ATTACHMENT 1

Brisbane City Council Response to "Review of the Right to Information Act 2009 & Chapter 3 of the Information Privacy Act 2009" Discussion Paper, August 2013

1 Objects of the Act – "Push Model" strategies

1.1 Is the Act's primary object still relevant? If not, why not?

The primary objects of both Acts are still relevant.

1.2 Is the "push model" appropriate and effective? If not, why not?

Council has been "pushing out" a considerable number of documents via its website in recent years. This means that residents of Brisbane no longer have to use formal access methods to obtain a substantial amount of the information that affects or is of interest to them, as they had to in the past.

2 Interaction between the RTI and IP Acts

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 current 'dual' Act system is confusing to applicants and makes for a convoluted and administratively burdensome process that is more difficult for agencies to manage than the previous single entry point as was the case under the Freedom of Information (FOI) Act.

Based on current requirements, decision letters for IP applications that rely on RTI Act exemptions are complicated and undoubtedly confusing to many recipients as they involve cross referencing between the RTI and IP Acts. Further, due to the vagueness of the current 'dual' Act system, some applications may be dealt with by agencies as RTI applications whereas other agencies may deal with them as IP applications.

Few of the applications that Council receives are purely personal information applications. Most are more appropriately considered mixed applications and so are addressed under both Acts. This creates confusion amongst some applicants who believe they should not have to pay an application fee when the information they seek concerns them. Most of these types of applications concern neighbourhood disputes, dog attack investigations, personal injury requests, etc. where the information being sought also includes the personal information of other individuals or where some of the documents being sought do not specifically contain the personal information of the applicant.

A simpler system would be for all access applications to be made under the RTI Act and for the IP Act to deal with protection and management of personal information by agencies. In other words, remove Chapter 3 from the IP Act and incorporate its access provisions into the RTI Act.

3 Applications not limited to personal information

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

Yes, in the same way that the processing "clock" stops for all other consultations in the process.

3.2 Should the requirement for an agency to again consider whether an application can be made under the IP Act be retained?

Removing the current 'dual' Act system would remove the need to consider this issue.

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, Council agrees that all timeframes stipulated in both Acts need to be consistent. Other legislation refers to business days and both Acts should also do this.

4 Scope of the Acts

4.1 Should the Act specify that agencies may refuse access on the basis that a document is not a document of an agency or a document of a Minister?

Yes. However the agency should include in their decision the basis on which they are refusing access, rather than issuing a blanket refusal. Many of the documents currently assessed under the RTI process are documents produced by an outside entity but are currently in the control of the agency to which the application was made.

4.2 Should a decision that a document is not a "document of the agency" or a "document of a Minister" be a reviewable decision?

Yes, this would ensure all decisions are reviewable.

4.3 Should the timeframe for making a decision that a document or entity is outside the scope of the Act be extended?

Yes. Ten (10) days is often not sufficient time for the agency to undertake the necessary searches and investigations to determine if a given document is outside the scope of the Act.

4.4 Should the way the RTI Act and Chapter 3 of the IP Act apply to GOCs be changed? If so, in what way?

No.

4.5 Should corporations established by the Queensland Government under the Corporations Act 2001 be subject to the RTI Act and Chapter 3 of the IP Act?

No. Similarly, wholly owned corporations of local government are established under the *Corporations Act 2001* (Cth) for commercial, charitable or other purposes and should be regarded as exempt entities in terms of both the RTI Act and the IP Act.

4.6 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?

No, as this may have a detrimental effect on legitimate business interests and activities of those contracted service providers. Council agrees with the comment in the discussion paper that the cost of complying with any information access regime may also impose an unreasonable cost and administrative burden on these entities and these costs could be passed onto the consumer.

It would also substantially increase the complexity of the processes and effort required by agency decision makers in dealing with applications.

5 Publication schemes

5.1 Should agencies with websites be required to publish publication schemes on their website?

Not all agencies have the same resources, nor demand for documents. The level of information available on a website should be driven by the demand for information of a particular type or a particular subject matter, together with the resources available within that agency to make such information available.

5.2 Would agencies benefit from further guidance on publication schemes?

Guidelines and templates for "best practice" and "minimum compliance" publication schemes would definitely be of benefit to agencies to use as a base and make decisions on the form and content of their publication schemes. This would however depend on resources, documents held and internal agency political and administrative decisions on publication of documents.

