

Attachment 1

Department of Science, Information Technology, Innovation and the Arts submission

Review of the *Right to Information Act 2009* (RTI Act) and Chapter 3 of the *Information Privacy Act 2009* (IP Act) Discussion Paper

Question	Arts portfolio response prepared by Deborah Tanzer, Principal Legal and Governance Officer, Arts Queensland
<p>4.5 (pps13-14) Should corporations established by the Queensland Government under the <i>Corporations Act 2001</i> (Cth) be subject to the RTI Act and Chapter 3 of the IP Act?</p>	<p>There are a number of companies currently within the Arts portfolio established by the Queensland Government under the <i>Corporations Act 2001</i> (Cth).</p> <p>It is difficult to provide a comprehensive response to this question given the definition of a "corporation established by the Queensland Government under the <i>Corporations Act 2001</i>" has not been provided and could be broadly interpreted.</p> <p>Some issues to be considered include, for example, whether a company established by the Queensland Government under joint ownership with another body e.g. a local government body, will fall within the definition.</p> <p>It is noted that in June 2008, the FOI Independent Review Panel Chaired by Dr David Solomon AM delivered the Solomon Report Reviewing Queensland's Freedom of Information legislation and recommended that the definition of "public authority" in the Act should be extended to include bodies established for a public purpose under an enactment of Queensland, the Commonwealth or another State or Territory.</p> <p>The alternative considered was to include all bodies "supported directly or indirectly by government funds or other assistance or over which government is in a position to exercise control" (the Government could then declare them to be public authorities for the purposes of the Act).</p> <p>The Queensland Ombudsman (p86 of the Solomon Report) submitted that government control is the most important characteristic in terms of defining which bodies exercise government functions – if the body is controlled by the government and spends public funds it should be subject to FOI. Government control will be established if the government has ownership interest in the body of at least 50% and in the case of a body corporate, the government has a controlling interest if it is able to:</p> <ul style="list-style-type: none"> • control (whether directly or through its ownership interest in other bodies) the composition of the board of directors; • cast (or control casting of) more than half of the maximum number of votes that might be cast at a general meeting of the body; • control more than one half of the issued share capital of the body. <p>Other factors to consider include that these companies:</p> <ul style="list-style-type: none"> • are established as separate legal entities • some are created to provide a commercial focus,

- operate in a competitive environment, provide spread of control i.e. engaged in commercial activities, as a trading body with own control of funds and flexibility and independence.

The precise scope of commercial activities will vary from case to case. One consideration is the extent to which a company's commercial activities are carried out in a competitive market e.g. the greater the commercial activity, the less justification for applying the RTI Act.

It should be noted that all companies within the Arts portfolio operate within a commercial space i.e. the Aboriginal Centre for the Performing Arts Pty Ltd; Queensland Music Festival Pty Ltd, Major Brisbane Festivals Pty Ltd and Screen Queensland Pty Ltd.

There is an argument that there is a need to protect the commercial interests of these companies from additional administrative and financial burden.

It can be conversely argued that given these companies are owned by Government, they should be subject to RTI provided that commercial-in-confidence exemption provisions (at the least) should apply (i.e. these entities should be entitled to have their competitive commercial activities protected from disclosure).

Further to the above, in the case of companies engaged in investment incentive schemes, consideration should be given to extending the current exemption (11) beyond those administered by the department (ie the department administered by the Minister having responsibility for business, industry development, and investment opportunities and attraction, as identified in the Administrative Arrangements and within which that responsibility is administered), as the information concerning the granting of investment schemes is commercially sensitive information and could include documents entered into between the company and third parties which include confidential information relating to business, commercial and financial affairs of the entities, disclosure of which could breach confidentiality provisions of those documents.

