Council's response to the Queensland Government's *2016 Consultation on the Review of the Right to Information Act 2009 and Information Privacy Act 2009 consultation paper*

Introduction

Brisbane City Council (Council) welcomes the opportunity to provide feedback on the ideas and topics raised in the *2016 Consultation on the Review of the Right to Information Act 2009 and Information Privacy Act 2009 consultation paper* (Consultation Paper).

Council provided a response in November 2013 to the former Queensland Government's two discussion papers as part of the 2013 review of the *Right to Information Act 2009* (RTI Act) and the *Information Privacy Act 2009* (IP Act) (collectively the 2013 Discussion Papers). Council's position, as expressed in 2013, remains largely unchanged. For completeness, Council has restated its position in response to each question raised by the Consultation Paper.

Response to questions asked in Consultation Paper

1. *Are the objects of the RTI Act being met? Is the push model working? Are there ways in which the objects could be better met?*

   Council considers that the primary objects of the RTI Act are still relevant. Council has been "pushing out" a considerable number of documents via its corporate website in recent years. This means that residents in Brisbane no longer have to use formal access methods to obtain a substantial amount of information that affects or is of interest to them. For example, Council publishes documents pertaining to development applications (PD Online), *Brisbane City Plan 2014*, neighbourhood plans, infrastructure plans and projects, Eat Safe Brisbane information, flood mapping, and a substantial array of other documents and information of interest and relevance to the Brisbane community and which are typically matters the subject of Right to Information (RTI) access applications lodged with local governments. While access applications are still received by Council on these matters, the scope of the applications received is often narrower due to the amount of information already publicly available. There is now also an Open Data portal available on Council's website, with an expanding range of information publicly available on it.

2. *Is the privacy object of the IP Act being met? Is personal information in the public sector environment dealt with fairly? Are there ways that this object could be better met?*

   Council is of the opinion that primary objects of the IP Act are still relevant and that the IP Act satisfactorily deals with the handling and management of personal information across the public sector.

3. *Should the way the RTI Act and Chapter 3 of the IP Act applies to Government Owned Corporations (GOCs), statutory bodies with commercial interests and similar entities be changed? If so, in what way? Is there justification for treating some GOCs differently to others?*

   Council considers that there should be no change to the way that the RTI Act applies to Government Owned Corporations (GOCs). Furthermore, Council considers that wholly owned corporations of local government established under the *Corporations Act 2001* (Cth) for commercial, charitable or other purposes should be regarded as exempt entities under the RTI Act.

   Given the commercial or charitable nature of such local government *Corporations Act 2001* (Cth) companies, documents of these entities should not be subject to the requirements of the RTI Act.

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 RTI Act and Chapter 3 of the IP Act should not apply to the documents of contracted service providers where they are performing functions on behalf of government as this may have a detrimental effect on legitimate business interests and activities of those contracted service providers.

Council agreed with the comment in the 2013 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 would potentially be passed onto the consumer and government agencies engaging the service providers.

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

5. *Should GOCs in Queensland be subject to Queensland's IP Act, or should they continue to be bound by the Commonwealth Privacy Act?*

Council considers that there should be no change to the way that the IP Act applies to GOCs. Furthermore, Council considers that wholly owned corporations of local government established under the *Corporations Act 2001* (Cth) for commercial, charitable or other purposes should be regarded as exempt entities under the IP Act.

Companies established under the *Corporations Act 2001* (Cth) are already subject to and required to comply with the Australian Privacy Principles (APPs) as set out in the *Privacy Act 1988* (Cth). As highlighted in the Consultation Paper, the APPs offer a higher level of privacy protection to individuals than the Information Privacy Principles (IPPs) set out in the IP Act.

6. *Does the IP Act deal adequately with obligations for contracted service providers? Should privacy obligations in the IPA Act be extended to subcontractors?*

The requirements of the IP Act for contracted service providers are adequately addressed through formal contractual arrangements between Council and its third party contractors.