5.3 Are there additional ways that Government can make information available?

Information could be made available by continuing with publication schemes, such as the one Council has implemented to proactively release Establishment & Coordination Committee minutes.

6 Applying for access or amendment under the Acts

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?

A standard application form is a beneficial means for providing a checklist to ensure applications are made in the proper and complete form. However, a standard form that applies to all agencies regardless of size or customers may not always be appropriate.

An alternative would be to develop a standard template form which should retain certain mandatory fields but could be modified by agencies to suit their customers' information requests. The mandatory information would include which Act they are seeking information under, identification as the applicant (or agent of the applicant), and sufficient detail of the documents being sought to enable the agency to effectively search for and identify the required documents.

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

Council has only had one IP amendment request in recent years, so does not offer any comments or suggestions on this matter, other than the general comments included in the response to 6.1 above.

6.3 Should the list of qualified witnesses who may certify copies of identity documents be expanded? If so, who should be able to certify documents for the RTI and IP Acts?

Yes, the list should be expanded to include agency counter or customer service officers. The level of identity certification should be such that the RTI Unit and decision maker's agency is sufficiently satisfied of the identity of the applicant, bearing in mind the type and sensitivity of documents being sought in each instance.

6.4 Should agents be required to provide evidence of identity?

The level of identity certification should be such that the RTI Unit and decision maker's agency is sufficiently satisfied of the identity of the applicant, bearing in mind the type and sensitivity of documents being sought in each individual instance.

6.5 Should agencies be able to refund application fees for additional reasons? If so, what are appropriate criteria for refund of the fee?

Yes, agencies should be able to refund application fees if the application fee has been paid to the incorrect agency. A refund directly to the applicant is administratively more efficient than transferring application fees paid between agencies.

A refund (or return of a cheque), together with advice to the applicant that they have applied to the wrong agency and details of the correct agency is less administratively complex and costly than inter-agency transfers.

6.6 Are the Acts adequate for agencies to deal with applications on behalf of children?

Council is not in a position to comment on this matter as the number of applications involving children has been low and no difficulties have been experienced.

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?

Council considers that the further specified period should be added to the end of the original processing time, regardless of when the request is made.

6.8 Should an agency be able to continue to process an application outside the processing period and further specified period until they hear that an application for review has been made?

Yes, provided it is to the benefit of the applicant, i.e. the application is able to be properly processed and is not unduly delayed. It is not always reasonably practical to contact the applicant with an extension request and receive a response within the statutory processing time due to factors such as annual or other leave by the applicant.

6.9 Is the current system of charges estimate notices beneficial for applicants? Should removing the charges estimate notice (CEN) system be considered?

The current CEN system is cumbersome and involves a significant workload by the agency for little benefit. In order to arrive at a relatively accurate estimate of processing charges, a significant amount of work is undertaken on the application, particularly in cases involving non-standard documents/applications. If the applicant decides to reduce the scope or withdraw the application, work done up to that point by the agency is wasted.

It is Council's view that a system of charges should be available to agencies in order to encourage applicants to scope their requests to information that is genuinely needed. This system would also apply to recover some of the extensive costs involved in processing access applications.

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

Yes, Council agrees that two CENs are adequate, as more than this adds to the administrative burden of the process.

Current provisions require the second CEN to be equal or smaller than the first one accepted by the applicant. Council's preferred option would be for a second CEN to be issued if it was found that actual processing time took longer than that estimated in the first CEN, thus issuing a larger CEN. Even an experienced RTI decision maker cannot always pre-empt the number of pages that may contain exempt material and require redactions in advance of actually reviewing these pages. For example, a recent request was initially estimated at much less than it should have been as it was found during the process of reviewing the documents and making an access decision on them that there were approximately 600 pages requiring redaction, the large number of which was not envisaged when the CEN was initially prepared and subsequently accepted by the applicant.

6.11 Should applicants be able to challenge the amount of the charge and the way that it is calculated? How should applicant's review rights in this area be dealt with?

No. Applicants frequently have a limited understanding of the filing and records storage systems of the agencies to which they apply. In reality, documents often take a considerable amount of searching effort to identify. This means charges calculated are significantly less than the actual costs involved in processing an application. Adding a process whereby the applicant can

challenge the amount of the charge further adds to the administrative burden to an already complex process.

6.12 Should the requirement to provide a schedule of documents be retained?

No. Under current provisions, the only way to produce a meaningful schedule of documents (listing the documents/categories of documents and the number thereof) is to substantially process the application. If the applicant decides to reduce the scope or withdraw the application after receiving the CEN, work done up to that point by the agency is wasted.

