



Our ref: CSU/00025

15 November 2013

The Honourable Jarrod Bleijie MP
Attorney-General and Minister for Justice
RTI and Privacy Review
Department of Justice and Attorney-General
GPO Box 149
Brisbane QLD 4001

By email: FeedbackRTIandprivacy@justice.qld.gov.au

Dear Mr Bleijie

Reviews of the *Right to Information Act 2009* and the *Information Privacy Act 2009*

I refer to your call for submissions about the reviews of the *Right to Information Act 2009* (the RTI Act) and the *Information Privacy Act 2009* (the IP Act) and thank you for the opportunity to make a submission.

Interaction between the RTI Act and the IP Act

In my Office's dealing with requests for information, I believe that the current division of legislative provisions about access to information between the RTI Act and the IP Act is confusing, both for applicants and decision-makers. It would, in my view, be preferable if the legislative regime governing access to information were contained within one Act.

Exempt information

I have previously requested that consideration be given to making Ombudsman Office operational files exempt from applications under the RTI Act. I write to renew my request, and to submit that such an exemption should also extend to access applications under the IP Act.

As I am sure you are aware, the *Ombudsman Act 2001* strictly limits the ways in which information about complaints and investigations (operational files) may be disclosed. These appropriate restrictions are undermined by the absence of an exemption from right to information and information privacy applications for operational files. I confirm that my concerns about applications for access to information do not extend to other files held by this Office, be they financial, administrative or of any other type.

The RTI Act currently includes public interest harm as a factor favouring nondisclosure (Schedule 4, Part 4). However, this is insufficient to ensure that operational material will not be disclosed. That this factor is only relevant until an Ombudsman's investigation is completed diminishes its role in protecting disclosure of the often very sensitive information handled by this Office.

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Under the Ombudsman Act, I have significant powers to compel the production of documentation and information from public agencies. I consider that in circumstances where I may have obtained that information (which could be potentially sensitive), a clear exception from the provisions of the RTI and IP Acts is very appropriate.

The need for an exemption will become more pressing if any future amendment of the definition of official misconduct in the *Crime and Misconduct Act 2001* mirrors the proposals in the most recent Queensland Government Response Paper. The proposed changes would result in many matters, about which the CMC is presently notified, and a proportion of which it chooses to review or monitor no longer falling within the CMC's jurisdiction. Many of these matters would however involve 'administrative action' and therefore be amenable to investigation by this Office. In my view, complainants are likely to refer matters, previously in the CMC's jurisdiction, to this Office for investigation. If the CMC's jurisdiction changes are adopted, but the RTI and IP access regime is not amended, matters which are presently exempt, because they are being dealt with by the CMC, would not be exempt if they were to be handled by this Office.

I submit that an exemption for this Office's operational files should not be limited to matters which have not been finalised.

Such an exemption for the Ombudsman would bring Queensland into line with many other Australian jurisdictions. For example, in New South Wales, s.29A(1) of the *Ombudsman Act 1973* provides:

The *Freedom of Information Act 1982* does not apply to a document that is in the possession of any person or body to the extent to which the document discloses information that relates to-

- (a) a complaint, a referred complaint, a referred matter or a matter referred to the Ombudsman under section 16; or
- (b) an enquiry or investigation conducted under the Act; or
- (c) a recommendation made by the Ombudsman under this Act; or
- (d) a report made under this Act or a draft of a report.

I would be happy to provide further information and explanation about my request for an exemption for this Office's operational files.

Maintenance of public interest disclosure exemption

I support the maintenance of the exemption in relation to public interest disclosures which is included in Schedule 3 of the RTI Act.

Yours sincerely



Phil Clarke
Queensland Ombudsman