Chapter 3 provisions of the IP Act should not apply to subcontractors performing functions on behalf of government, as this may have a detrimental effect on legitimate business interests and activities of those contracted service providers. Council also considers that it would also substantially increase the complexity of the processes and effort required by agency decision makers in dealing with applications.

7. *Has anything changed since 2013 to suggest there is no longer support for one single point of access under the RTI Act for both personal and non-personal information?*

Council's position, as expressed in 2013, remains unchanged. Council's position was and is that there should be a single point of access under the RTI Act for both personal and non-personal information. 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 repealed *Freedom of Information Act 1992* (Qld) (the repealed FOI Act).

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

Council considers that 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. This would require the removal of Chapter 3 from the IP Act and its incorporation into the access provisions under the RTI Act.

Council notes that the Consultation Paper states that "the rationale for this division was that having relatively straightforward personal applications processed under privacy legislation would 'free up' agency practitioners to deal with more complex applications under the new RTI Act." Council disputes this assertion as IP Act access applications can be just as large, complex and time consuming as RTI Act access applications, without the benefit of processing charges as an incentive to restricting their scope.

Council also notes that the Consultation Paper states that "responses in 2013 unanimously supported providing a single point of access to documents."

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

Council considers that a requirement to provide a schedule of documents should be removed. Under the 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. In the case of many agencies, including Council, a schedule of documents has to be prepared manually, making this a time consuming process, particularly with large and complex applications. If the applicant decides to reduce the scope or withdraw the application after receiving the Charges Estimate Notice (CEN), work done up to that point by the agency is wasted.

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?*

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

The repealed FOI Act provided for consultation where the release of the information could be expected to be of 'substantial concern' to a third party. Council notes that "responses in 2013 were almost all in favour of reverting to the higher threshold under the FOI Act." The current wording 'expected to be of concern' imposes an administrative burden on agencies as it requires agencies to consult with all third parties, even where consultation may not be actually 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.

Council considers that in some cases it is detrimental to consult with third parties, for example, in the case of neighbourhood disputes or workplace disputes and investigations. In these instances consultation with third parties is difficult and could arguably inflame an already volatile situation.

10. *Although not raised in 2013, is the current right of review for a party who should have been but was not consulted about an application of any value?*

Council does not consider that the current right of review for a party who should have been but was not consulted about an application is of any value, particularly as the documents would have already been released to the applicant by the time the other party is aware of the disclosure.

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

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

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

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

Council considers that under the 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.

13. *Should the public interest factors be reviewed so that (a) the language used in the thresholds is more consistent; (b) the thresholds are not set too high and (c) there are no two part thresholds? If so please provide details.*

Council is of the opinion that:

(a) the language used in the thresholds needs to be consistent;

(b) the thresholds are currently set too high and should be reconsidered to reflect the reality of agencies dealing with access applications; and

(c) there should be no two-part thresholds.

Council recommends that Part 3 and Part 4 of the RTI Act be amalgamated into one new Part 3 as set out in Appendix 1, which encapsulates the details of Council's answer to this question.

14. *Are there new public interest test factors which should be added to Schedule 4? If so, what are they? Are there any factors which are no longer relevant, and which should be removed?*

Council considers that a formal public interest factor relating to consumer protection and/or informing consumers would be of benefit and should reflect current case decisions of the Office of the Information Commissioner.

In particular, Council considers that it would be appropriate for a new public interest factor to be added which confirms the recent decisions of the Office of the Information Commissioner about agencies releasing information about their regulatory functions including information about what actions have been taken under (for example) the *Food Act 2006* (Qld) and other local laws or legislation requiring agencies to undertake law enforcement activities.

Alternatively, Council considers that it would be beneficial if those local laws and enactments requiring an agency to undertake law enforcement activities be amended to specifically permit the agency to publish information about the enforcement activities undertaken, or successful prosecutions.