6.13 Should the threshold for third party consultations be reconsidered?

Yes. The FOI Act provided for consultation where the release of the information could be expected to be of "substantial concern" to a third party. The current wording "expected to be of concern" imposes an administrative burden on agencies because of the significant amount of consultation which may not actually be necessary. Council considers that consultation could and should occur if an agency is proposing to release information that a reasonable person would consider to be of *substantial* concern to a third party.

Another issue with the requirement for third party consultations arises when the documents being sought relate to neighbourhood disputes or workplace disputes and investigations. In these instances it is often difficult and arguably irresponsible to consult with the third parties involved without inflaming an already volatile situation.

6.14 Should the Acts set out the process for determining whether the identity of applicants and third parties should be disclosed?

Yes, this would provide clear processes for RTI decision makers.

6.15 If documents are held by two agencies, should the Act provide for the agency whose functions more closely relate to the documents to process the application?

No. Where Council has knowledge of another agency that may also hold relevant documents, Council will recommend that the applicant also lodges an application with the second agency. It should not be the responsibility of the agency whose functions more closely relate to the documents ("lead agency") to identify other agencies that may (or may not) hold relevant documents, obtain such documents from them, undergo the necessary consultations and to make an access decision on all relevant documents originally held by a number of agencies. This would be an administratively burdensome process. It may also be case that one of the other agencies holds more relevant documents than the "lead agency" in a particular instance. It is therefore preferable that applicants be able to decide whether they wish to make applications to all or some of the agencies that may hold documents.

6.16 How could prescribed written notices under the RTI and IP Act be made easier to read and understood by applicants?

Council considers that a customer focus approach to processing applications is essential in order for applicants to understand the outcome of their application. This means that decision letters and other correspondence with applicants should allow for flexibility in length and detail, follow standard plain language guidelines, and be tailored to the target audience. For example, a straightforward decision to a resident applying for neighbourhood complaint documents should be shorter and simpler than a decision letter to a legal firm containing lengthy discussion on exemption clauses and public interest test factors. This is particularly so in cases where the decision maker believes the decision is likely to be the subject of review because of the subject matter or sensitivity of the documents in question.

It is Council's view that as long as certain key mandatory elements are met in written notices, the format, length and complexity of written notices and correspondence from agencies should be variable according to subject matter. It would also be of benefit for the OIC to publish template (or de-identified) examples of what they consider to be "best practice" and "minimum compliance" decision letters and other written notices.

6.17 How much detail should agencies and Ministers be required to provide to applicants to show that information the existence of which is not being confirmed is prescribed information?

Council considers that minimal information should be provided and the statement that an agency can neither confirm nor deny the existence of the document is more than sufficient. Council considers that if an agency were to provide more information about neither confirming nor denying the existence of the document, the result could be to actually confirm or deny that the document exists.

For example, if an applicant requests information concerning complaints made by Mrs Smith about the applicant, Council can only advise that it can neither confirm nor deny the existence of documents containing that information as to provide any additional information may confirm/deny that Mrs Smith has made complaints to Council about the applicant.

6.18 Should applicants be able to apply for review where a notation has been made to the information but they disagree with what the notation says?

Council does not consider that an applicant should be able to apply for a review about the content of a notation made to information. The notation itself is a public record of the agency or Minister who made it. Furthermore, Council considers that an ability to amend a notation or any information contained in a public record would be contrary to the intention of the legislation, which is to provide access to information already in existence – not to challenge the content of information.

7 Refusing access to documents

7.1 Do the categories of excluded documents and entities satisfactorily reflect the types of documents and entities which should not be subject to the RTI Act?

Council considers that the document categories set out in Schedule 1 satisfactorily reflect the general types of document which should not be subject to the RTI Act.

Council considers that Schedule 2 of the RTI Act should be amended to specifically provide that the RTI Act does not apply to any *Corporations Act 2001* (Cth) companies. This will remove any confusion regarding the application of the RTI Act to *Corporations Act 2001* (Cth) companies established by an agency. See also 4.5 above.

7.2 Are the exempt information categories satisfactory and appropriate?

Council would not object if categories were expanded. Council would object to the existing Schedule 3 exemptions being reduced, particularly Section 4A, 4B, 7, 8 and 10.

