

15 November 2013



Right to Information and Privacy Review
Department of Justice and Attorney-General
GPO Box 149
BRISBANE QLD 4001

BY EMAIL: FeedbackRTIandprivacy@justice.qld.gov.au

Dear Sir/Madam

Submission on the Right to Information and Privacy Review

The Queensland Public Interest Law Clearing House (QPILCH) is a not-for-profit, community-based legal organisation that coordinates the provision of pro bono legal services for individuals and community groups.

QPILCH believes that the primary objects of the RTI Act remains valid and is meeting those objects as it facilitates open government. As all information collected by government and documents created by it occurs at public expense, subject to certain legitimate exceptions, it is in the public interest for that information to be publicly accessible.

As transparency, and participation and collaboration upon which transparency is based, are essential features of good government, we urge the Queensland Government to retain the current 'push model' and to continue to develop it so more information is routinely available and accessible through improved IT and other platforms.

This submission focuses on Question 4.6 in the *Review of the Right to Information Act 2009 and Chapter 3 of the Information Privacy Act 2009: Discussion Paper 2013* (the Discussion Paper): '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 the government'. The following observations are made in the Discussion Paper with respect to this question:

- the trend for government agencies to contract private sector bodies to provide services to the public on behalf of government results in the loss of a degree of accountability;
- allowing documents held by private sector bodies to be subject to an information access regime may have a detrimental effect on their legitimate business interests; and
- the costs of complying with an information access regime may impose an unreasonable cost and administrative burden on these entities.

On this basis, we submit that not-for-profit organisations (**NFPs**) operating in Queensland that receive funding from one or more government departments to facilitate their services and are parties to contracts connected with that funding and that require the fulfilment of certain services in return for the relevant funding, should be exempt from the operation of the RTI Act for the reasons outlined below.

The phrases "contracted service provider" and "performing functions on behalf of government" used in Question 4.6 are both ambiguous. If the RTI Act and Chapter 3 of

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the IP Act were to extend in the relevant manner, then it is submitted that these terms, if used in any such legislative amendment, should be comprehensively and clearly defined. Specifically, it should be made clear that NFPs that fall into the category outlined above are excluded from the operation of the RTI Act and Chapter 3 of the IP Act.

The vast majority of NFPs operate with very limited resources and the costs of complying with an information access regime would impose a significant cost and administrative burden on these entities. Although the vast majority of documents that an applicant might seek access to from QPILCH specifically would be exempt from disclosure under one of the already existing exemptions in the legislation (and potentially the operation of legal professional privilege), this is not the case for all NFPs. Further, even if an exemption were deemed applicable in any given circumstance, this determination imposes an unreasonable cost on the relevant NFP.

We are unaware of an existing demand by clients of NFPs for access to client records. In 11 years, QPILCH has had one request by a client for a copy of their file. As the largest free and low cost civil law provider in Queensland, we have not received an application for assistance from a client of an NFP for access to their file. Opening up the RTI regime to include NFPs could potentially create an interest and a demand in securing such information, which NFPs would struggle to address.

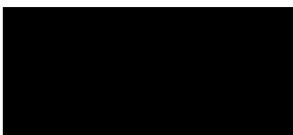
Without there being any appreciable demand or public concern about the current operation of NFP file recording and disclosure, there does not appear to be any public interest in including NFPs within the regime.

It is submitted that the simplest way to ensure that NFPs that provide community services remain excluded from the operation of the RTI Act and Chapter 3 of the IP Act is to define the terms used in any relevant amendment in a manner that expressly and clearly excludes these entities. Alternatively, these entities should be added to the exempt bodies list in Schedule 2 of both Acts.

We submit that the current regime meets the needs of the community. A change to include NFPs would create additional burdens that NFPs are not funded to address and would add a further level of complication to the regime.

Thank you for your consideration.

Yours faithfully

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Tony Woodyatt
Director