After amalgamation of Part 3 and Part 4 of the RTI Act, Council is of the opinion that amendments should be made to reflect the practical application of these factors and the thresholds or consequences that may be needed to be met in order to apply them.

15. *Are there benefits in departmental disclosure logs having information about who has applied for information, and whether they have applied on behalf of another entity?*

This question is not relevant to Council, therefore no response is provided.

16. *Have the 2012 disclosure log changes resulted in departments publishing more useful information?*

This question is not relevant to Council, therefore no response is provided.

17. *Should the disclosure log requirements that apply to departments and Ministers be extended to agencies such as local councils and universities?*

Council considers that the disclosure log requirements should not be extended to local councils.

It is noted that the Consultation Paper indicates that most other jurisdictions do not have disclosure logs. Council has concerns about publishing the name of RTI applicants in a disclosure log and the name of any entity for whose benefit access to the document was sought. Council believes that this discloses the personal information and information concerning the private business and financial affairs of individuals and entities.

Council also considers that it is unfair for an applicant to pay the application fee and processing charges (if any) for access to documents which can then be released to the world at large at no cost to other individuals/entities after the applicant has received documents that they paid for.

18. *Is the requirement for information to be published on a disclosure log "as soon as practicable" after it is accessed a reasonable one?*

Council believes that publication 'as soon as practicable' is preferable to specifying a particular timeframe. The requirement for information to be published on a disclosure log has significant resourcing considerations, particularly where documents contain information that can be released to the applicant but should not be released to the word at large, for example the applicant's personal information.

Council is also of the opinion that the RTI Act fails to:

(a) consider the impact of large documents, which may have limited public interest, occupying space on servers servicing the agencies' websites; or

(b) specify timeframes for how long documents should remain on the disclosure log and be available for access.

19. *Do agency publication schemes still provide useful information? Or are there better ways for agencies to make information available?*

Council considers that the level of information published by an agency should be driven by the demand for information of a particular type or a particular subject matter. As such, a publication scheme may not always be appropriate or provide useful information.

As stated earlier in this response, 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. A large amount of Council data is now also available to the public via Council's online Open Data portal.

Council considers that its Open Data portal is an effective way for Council to make information available to the public and that the Open Data portal supports the objects of the RTI Act.

20. *Should internal review remain optional? Should the OIC be able to require an agency to conduct an internal review after it receives an application for external review?*

An applicant should not be required to request an internal review before being able to exercise their rights for an external review to be conducted by the OIC. It is Council's view that mandatory internal review should not be reinstated.

However, Council considers that the following amendments should be made to the current internal review procedure.

- As section 80(2) of the RTI Act provides that a reviewer must make a new decision as if the reviewable decision had not been made, the reviewer should be permitted to seek an extension of time to deal with an internal review where the reviewer is experiencing high levels of competing priorities; or where the documents are voluminous or complex; or where additional searches are required to be undertaken. This may reduce the number of external review applications received by the OIC, which occur in the case of a deemed decision under section 83(2) of the RTI Act.

- An agency should be able to refer an applicant directly to external review in certain circumstances.

21. *Should applicants have a right of appeal directly to QCAT? If so, should this be restricted to an appeal on a question of law, or should it extend to a full merits review?*

Applicants should not have a right of appeal directly to QCAT. 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.

22. *Should the OIC have additional powers to obtain documents for the purposes of its performance monitoring, auditing and reporting functions?*

Council considers that the current powers of the OIC to monitor, audit and report on agencies' compliance with the RTI Act and the IP Act are sufficient.

