have specific improvements to suggest?

Please provide any other comments
Appendix D

Transcript of meeting with the Acting Information Commissioner
Committee hearing reconvened at 3.40 pm

KINROSS, Ms Julie, Acting Information Commissioner

RANGIHAEATA, Ms Rachael, First Assistant Information Commissioner

PULLER, Ms Kylie, Acting Manager, Corporate and Executive Services

CHAIR: I welcome you to the meeting. Thank you for coming and thank you for providing a timely response to the committee’s questions on notice. I did not introduce the committee members earlier but that is because everyone knew us, but just quickly around the table there is Betty Kiernan from Mount Isa, Rosa Lee Long from Tablelands, Andrew Cripps from Hinchinbrook, I am Di Reilly from Mudgeeraba, Tim Nicholls from Clayfield and he will be here shortly, Allison and Amanda you know, Steve Wettenhall from Barron River and Vicky Darling from Sandgate.

You have previously been provided with a copy of instructions to committees regarding witnesses. We will follow these instructions. The meeting is recorded by Hansard so to assist Hansard before you speak give your full name and title. I was going to ask you how long your opening statement might be. Because we have run out of time you might want to table it and we will have a discussion and ask some questions unless it is a short opening statement?

Ms Kinross: It is certainly not 20 minutes, Madam Chair. It is two pages long which I anticipate might be three or four minutes.

CHAIR: Please go ahead then.

Ms Kinross: Thank you, Chair and committee members. Thank you very much for the invitation to the meeting today and for the opportunity to make some opening comments. The 2007-08 year was a watershed year for FOI in light of the review of the Freedom of Information Act undertaken by the independent panel. It was also a year where the improved performance of the Office of the Information Commissioner was consolidated.

The Freedom of Information Act requires the commissioner to submit to the Speaker and to the parliamentary committee a report on the operations of the commissioner during that year. We did provide an earlier electronic copy to the committee secretariat but I would like, if I might, Chair, to give a hard copy of the report to the committee members today.

CHAIR: That would be lovely, thank you.

Ms Kinross: In 2007-08 the office received almost 10 per cent more applications than it did in the previous year. Despite this, the office’s timeliness improved significantly with the number of median days to finalise reviews dropping from 115 days to 85 days. This is the first time the office has met the performance target of 90 days since that target was introduced.

There was also a particularly pleasing improvement in applicant satisfaction, particularly with respect to the percentage of applicants who thought the office’s letters and decisions were written in clear and plain English, from 75 to 90 per cent satisfaction by the applicants.

The office maintained a low number of reviews which were more than 12 months old at the end of the year and there was only one application for a statutory order of review in relation to an external review decision made during the year. As forecast to the committee at its last biannual meeting, the number of external reviews finalised dropped below the target number of 300 to 284—not far off the target. The primary contributing factors to this decline in the number of finalised reviews are the increase in the number of external reviews received by the office, a decrease in the number of available staff for a large part of the year due to the uncertainty regarding the appointment of a new permanent Information Commissioner and a decision not to backfill temporary vacancies to ensure the budget was not exceeded. Given that uncertainty in the staffing arrangements, the overall performance of the office in my view was highly commendable. I feel I can say that as I was only there for the last two months of that financial year.

With respect to the watershed year, the impending release of the Solomon report indicated that a major review of the office’s strategic plan during 2007-08 would have been an inappropriate thing for us to do. With the government response to the Solomon report available in August this year, the office’s attention is now focused on what is required to ready the office for its new roles by mid 2009, to ready the government agencies in terms of the new legislation and to work with the other agencies with key roles in the reforms across government, those being the Public Service Commissioner, the State Archivist, the Queensland Government Chief Information Officer and the Information Policy and Legislation Reform Unit within the Department of the Premier and Cabinet. One of the necessary tasks will be to significantly review the office’s strategic and operational plans ready for implementation in the 2009-10 year.
The Cabinet Budget Review Committee approved in October 2008 additional funding for the office for 2008-09 in the amount of $1.6 million to fund an implementation team which, at its largest, will be composed of 10 people, a number of whom will work through until December 2009. To date, five staff have commenced, with a further two to commence in December 2008. We are expecting to secure temporary accommodation to house the implementation team this week. Fortunately, those premises are fully fitted out so I expect the implementation team will be housed together there before the end of the year, assuming there are no delays in establishing the cable connection necessary for the implementation team to begin work in those new temporary premises.

Ms Rachael Rangihaeta is leading the implementation team. The reform process will be a major part of the office’s efforts for the next few years. In parallel to the reform process, a number of initiatives will be piloted or implemented to support our continuing efforts in providing fair, impartial, high-quality, prompt review with as little formality and technicality as possible.

The office has trialled an early assessment process which seems to have delivered, in the first four months of this financial year, a significant improvement in the timeliness of finalising applications for review. This process has now been formalised as a pilot which will be evaluated in the new year. The evaluation should tell us whether the changes in work processes can lead to sustained improvement in timeliness or whether the changes have other unintended consequences which neutralise these early gains. Hopefully the early signs this financial year will be reflected in the end-of-year performance figures with respect to timeliness for the external review process. Thank you, Madam Chair and committee members.

CHAIR: You have covered a lot of what we might want to talk about.

Ms DARLING: Congratulations on the continual improvement. That must be satisfying.

Ms Kinross: Yes.

Ms DARLING: I hope that keeps going with all of the reforms that you have ahead of you.

Ms Kinross: It is a nice time to be at the office. You have something to boast about, that is for sure.

