

Your ref:
Our ref:

[REDACTED]



3 February 2017

RTI and Privacy Review
Department of Justice and Attorney General
GPO Box 149
BRISBANE QLD 4001

Dear Sir

2016 Review of the *Right to Information Act 2009* and *Information Privacy Act 2009*

Thank you for the opportunity to comment on the consultation paper for the review of the *Right to Information Act 2009* (RTI Act) and the *Information Privacy Act 2009* (IP Act).

My officers and I are satisfied with the intent of the Acts and continue to support the release of government-held information unless, on balance, it is contrary to the public interest.

Under current legislation, the Queensland Audit Office (QAO) has been consulted on several matters pertaining to audits or investigations that have been conducted by my office and I would appreciate this practice continuing under future legislation. I also ask the steering committee to consider recognising the QAO as an entity to which the Act does not apply in relation to its audit functions to help clarify the obligations of my office to protect audit information, manage expectations of requestors and reduce administrative burden.

My comments relate to questions 4, 8, 9, 11 and 12 and are available in Attachment 1.

If you require any further information please contact [REDACTED] on [REDACTED] or [REDACTED]

Yours sincerely

[REDACTED]

Karen Johnson
Assistant Auditor-General
on behalf of Anthony Close

4. 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?

The QAO supports the proposal to adopt an approach similar to that of section 6C of the *Commonwealth Freedom of Information Act 1982*.

8. Noting the 2013 response, should the requirement to provide a schedule of documents be maintained?

Yes. My officers believe the schedule demonstrates transparency, assists them to process an application and helps external parties understand the documents being considered for release. My officers have indicated that they would continue to issue a schedule even if the requirement was repealed.

9. Should the threshold for third party consultations be changed so that consultation is required where disclosure of documents would be 'of substantial concern' to a party?

The QAO only receives a small number of access applications and does not have an issue with the current requirements. We appreciate that larger entities may find the requirements quite onerous and support the decision to review requirements. I request that you consider the following factors:

- Definition of 'substantial concern'

My officers are concerned that without a clear definition of 'substantial concern' agencies may misinterpret their requirements and overlook some third parties. We are concerned that this could lead to an inconsistent approach to consultation and request the steering committee to clearly define 'substantial concern' in future legislation.

- Potential inappropriate disclosures / privacy breaches

Since 2013, the QAO has participated in third party consultations on regarding the disclosure of information created, obtained or disclosed during the conduct of an audit or investigation by this office. In 60% of these cases, my officers have requested the agencies to make additional redactions to protect the privacy of my employees and other individuals. I am concerned that if the threshold for consultation is increased the privacy of my employees may be compromised.

- Mandate of the Auditor-General

The mandate of the Auditor-General in Queensland encompasses all state and local government public sector entities so I have a vested interest in knowing what information my clients are disclosing when it relates to audits and investigations that have, are, or will be conducted by the QAO.

In the event the threshold is changed, to require agencies to consult where disclosure would be of 'substantial concern' to a party, then I request the steering committee consider including an additional provision that requires public sector entities to consult with the Auditor-General on any matter pertaining to audits or investigations that have, are, or will be conducted by the QAO.

- Confidentiality provisions of the *Auditor-General Act 2009*

Under sections 61 and 64 of the *Auditor-General Act 2009*, the auditor-general must provide relevant parties with a copy of any proposed report pertaining to them and afford them the opportunity to comment on the report. This information is subject to the confidentiality provisions of the *Auditor-General Act 2009* and cannot be released by the QAO or a recipient of a proposed report. My office has a vested interest in ensuring that parties understand the confidentiality surrounding reports to Parliament prepared by this office and feel it is necessary to be consulted on all matters pertaining to such reports.

11. Are the exempt information categories satisfactory and appropriate? Are further categories of exemption needed? Should there be fewer exemptions?

My office is satisfied with the categories for exempt information but requests a review of the provision pertaining to information disclosure of which prohibited by Act, particularly the section relevant to the *Auditor-General Act 2009*.

Under the *Auditor-General Act 2009*, information disclosed to, obtained by or made by the QAO in relation to an audit that has, is being or will be conducted is protected by a confidentiality provision and cannot be released by the QAO. This type of information represents the majority of our records and is the subject of most right to information requests received by the QAO. In this financial year, my officers have responded to four informal requests and one formal access application all seeking access to audit information. These requests are an administrative burden for my office as we cannot release the information and generally have to advise the applicant to contact the entity that is the subject of the request. As such, I would appreciate the steering committee considering a change to the legislation to recognise the QAO as an agency to which the Act does not apply to in relation to its audit functions. I strongly believe that this change will clarify the QAO's obligation to protect audit information, remove the administrative burden of my officers having to deal with applications that we cannot process and reduce the duplication of processes by encouraging the public to apply directly to the relevant agency.

In the event, the QAO is not recognised as an entity to which the Act does not apply to in relation to its audit functions I request the reference to section 53 of the *Auditor-General Act 2009* be retained in schedule 3, s.12 of the RTI Act.

12. Given the 2013 responses, should the public interest balancing test be simplified; and if so how? Should duplicated factors be removed or is there another way of simplifying the test?

The QAO supports the decision to simplify the public interest balancing test and requests the inclusion of a factor prompting decision-makers to consider whether disclosure could prejudice an audit or investigation that has, is being or will be conducted by the Auditor-General.