23. *Is the information provided in the Right to Information and Privacy Annual Report useful? Should some of the requirements be removed? Should other information be included? What information is it important to have available?*

Council considers that the type of information provided in the Right to Information and Information Privacy Annual Report (the Annual Report) 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 additional information about the total number of pages of documents (or pieces of CCTV footage) 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 also follow a specified schedule each year to ensure that agencies are aware of their reporting requirements. Council considers that the timeframes for Council to provide information to the Queensland Government for inclusion in the Annual Report have been insufficient in recent years. Council recommends that that the following timeframes be considered by the Queensland Government:

(a) the Queensland Government or the OIC to provide a request for non-standard information from an agency by no later than 31 July in each year

(b) an agency should provide standard and non-standard information to the OIC or the Queensland Government by no earlier than one month nor no later than three months after the end of the financial year

(c) the Queensland Government or the OIC to publish and table the Annual Report for the last concluded financial year by no later than 30 November each year.

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

Council considers that it would be more advantageous to align the Information Privacy Principles (IPPs) with the Australian Privacy Principals (APPs). The advantages include:

- clarity and consistency of application, as all public sector agencies across Australia are subject to the same principles
- consistency of definitions mean an equal application of legislation.

Council acknowledges that the alignment of the IPPs with the APPs may create additional compliance requirements including:

- amending existing privacy policies to ensure they comply with all 13 APPs
- notifying individuals when personal information has been collected from an entity other than the individual themselves and how such information will be used, disclosed or can be accessed in accordance with APP5
- ensuring personal information is not used for direct marketing in accordance with AAP7
- complying with the cross-border disclosure of personal information requirements as set out in APP8.

25. *Should the definition of 'personal information' in the IP Act be the same as the definition in the Commonwealth Act?*

Council is of the opinion that the definition of 'personal information' should be same as in the *Privacy Act 1988* (Cth) for consistency purposes; and agrees with the points supporting this change as raised in the 2013 Discussion Papers and the Consultation Paper including:

- removing the reference to a database from the definition as this is implicit in a modern interpretation of information
- removing the term 'identity' (given concerns around the meaning of that word) and use the term 'identified' in any amendment to the RTI Act and the IP Act to more accurately reflect an individual.

26. *Does the IP Act inappropriately restrict the sharing of information? If so, in what ways? Do the exceptions need to be modified? Would adopting a 'use' model within government be beneficial? Are other exceptions required where information is disclosed?*

Council considers the current level of restrictions on the sharing, use and disclosure of personal information are appropriate. The IP Act ensures the protection of an individual's personal information. The current exceptions for an agency to use and disclose personal information as necessary for law enforcement activities or to lessen or prevent a serious threat to public health and safety sufficiently allow Council to carry out its duties.

27. *Does section 33 create concerns for agencies seeking to transfer personal information, particularly through their use of technology? Are the exceptions in section 33 adequate? Should section 33 refer to the disclosure, rather than the transfer, of information outside Australia?*

Council's position is that 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.

In the event that section 33 remains in the IP Act, Council agrees with the suggestion of amending section 33 so that it refers to the disclosure, rather than the transfer, of information outside of Australia, for the above reasons.

28. *Should the IP Act provide more flexibility about the timeframe for complaints to the OIC to be lodged? How should this be approached?*

Council considers 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. 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.

29. *Should there be a time limit on when privacy complaints can be referred to QCAT?*

The current timeframe of 20 days for referral of a complaint from the OIC to QCAT is a sufficient time for the complainant to consider whether they would like to proceed down the path of escalating the complaint. Council considers that it is important that all parties are aware and held accountable to these timeframes to ensure that privacy matters/complaints are not drawn out unnecessarily.

30. *Are additional powers necessary for the Information Commissioner to investigate matters potentially subject to a compliance notice under the IP Act?*

Council considers that it is reasonable for the Information Commissioner to be granted additional powers to investigate matters potentially subject to a compliance notice. For example, the OIC should have the ability to conduct preliminary inquiries about a matter for the purpose of deciding whether the Information Commissioner has power to investigate a matter; and to request information about a matter before determining whether it is appropriate for the Information Commissioner to issue a compliance notice.

