

Submission on the Review of the Right to Information Act & Information Privacy Act

Date: 31 January 2017

1. Introduction/ Context

The Queensland government is currently undertaking a review of both the *Right to Information Act 2009* (RTI Act) and the *Information Privacy Act 2009* (IP Act). Such a review is a requirement of the existing legislation and targets the effectiveness and efficiency of the legislation in meeting its objectives.

The Terms of Reference for the review importantly note the need to reduce the regulatory burden where this can be achieved without compromising the objects of the Acts.

This is consistent with the Lockyer Valley Regional Council's (LVRC) approach to such reviews. Council has consistently argued for a simplified legislative framework to foster better community understanding, improved operational efficiencies by regulators and more effective governance.

State Agencies and large local governments have a critical mass sufficient to engage dedicated staff to deal with matters such as the 'right to information' and 'information privacy'. However smaller local governments with more modest staff numbers do not have that luxury and rely on staff who are necessarily multi-skilled and not specialised in these areas. While we have relatively few RTI applications, the organisation requires staff training and capacity to deal with the applications as they are made.

This means that local governments like LVRC seek legislative simplicity wherever possible and also seek support through training and advice from State agencies such as the Office of the Information Commissioner. LVRC accepts these governance responsibilities and is supportive of the objects of the Acts. However, the legislative burden can quickly become difficult and costly to meet. This demands simplification and efficiency wherever possible. It is within this context that responses are provided to the questions posed by the Consultation Paper that are pertinent to LVRC. This input is based on LVRC's experiences and exposure to the legislative framework.

2. Specific questions considered by LVRC.

Question 11, Exemption Categories

Schedule 3 of the RTI Act identifies exempted information. The disclosure of such information is considered contrary to the public interest. The retention of the exemption relating to local government budgetary information is supported. This exemption has been utilised by LVRC on occasion to protect the public interest.

Question 12, 13, 14. Public Interest Balancing Test

Section 49 and Schedule 4 of the RTI Act set out the steps and factors an agency must utilise to determine whether access to requested information would, on balance, be contrary to the public interest.

As flagged in the consultation paper, the existing schedule is overly complicated.

Part 1 provides 4 factors irrelevant to deciding the public interest

Part 2 provides 19 factors favouring disclosure

Part 3 provides 22 factors favouring nondisclosure, and

Part 4 provides an additional factors favouring nondisclosure because of public interest harm (which runs for a further 7 pages).

Guidance is useful, though clearly some simplification is required. This test is essential for the proper functioning of the legislation. In its current complex form it is difficult to utilise. LVRC has applied this test for relevant RTI applications with considerable difficulty and the LVRC decision maker has raised concerns over its complexity.

A good example may be an application for release of documents that may contain commercially sensitive information or reports that were produced at significant cost. The consideration of such matters is referenced in a number of areas of the schedule. It is difficult for a decision maker to balance the public benefit in light of the drafting of the legislation.

Removal of duplication, redrafting and the merger of Parts 3 and 4 would be a sensible approach. A reduction of complexity and efficiency in line with the terms of reference of the review is required.

Question 20, Internal Review

Retention of the optional internal review is supported. This would enable the decision to be reviewed by the agency without the need to prematurely and formally engage with the OIC. Agencies could still seek guidance from the OIC for them to consider in the review. While it runs the risk of being an additional step in the process, where successful in satisfying the applicant, it would reduce the administrative burden on agencies.

Question 21, Right of Appeal to QCAT?

The current legislation enables external review by the OIC and referral to QCAT on a question of law (but not merit). This approach seems appropriate with QCAT able to apply their expertise on matters of law while the OIC applies their expertise on matters of merit without the additional costs, time and complexities of engaging with QCAT.

Question 22, Additional OIC powers

It is considered that OIC's existing powers are sufficient. The benefits have not been identified to justify additional powers for the OIC monitoring and auditing role (including for documents that are subject to legal professional privilege).

Question 24, Privacy Principles

There are clearly benefits from the proposal to have a single set of privacy principles across all Australian jurisdictions. This would aid users and create a more consistent approach. If the Australian Privacy Principles (APPs) were to be adopted rather than the Information Privacy Principles (IPPs) there would be some cost to agencies relating to the change. This would relate to changing of systems and processes as well as additional staff training. However in the longer term the benefits would outweigh these costs.

It is noted that the APPs contain a privacy principle for direct marketing. The implementation of such a policy would need to ensure local governments are still able to deliver our services and events effectively while maintaining appropriate levels of privacy. This may be able to be addressed in agencies privacy policy development.

Question 26, Sharing of information

The concept of sharing information between agencies for use and/ or disclosure in certain circumstances is supported. This support is on the proviso that sufficient safeguards are provided and the legislation (and any guidance) is clear as to when such information is able to used or disclosed.

Question 33, Terminology “collect” rather than ‘ask for’

The use of the term “collect” rather than ‘ask for’ is supported as it adds clarity and consistency to the privacy framework.

Question 34, Other

As discussed in the introduction, local governments are faced with a plethora of legislation which is applicable regardless of their relative size and capacity. A local government such as Lockyer Valley Regional Council has modest means yet is faced with a complex and overlapping suite of legislation to meet and administer. To enable efficiency, legislative clarity is most important.

Further, any review of the RTI Act should ensure the retention of those provisions that allow for the practical application of the legislation. This would include the capacity for agencies to have a degree of flexibility in meeting timeframes in defined circumstances. This assists agencies who have relatively constrained resources.

The existing legislation also provides for the recognition of vexatious applicants. Such applicants undermine the RTI framework and retention of these provisions is supported to enable agencies a degree of protection from misuse of the RTI provisions.