7.3 Does the public interest balancing test work well? Should the factors in Schedule 4 Parts 3 and 4 be combined into a single list of public interest factors favouring non-disclosure?

Under current provisions, the public interest balancing test is quite complex given the overlapping and duplication between the Part 3 and Part 4 factors. The test would be more efficient if a single listing/description of factors favouring disclosure or non-disclosure was provided.

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?*

A formal public interest factor relating to consumer protection and/or informing consumers would be of benefit, given that at present access decisions on documents relating to audits and inspections under the Food Act and similar legislation need to be made on case precedent. After amalgamation of Part 3 and Part 4 factors, there should be consideration of the practical application of these factors and the thresholds or consequences that may be needed to be met in order to apply them.

7.5 Does there need to be additional protection for information in communications between Ministers and departments?

Council does not make any comment on whether additional protection for information in communications between Ministers and departments is needed. However, Council considers that the protections currently offered (and any additional protections incorporated in any amendment to the RTI Act) should be consistently applied to cover information in communications between Councillors and divisions within Council. This will enable local governments to function in the same capacity as a State Government – free, full and frank communications between Councillors and divisions.

7.6 Should incoming government briefs continue to be exempt from the RTI Act?

Yes. Council's view is that this provision should also be consistently applied to certain incoming briefs to the Lord Mayor and Chairmen of Council Committees by senior officers of Council, to ensure that full and frank briefings may be provided.

7.7 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?

Council considers that there is scope for information which was produced before a Commission to be released under the RTI Act beyond the term of the enquiry, subject to any specific recommendation of the Commission or relevant State Department. Each agency should continue to be responsible for assessing the information against the exemptions and public interest test.

It should also be noted that in the recent Flood Commission of Inquiry, the majority of the documents produced before the Commission were made available to the public on the Commission's website. Council further considers that the Commission/relevant State Department should be required to maintain a database of the information made publicly available during a Commission following its conclusion.

7.8 Is it appropriate or necessary to continue the exclusion of Commission documents from the RTI Act beyond the term of the Inquiry?

The Queensland Government should be responsible for ensuring access to documents beyond the term of an Inquiry.

7.9 Are provisions in the RTI Act sufficient to deal with access applications relating to mining safety in Queensland?

Not applicable to Council.

7.10 Are the current provisions in the RTI Act sufficient to deal with access applications for information about successful applicants for public service positions?

Council agrees that the current low level threshold for third party consultation causes problems in the workplace and could cause distress to persons involved. In these instances, third party consultation is not a preferred avenue. A conservative access decision on documents within scope is a more measured and realistic approach.

8 Fees and charges

8.1 Should fees and charges for access documents be more closely aligned with fees, for example, for access to court documents?

It is Council's view that fees and charges should be more reflective of the work involved in processing applications. Council acknowledges that it would be unreasonable to have full cost recovery in place not only because of the financial impact on the applicant but also because to do so would be contrary to the objects of the Act. However, the financial recovery options available should be reviewed to decrease the financial and administrative burden on agencies. A robust schedule of fees and charges that is specific and not open to interpretation on matters such as personal information should be in place.

8.2 Should fees and charges be equally imposed on all applicants? Or should some applicants pay higher charges?

Fees and charges should be equally imposed, however legislative provisions should allow for a discount on processing and access charges for financial hardship cases, rather than the current 100% waiver. This waiver has been open to abuse by applicants (holding concession cards or applying on behalf of not-for-profit organisations) who undertake broad applications in the full knowledge they will not have to meet the significant costs dealing with large and complex applications.

8.3 Should the processing period be suspended when a non-profit applicant is waiting for a financial hardship status decision from the Information Commissioner?

Yes, Council agrees with this proposal as the processing timeframe is often not long enough, particularly during periods of high workloads.

8.4 Should the RTI Act allow for fee waiver for applicants who apply for information about people treated in multiple HHSs?

Not relevant to Council.

8.5 If so what should be the limits of this waiver?

Not relevant to Council.

9 Reviews and appeals

9.1 Should internal review remain optional? Is the current system working well?

Yes, internal review should remain optional. Amendments to the current system could include:

- an extension of time to deal with an internal review where the internal reviewer is experiencing high levels of competing priorities, or where the documents are voluminous or complex
- an option for the agency to refer an applicant directly to external review in certain circumstances.

9.2 If not, should mandatory internal review be reinstated, or should other options such as a power for the Information Commissioner to remit matters to agencies for internal review be considered?