However, Council considers that these powers should be time-bound to ensure that:

(a) matters are investigated promptly by the Information Commissioner

(b) agencies have sufficient time to respond to questions or requests made by the Information Commissioner.

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

The definition of 'generally available publication' should be clarified. Council considers that the definition appearing in the *Privacy Act 1988* (Cth) is appropriate and should be incorporated into the IP Act.

32. *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?*

Council considers that IPP 4 should be amended to provide that an agency must take reasonable steps to ensure information is protected against loss and misuse. It is unreasonable to impose an obligation on all agencies to ensure that information is always protected against loss and misuse. Many instances of loss or misuse may be outside the reasonable control of an agency, for example loss of a data centre during a natural disaster event or misuse of information by a former employee who is no longer under the supervision or control of an agency.

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

Council considers that replacing the words 'ask for' with 'collect' for the purposes of IPPs 2 and 3 would 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, it is impractical for Council officers to provide a collection notice before every communication with an individual, particularly when an individual volunteers personal information without being asked to.

34. *Are there other ways in which the RTI Act or IP Act should be amended?*

Council recommends that the following additional amendments to the RTI Act and the IP Act should be considered.

(a) Amend the charging regime:

The current CEN system is cumbersome and involves a significant workload by the agency. In order to determine a relatively accurate estimate of processing charges, a significant amount of work needs to be 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.

Council further considers that the RTI Act should be amended to allow for an agency to issue an amended or updated CEN once an application is finalised and it is discovered to be larger than the original CEN anticipated.

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. Even an experienced RTI decision maker cannot always correctly estimate the number of pages that may contain exempt material and require redactions in advance of actually reviewing these pages.

(b) Access application form:

The RTI Act currently provides that an access application must be in the approved form approved under section 192.

Council considers that, while a standard application form is beneficial for providing a checklist to ensure that applications are made in accordance with the RTI Act, a standard form that applies to all agencies regardless of size or customers may not always be appropriate.

Council is of the view that it would be more appropriate for the RTI Act and the IP Act (or their regulations) to specify certain mandatory information which must be included in any request to access information. Council recommends that section 192 should be amended as follows.

Section 192 Approved Forms

An approved form for the purposes of this Act must include the following details—

(a) the full name of the applicant or the applicant's agent;

(b) whether the application is made under this Act or the Information Privacy Act;

(c) *sufficient details of the documents being sought to enable the agency to assess the application; and*

(d) *if possible, identify the required documents.*

Moving away from a standard form approved by the chief executive would also allow agencies to develop online access applications through their corporate websites.

In the event that the current approved form is retained, Council notes that the approved form is not compliant with the Payment Card Industry Data Security Standard (PCI DSS). Council strongly recommends that the current approved form is updated to ensure that the credit card authorisation on page 4 is PCI DSS compliant.

(c) Fees and charges:

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.

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 knowledge they will not have to meet the significant costs dealing with large and complex applications.

(d) Grounds for internal review:

Applicants need to provide clear and specific grounds supporting their request for an internal review. Council recommends that the RTI Act be amended to give internal reviewers the ability to refuse to undertake an internal review if there are insufficient grounds provided by the applicant. This amendment would reflect the existing rights of the OIC to refuse to deal with an external review as set out in section 94(1)(a) of the RTI Act.

APPENDIX 1

PROPOSED SCHEDULE 4 PART 3 FACTORS FAVOURING NONDISCLOSURE

Part 3 Factors favouring nondisclosure in the public interest

1 Affecting relations with other governments

(1) Disclosure of the information could reasonably be expected to cause a public interest harm if disclosure could—
(a) cause damage to relations between the State and another government or
(b) divulge information of a confidential nature that was communicated in confidence by or for another government.

(2) Subsection (1) applies only for 10 years after the information was brought into existence.

(3) The information commissioner may, on application by a prescribed entity, extend the 10 year period if the commissioner considers the extension in the public interest.