CHAIR: Fantastic, well done.

Ms DARLING: Thank you for outlining your plans leading up until—I notice your timeline—the middle of next year in anticipation of the new freedom of information legislation being passed by then. I was going to ask you about administrative implications but I think you have covered the process in your opening statement, thank you.

With regard to the review of your strategic and operational plans, are you anticipating that the bulk of that will be completed by the middle of next year as well?

Ms Kinross: I would hope very much to have a plan in place that will take us through for the next four to five years. One of the barriers to fully achieving that by July next year will be understanding fully the detail of the new legislation, once we see it, because the strategic plan requires us to develop performance indicators and so on for the new functions so we need to see what the new functions are and go through a process of developing new performance targets for that. I would be hopeful that we could do that by July next year.

Ms DARLING: That is a big target. That is great. When do you anticipate permanent appointment of the Information Commissioner?

Ms Kinross: As the committee would be aware, Solomon recommended that the committee have an involvement in the appointment of the Information Commissioner, as well as the proposed two new deputies for the office. The appointment process for the Information Commissioner is an appointment process handled by the Department of Justice and Attorney-General. I cannot answer on the department’s behalf, but I would anticipate that the department fully intends to have a permanent Information Commissioner ready to start on the commencement of the legislation. Depending on the legislative timetable, I would expect the department to coordinate the recruitment processes to ensure that that happens.

CHAIR: I have been involved in one of those processes already, before the major watershed year of reform started, in relation to appointing an Information Commissioner, which was then postponed. I would imagine the process will be similar and that the chair would be invited to participate on a selection panel.

Ms DARLING: Are the staff and resources for the implementation team being provided above and beyond your current staff and resources for the office?

Ms Kinross: Yes, the $1.6 million is in addition to the funding that the office has. So it is on top of.

Ms DARLING: How long will the implementation team be in place? Just until the middle of next year?

Ms Kinross: Our time frame for the implementation team is through until December 2009. There is also additional supplementary funding in the 2009-10 year that has also been approved in the amount of $0.9 million for the first half of next year. So, $2.5 million all up.

CHAIR: What will be some of the first tasks for the implementation team? Because this will run over the period of time before the legislation has been introduced and passed by the House and afterwards?
Ms Kinross: Yes.

CHAIR: It is very much a transition period, is it not?

Ms Kinross: It absolutely is, Madam Chair. We received the funding in October. The early phase of the project is about the practical implications: securing the accommodation for the project time, recruiting the project team and, as we get a critical mass of people, Rachael and others have been engaging in planning so that we can work out, of all the tasks that we need to do, where the dependencies lie to make sure that we prioritise the things that have to happen first on which other ensuing activities will depend.

That sort of planning phase is happening now. We do have a detailed work plan, but we need to break down some of the larger projects into more detailed project plans. That work is happening now. We have to think about the project in three ways: firstly, we need to get ready as a new agency or a larger agency—a significantly upsized agency—which means that we have to put in place some new corporate processes that a small agency does not require such as establishing audit committees and so on and so forth; secondly, we have to focus on our new role in supporting the community and agencies in the right to information. So we will be focusing on developing the guidelines that the agencies need and training packages so that we can roll out a program that makes sure that the agencies receive timely advice and support. The third component is the coordination with other lead agencies in the reform process. That is how we have conceptualised the work. We are at a very early stage in terms of the detailed planning but we have commenced some of the activity.

CHAIR: There is not that much guesswork in it because you have the Solomon report and you have the government's response to the Solomon report so you can use that as the basis of how you think the legislation will look. There could be some additional implications from the legislation itself, but you probably will have covered most of that. It sounds like you can.

Ms Kinross: I think that is right. The policy settings are the key drivers. We can work within those policy settings. The legislation may throw up new things for us to consider, but given the time frames—and it is nice to see government doing something speedily

CHAIR: The additional resourcing seems to have come through fairly quickly.

Ms Kinross: Absolutely.

CHAIR: It is adequate for what those needs are for now or close to it?

Ms Kinross: It is what I have asked for. When you ask whether the funding is adequate, the answer to that depends on whether the estimates I have made of the work are accurate. They are the best that I could make. Time will tell whether I have done it accurately.

CHAIR: I think you have leapt ahead very quickly in grasping what has to be done and what should be done. It sounds like it is a very exciting time but there might be some particular challenges as well.

Ms Kinross: Absolutely, and we are looking forward to those.

CHAIR: Have you noticed some already? I am just thinking that the initial challenge may have been recruiting appropriate staff.

Ms Kinross: The recruitment of staff these days brings its own challenges, but we have been fortunate enough to recruit some very talented people so I am confident in the staffing that we have and the staff who will commence by December this year. The major risk that we have identified to the implementation is securing CBD accommodation for the larger organisation and the time frames involved in getting accommodation fitted out. There is usually a six or seven-month lead time from signing off a lease to when you can occupy premises. That is our major risk and we are certainly working very closely with the Department of Public Works and other agencies around managing that risk.

CHAIR: Fantastic. I think that has been great. Congratulations on your continued improvement in terms of customer client service. Thank you for that very brief but very informative visit with us. I am sorry that that is all we have time for this year. A transcript will be sent to you and you can have a look at that. I think your answers to the questions on notice and your opening statement and report certainly have covered many of the things that we were interested in knowing.

Ms Kinross: Good.

CHAIR: I wish you and your staff and office a very happy and safe Christmas.

Ms Kinross: Thank you very much.

Committee hearing closed at 3.58 pm