It is Council's view that mandatory internal review should not be reinstated. The applicant should be afforded the option to request internal review or go straight to external review.

9.3 Should applicants be entitled to both internal and external review where they believe there are further documents which the applicant has not located?

Yes, as this reflects current practice and should be formalised in the Act.

9.4 Should there be some flexibility in the RTI and IP Acts to extend the time in which agencies must make internal review decisions? If so, how would this best be achieved?

It is Council's view that flexibility for internal reviews is necessary where the internal reviewer is experiencing high levels of competing priorities, or where the documents are voluminous or complex. This may, in some circumstances, negate the need for the applicant to go to external review because the internal review has been able to undertake a comprehensive review of the matter in a reasonable timeframe.

9.5 Should the RTI Act specifically authorise the release of documents by an agency as a result of an informal resolution settlement? If so, how should this be approached?

Yes. Specific reference in the Act would be of benefit to agencies and their decision makers and would offer them greater protections under the Act.

9.6 Should applicants have a right to appeal directly to QCAT? If so, should the Commonwealth model be adopted?

No. Referral of matters to QCAT is expensive for all parties involved and should be minimised. Applicants should only be able to appeal to QCAT after a certain period of time has elapsed after submitting an external review to OIC without receiving a decision or informal resolution, or where the OIC has not made a decision in their favour.

10 Office of the Information Commissioner (OIC)

10.1 Are current provisions sufficient to deal with the excessive use of OIC resources by repeat applicants?

It is Council's view that there is room for clarification around these provisions given the current high threshold for OIC to declare a vexatious applicant.

10.2 Are current provisions sufficient for agencies?

As above, Council's view is that agencies should be able to refuse to deal with vexatious applicants where their applications constitute a substantial and unreasonable diversion of resources. See also 12.1 below.

10.3 Should the Acts provide additional powers for the OIC to obtain documents in the performance of its performance monitoring, auditing and reporting functions?

No.

10.4 Should legislative timeframes for external review be reconsidered? Is it appropriate to impose timeframes in relation to a quasi-judicial function?

There is significant difference in the timeframes for external and internal review and this should be reviewed to enable a more comprehensive response in a more realistic timeframe. The unlimited timeframe for OIC to deal with external review requests has resulted in some complex applications taking up to 12 months to finalise. This is in contrast with agency decision makers, who have only 25 business days (plus any extensions sought) and internal reviewers, who have only 20 business days (with no extensions possible).

Any review of timeframes should also provide minimum timeframes for requests from the OIC to agencies for providing detailed submissions, searches etc to take into account workload of current active applications. For example, some OIC requests to agencies are bundled together resulting in a number of requests with the same response date. This means a large effort is required in a short timeframe.

10.5 If so, what should the timeframes be?

It is Council's view that the maximum timeframe for external review should not exceed 12 months.

11 Annual reporting requirements

11.1 What information should agencies provide for inclusion in the Annual Report?

The type of information reported should be standard in terms of reporting timeframes, format and content. The type of information sought should be meaningful and useful to Parliament and other readers and users of the Annual Report. For example, reporting on the total number of applications for the year is not meaningful without being accompanied by the total number of pages of documents considered over the same year because of the large variance experienced in the size and complexity of individual applications.

Requests to agencies to provide data for the Annual Report should follow a determined schedule each year and the required format of responses should not vary markedly from year to year.

12 Other issues?

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?

Yes. Council believes there is benefit in having the capacity to dismiss unintelligible applications where all reasonable steps have been undertaken by the agency to clarify the request with the applicant. This provision is in no way intended to preclude applicants who have English as a second language but rather ensure applications are clear, correct and relevant.

ATTACHMENT 2

Brisbane City Council Response to "Review of the Information Privacy Act 2009: Privacy Provisions" Discussion Paper, August 2013

1. *What would be the advantages and disadvantages of aligning the IPPs with the APPs, or adopting the APPs in Queensland?*

   Council's view is that the advantages would outweigh any perceived disadvantage of aligning the IPPs with the APPs. The advantages include:
   - clarity and consistency of application, as all agencies are subject to the same principles;
   - consistency of definitions mean an equal application of legislation.

   A possible disadvantage however is that additional compliance requirements may be necessary if the principles are changed.