(4) An application for an extension may be made before or after the end of the 10 year period.

(5) In this section—
prescribed entity means—
(a) an agency or Minister or
(b) an entity that would be a relevant third party under section 37 in relation to the document containing the information in relation to which the extension is sought.

2 Affecting investigations by ombudsman or audits by auditor-general

Disclosure of the information could reasonably be expected to cause a public interest harm if disclosure could prejudice the conduct of—
(a) an investigation by the ombudsman or
(b) an audit by the auditor-general or
(c) a review by the ombudsman or the auditor-general.

3 Affecting particular operations of agencies

Disclosure of the information could reasonably be expected to cause a public interest harm if disclosure could—
(a) prejudice the effectiveness of a method or procedure for the conduct of tests, examinations or audits by an agency or
(b) prejudice achieving the objects of a test, examination or audit conducted by an agency or
(c) have a substantial adverse effect on the management or assessment by an agency of the agency's staff or
(d) have a substantial adverse effect on the conduct of industrial relations by an agency or
(e) prejudice the management function of an agency or the conduct of industrial relations by an agency.

4 Disclosing deliberative processes

(1) Disclosure of the information could reasonably be expected to cause a public interest harm through disclosure of—
(a) an opinion, advice or recommendation that has been obtained, prepared or recorded or
(b) a consultation or deliberation that has taken place, in the course of, or for, the deliberative processes involved in the functions of government.

Examples of information of the type mentioned in subsection (1)—
A document prepared by an agency about projections of future revenue for the State a document prepared to inform a decision by an agency about potential road routes, where disclosure of all potential routes, including those that are subsequently rejected, could have a negative impact on property values or cause community concern.

(2) If the deliberative processes mentioned in subsection (1) include public consultation, subsection (1) applies only until the public consultation starts.

(3) However, subsection (1) does not apply for information to the extent it consists of—
- (a) information that appears in an agency's policy document or
- (b) factual or statistical information or
- (c) expert opinion or analysis (other than expert opinion or analysis commissioned in the course of, or for, the deliberative processes mentioned in subsection (1)) by a person recognised as an expert in the field of knowledge to which the opinion or analysis relates.

(4) Also, subsection (1) does not apply for information if it consists of—
- (a) a report of a body or organisation—
  - (i) established within an agency and
  - (ii) prescribed under a regulation or
- (b) the record of, as a formal statement of the reasons for, a final decision, order or ruling given in the exercise of—
  - (i) a power or
  - (ii) an adjudicative function or
  - (iii) a statutory function or
  - (iv) the administration of a publicly funded scheme.

5 Disclosing information brought into existence for ensuring security or good order of corrective services facility

(1) Disclosure of the information could reasonably be expected to cause a public interest harm if disclosure would disclose information that—
- (a) is in the possession of, or brought into existence by, the department in which the *Corrective Services Act 2006* is administered and
- (b) is—
  - (i) a recording of a telephone call made by an offender from a corrective services facility or
  - (ii) an audio recording made in a corrective services facility for the security or good order of the facility or
  - (iii) a visual recording of a corrective services facility or a part of a corrective services facility or
  - (iv) a document to the extent that it refers to or contains any part of a recording mentioned in subparagraph (i), (ii) or (iii) or
- (c) in any other way could reasonably be expected to prejudice the security or good order of a corrective services facility.

(2) In this section—
offender means an offender as defined under the *Corrective Services Act 2006*.

6 Disclosing personal information

(1) Disclosure of the information could reasonably be expected to cause a public interest harm if disclosure would disclose personal information of a person, whether living or dead.

(2) However, subsection (1) does not apply if what would be disclosed is only personal information of the person by whom, or on whose behalf, an application for access to a document containing the information is being made.