Department of Science, Information Technology, Innovation and the Arts

Submissions from the Queensland State Archives

Question	Queensland State Archives response
4.6 (p 14) Should the RTI Act and Chapter 3 of the IP Act apply to the documents of contracted service providers where they are performing functions on behalf of government?	Yes, the RTI Act and IP Act should apply to public records (i.e those records created as part of the function or business contracted out) created by the contracted service provider. The contract between the public authority and the service provider should define the recordkeeping obligations and the records that are public records.
7.7 (p 27) Are the current provisions in the RTI Act sufficient to deal with access applications for information created by Commissions of Inquiry after the commission ends?	Yes, the Queensland State Archives supports the view that Commissions of Inquiry records should be exempt from RTI and IP while the Commission is undertaking its inquiry.
7.8 Is it appropriate or necessary to continue the exclusion of Commission documents from the RTI Act beyond the term of the Inquiry?	No, RTI and IP should not apply to the Commission of Inquiry records once the Commission ceases to exist.

Attachment 2

Department of Science, Information Technology, Innovation and the Arts portfolio statutory bodies

Review of the *Right to Information Act 2009* (RTI Act) and Chapter 3 of the *Information Privacy Act 2009* (IP Act).

Submissions from the Library Board of the Queensland State Library

2.1 Should the right of access for both personal and non-personal information be changed to the RTI Act as a single entry point?

Yes – this would alleviate the issue of determining which Act the application should fall under and make the application more straight forward to process.

3.1 Should the processing period be suspended while the agency is consulting with the applicant about whether the application can be dealt with under the IP Act?

Yes – this would make the process easier to manage.

5.2 Would agencies benefit from further guidance on publication schemes?

Yes – we would benefit from more information about what should/should not be included in publication schemes.

6.7 Should a further specified period begin as soon as the agency or Minister asks for it, or should it begin after the end of the processing period?

It should begin at the end of the processing period otherwise there is too much overlap and time periods can easily be mixed up.

6.10 Should applicants be limited to receiving two charges estimate notices?

No – we have had occurrences where a third charges estimates notice was needed but we could not issue it so we had to do the searches and processing with no fee.

7.4 Should existing public interest factors be revised considering

- *some public interest factors require a high threshold or several consequences to be met in order to apply*
- *whether a new public interest factor favouring disclosure regarding consumer protection and/or informed consumers should be added*
- *whether any additional factors should be included?*

Yes – as above, a weighted scale for the factors with specific criteria would be beneficial.

Submissions from the Board of the Queensland Museum

Review of the *Right to Information Act 2009* and Chapter 3 of the *Information Privacy Act 2009*

3.1 Should the processing period be suspended while the agency is consulting with the applicant about whether the application can be dealt with under the IP Act?

The processing time should be suspended while the agency is consulting with the applicant about whether the application can be dealt with under the IP Act. While the Queensland Museum (QM) has not received many requests, available resources are limited.

Review of the *Information Privacy Act 2009*: Privacy Provisions

5.0 Should section 33 be revised to ensure it accommodates the realities of working with personal information in the online environment?

Section 33 should be revised to ensure it accommodates the realities of working in an online environment having regard to the resources available by small agencies.

6.0 Does section 33 present problems for agencies in placing personal information online?

Section 33 does present problems for QM in placing personal information online.

7.0 Should an 'accountability' approach be considered for Queensland?

An alternative approach should be explored including providing an inclusion of an accountability approach such as along the lines of the ALRC's advice.

14.0 Should IPP 4 be amended to provide, in line with other IPPs, that an agency must take reasonable steps to ensure information is protected against loss and misuse?

The IPP4 element of reasonableness should be amended from "must ensure" to include a level of reasonableness for protection against "loss and misuse".

15.0 Should the words 'ask for' be replaced with 'collect' for the purposes of IPPs 2 and 3?

15.0 The words "ask for" should be replaced with "collect:" for the purposes of IPPs 2 and 3 in keeping with other jurisdictions and resource capabilities of small agencies.

Review of the *Right to Information Act 2009* (RTI Act) and Chapter 3 of the *Information Privacy Act 2009* (IP Act)

Submissions from the Queensland Art Gallery Board of Trustees

2.1 Should the right of access for both personal and non-personal information be changed to the RTI Act as a single entry point?

Yes. The Gallery supports the simplification of the legislative framework including the incorporation of Chapter 3 of the IP Act into the RTI Act. This would reduce the current extensive duplication and avoid the need for cross referencing between the Acts.