2. *Does the IP Act inappropriately restrict the sharing of information. If so, in what ways? Do the exceptions need to be modified?*

   Yes. The restrictions force Council to appear to be increasingly bureaucratic and not customer focussed. For example, customers who write to the Lord Mayor about a matter that is outside the jurisdiction of Council cannot be referred to the relevant entity without customer consent. An exemption could therefore be included to reflect that where personal information needs to be referred to another government agency subject to the IP Act, it is assumed to be equally protected by that agency.

3. *Should the definition of personal information in the IP Act be amended to bring it into line with the definition in the Commonwealth Privacy Amendment Act 2012?*

   Yes. Council agrees with the points raised:
   - remove the reference to a database from the definition as this is implicit in a modern interpretation of information;
   - remove the term the term "identity" given concerns around the meaning of that word and use the term "identified" in amended legislation to more accurately reflect an individual.

4. *Should government owned corporations in Queensland be subject to the Queensland IP Act, or should they continue to be bound by the Commonwealth Privacy Act?*

   No and nor should council owned corporations be covered. However if Queensland aligns with the National IPPs this should no longer be an issue as the application of privacy would be consistent across the sector.

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

   Yes. The current legislative provisions do not accurately reflect the conditions of the online environment and the geographical diversity of locations in which work is carried out. For example:
   - employees may work within Australia during Australian Eastern Standard Time but beyond those hours, work on the same system may continue in an offshore location;
   - employees may be located internationally to work on Council projects;
   - services that have been contractually outsourced have officers located internationally;
   - survey hosting mechanisms and servers are often located offshore.

6. *Does section 33 present problems for agencies in placing personal information online?*

   Yes. Refer Item 5 above.

7. *Should an accountability approach be considered for Queensland?*

   The accountability approach is likely to have broad community acceptance. Council agrees however that it may be challenging to determine whether the interpretation of "similar privacy protections" would be effectively upheld in other jurisdictions resulting in increased liability for the agency.

8. *Should the IP Act provide more detail about how complaints should be dealt with?*

   No. It is Council's view that agencies need to be able to retain an element of flexibility in the approach to complaints to reflect the diversity in size, resources, functions and jurisdictions of agencies. The OIC has a responsibility in this area rather than a rigid legislative approach.

9. *Should the IP Act provide more flexibility about the timeframe for complaints to the OIC to be lodged?*

   Yes, flexibility in the timeframe would better reflect the diversity in size, resources, functions and jurisdictions of agencies, together with the relative complexity of the complaint.

10. *Are additional powers for the Information Commissioner to investigate matters potentially subject to a compliance notice necessary?*

    Yes. Council agrees with the proposed amendment.

11. *Should a parent's ability to do things on behalf of a child be limited to Chapter 3 access and amendment applications?*

    No. Council considers that a parent's ability to do things on behalf of a child should not be limited to access and amendment applications. Even in the case of a child of 16 years to 18 years of age, the parents should still be able to make decisions on their behalf, particularly in the context of providing consent to use documents and photographs in publications of an agency or Minister. For example, Council informs the community through documents which often include images of children about topics such as vaccinations, libraries and community events.

12. *Should the definition of 'generally available publication' be clarified? Is the Commonwealth provision a useful model?*

    Yes. Council agrees with the proposed amendment.

13. *Should the reference to 'documents' in the IPPs be removed; and if so how would this be regulated?*

    No. Council considers that to remove the reference to "documents" in the IPPs would be to unreasonably expand the scope of the Information Privacy Act 2009 to include information collected verbally but never reduced to writing. Regulation of the collection of information collected verbally and never reduced to writing would be logistically impossible.

14. *Should IPP4 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?*

    Yes. Consistency of approach and application is considered important in this instance.

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

    No. Council considers that to replace the words "ask for" with "collect" for the purposes of IPPs 2 and 3 would be to place an unreasonable administrative burden on agencies to provide a collection notice to individuals in circumstances where it is not reasonably possible for the agency to do so.

For example, Council is the recipient of large volumes of unsolicited correspondence from residents and it would be impossible for Council to pre-empt the receipt of correspondence and provide a collection notice. Similarly, Council maintains and monitors the CitySafe CCTV system – it would be impractical and contrary to the purpose of installing the CCTV cameras for Council to place a collection notice at each location of a CCTV camera. Council considers that where a person is corresponding with Council, they should be reasonably aware that they are providing their personal information.

Furthermore, even in cases where an agency has not provided a collection notice to an individual, the agency is still required to treat that information in accordance with the requirements of the *Information Privacy Act 2009*.