(3) Disclosure of the information could reasonably be:
- (a) considered not to be in the best interests of a child where the information is the personal information of a child within the meaning of section 25, the applicant is the child's parent within the meaning of section 25 or
- (b) expected to impact on an individual who is deceased (the ***deceased person***) where the information is the personal information of a deceased person and the applicant is an eligible family member of the deceased person.

7 Disclosing trade secrets, business affairs or research

(1) Disclosure of the information could reasonably be expected to cause a public interest harm because—

(a) disclosure of the information would disclose trade secrets of an agency or another person or

(b) disclosure of the information—

(i) would disclose information (other than trade secrets) that has a commercial value to an agency or another person and

(ii) could reasonably be expected to destroy or diminish the commercial value of the information or

(c) disclosure of the information—

(i) would disclose information (other than trade secrets or information mentioned in paragraph (b)) concerning the business, professional, commercial or financial affairs of an agency or another person and

(ii) could reasonably be expected to have an adverse effect on those affairs or to prejudice the future supply of information of this type to government.

(2) However, subsection (1) does not apply if what would be disclosed concerns only the business, professional, commercial or financial affairs of the person by, or on whose behalf, an application for access to the document containing the information is being made.

(3) Disclosure of the information could reasonably be expected to cause a public interest harm because disclosure—

(a) would disclose the purpose or results of research, whether the research is yet to be started, has started but is unfinished, or is finished and

(b) could reasonably be expected to have an adverse effect on the agency or other person by, or on whose behalf, the research is intended to be, is being, or was, carried out.

(4) However, subsection (3) does not apply if what would be disclosed concerns only research that is intended to be, is being, or was, carried out by the agency or other person by, or on whose behalf, an application for access to the document containing the information is being made.

8 Affecting confidential communications

(1) Disclosure of the information could reasonably be expected to cause a public interest harm if—

(a) the information consists of information of a confidential nature that was communicated in confidence and

(b) disclosure of the information could reasonably be expected to prejudice the future supply of information of this type.

(2) However, subsection (1) does not apply in relation to deliberative process information unless it consists of information communicated by an entity other than—

(a) a person in the capacity of—

(i) a Minister or

(ii) a member of the staff of, or a consultant to, a Minister or

(iii) an officer of an agency or

(b) the State or an agency.

(3) In this section—

deliberative process information means information disclosing—

(a) an opinion, advice or recommendation that has been obtained, prepared or recorded or

(b) a consultation or deliberation that has taken place in the course of, or for the purposes of, the deliberative processes involved in the functions of government.

9 Affecting State economy

(1) Disclosure of the information could reasonably be expected to cause a public interest harm because disclosure could—

(a) have a substantial adverse effect on the ability of government to manage the economy of the State or

(b) expose any person or class of persons to an unfair advantage or disadvantage because of the premature disclosure of information concerning proposed action or inaction of the Assembly or government in the course of, or for, managing the economy of the State.

(2) Without limiting subsection (1)(a), that paragraph applies to information the disclosure of which would reveal—
(a) the consideration of a contemplated movement in government taxes, fees or charges or
(b) the imposition of credit controls.

10 Affecting financial or property interests of State or agency

(1) Disclosure of the information could reasonably be expected to cause a public interest harm because disclosure could have a substantial adverse effect on the financial or property interests of the State or an agency.

(2) Subsection (1) applies only for 8 years after the information was brought into existence.

11 Affecting the administration of justice

(1) Disclosure of the information could reasonably be expected to impede the administration of justice:
(a) generally, including procedural fairness or
(b) for a person.

(2) Disclosure of the information could reasonably be expected to prejudice:
(a) the fair treatment of individuals and the information is about unsubstantiated allegations of misconduct or unlawful, negligent or improper conduct or
(b) the flow of information to the police or another law enforcement or regulatory agency.

12 Prohibited by an Act

Disclosure of the information is prohibited by an Act.

13 Other factors

Disclosure of the information could reasonably be expected to impede or prejudice:
(a) the protection of the environment
(b) security, law enforcement or public safety.