3.3 Should the timeframe for section 54(5)(b) be 10 business days instead of calendar days, to be consistent with the timeframes in the rest of the Act?

Yes. Timeframes in the legislation should where possible be stated in business days to avoid confusion.

5.2 Would agencies benefit from further guidance on publication schemes?

More guidance around publication schemes and how they might relate to open data publications would be beneficial provided it simplified administration and access.

6.1 Should the access application form be retained? Should it remain compulsory? If not, should the applicant have to specify their application is being made under legislation?

6.2 Should the amendment form be retained? Should it remain compulsory?

6.1 & 6.2 The application form should be retained but ease of use for applicants should be the primary consideration. Minimum information requirements should be kept simple and reflected in the form.

12.1 Are there any other relevant issues concerning the operation of the RTI Act or Chapter 3 of the IP Act that need to be changed?

For smaller organisations, establishing and maintaining an appropriate administrative scheme for RTI and IP is not very efficient. To date the Gallery has received no formal applications. All enquiries have been dealt with by administrative access. Many smaller government organisations do not have the resources or demand for a dedicated RTI officer. A simpler more flexible process for dealing with low risk applications would assist smaller organisations to meet their responsibilities.

Attachment 3

Review of the *Right to Information Act 2009* (RTI Act) and Chapter 3 of the *Information Privacy Act 2009* (IP Act) Discussion Paper

Submissions from Screen Queensland

Question	Response
<p>4.5 (p 14) Should corporations established by the Queensland Government under the <i>Corporations Act 2001 (Cth)</i> be subject to the RTI Act and Chapter 3 of the IP Act?</p>	<p>No, Screen Queensland believes that the current governance model is sufficient to provide an appropriate level of accountability and transparency with regards to Screen Queensland's investment activities.</p> <p>Screen Queensland ensures that it is accountable for and transparent with respect to its investments in a number of ways, most notably through the publication of all Screen Queensland's investments in development, production and screen culture. Details of all Screen Queensland's investments are published on our website and in our annual report each financial year. In addition, Screen Queensland is audited each financial year and the contents of the audit report form part of our annual report which is widely available to the public and also published on Screen Queensland's website.</p> <p>Screen Queensland believes that this level of corporate governance is appropriate for an organisation of this size and nature. Screen Queensland has been entrusted to serve the Queensland screen industry. Specifically, Screen Queensland was incorporated to, amongst other things, "increase the level of film and television production in Queensland". This is achieved through its investment in the screen industry at all levels from development through to production. Negotiation forms a significant part of our investment protocol and throughout the negotiation process we are provided with information that is confidential and/or commercial in confidence, especially, but not only, when international productions are under negotiation. If this information is made public it could jeopardise these negotiations, put screen projects at risk, inadvertently divulge applicant's intellectual property and go against the primary objective of the company.</p> <p>Screen Queensland endeavours to have an open dialogue with its Screen community and operates an open door policy inviting open and frank debate. It is important that this is encouraged to ensure that we are serving the screen community in the best way we can. Our concern is that if preliminary discussions about projects, many of which are in their infancy, are publicly disseminated before a formal investment decision has been made, it could discourage open discussion and reduce the attractiveness of Screen production in Queensland.</p> <p>On a practical level, if the ambit of the RTI Act were to be extended</p>

	<p>To organisations, such as Screen Queensland, it would place a significant burden on our existing resources. Specifically it would cause resources to be redirected from the constitutional objective of the organisation to handle the administrative tasks associated with RTI requests.</p>
Summary	<p>To summarise Screen Queensland's position:</p> <ol style="list-style-type: none">1. No, the ambit of the RTI Act should not be extended to Corporations established by the Queensland Government.2. Screen Queensland already has excellent formal disclosure systems and engagement with the screen industry.3. Confidentiality is critical in negotiations to grow our screen industry in Queensland.4. If Screen Queensland were to be incorporated into the RTI regime, compliance and administrative costs would divert Screen Queensland from its core business.