DEPARTMENT OF STATE DEVELOPMENT, INFRASTRUCTURE AND PLANNING

RESPONSE TO DISCUSSION PAPERs

Date	20 November 2013
TO`	**Department of Justice and Attorney-General**
FROM	Department of State Development, Infrastructure and Planning (DSDIP)
Discussion Papers	Review of the *Information Privacy Act 2009* (IP Act): Privacy Provisions and review of the *Right to Information Act 2009* and Chapter 3 of the *Information Privacy Act 2009*

Review of the *Information Privacy Act 2009 (*IP Act*)*: Privacy Provisions

- DSDIP supports the recommendations in the review of the IP Act and also proposes some recommendations.

Review of the *Right to Information Act 2009* (RTI Act) and Chapter 3 of the *Information Privacy Act 2009*

- DSDIP supports some of the recommendations of the RTI Act and recommends some new amendments to improve customer service to access applicants and provide more protection of the rights of persons or entities that may be adversely affected.

- The majority of recommendations proposed by DSDIP relate to improvements in efficiency/processes (approximately 30) and improvements in openness/transparency (approximately 10).

ISSUES

Attachment A - Review of the *Information Privacy Act 2009*: Privacy Provisions

Attachment B - Review of the *Right to Information Act 2009* and Chapter 3 of the *Information Privacy Act 2009*

Attachment A

Review of the *Information Privacy Act 2009*: Privacy Provisions

- **Responses to issues for Consideration**

Section	Issue for consideration	Department's response
1.0	What would be the advantages and disadvantages of aligning the IPPs with the APPs , or adopting the APPs in Queensland?	The advantage would be to achieve consistency across all levels of government.
2.0	Does the IP Act inappropriately restrict the sharing of information? If so, in what ways? Do exceptions need to be modified?	No comment. No evidence of privacy concerns or breeches by our department.
3.0	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. The Commonwealth Privacy Amendment Act should be adopted as it is better aligned with the description of the definition of 'personal information'.
4.0	Should government owned corporations in Queensland be subject to the Queensland's IP Act, or should they continue to be bound by the Commonwealth Privacy Act?	We agree in principal as the corporation legislation binding government owned corporation's (GOC) is federal as well.
5.0	Should section 33 be revised to ensure it accommodates the realities of working with personal information in the online environment?	No. Protection of s.33 should remain. There needs to be mechanisms in place where contracts between agencies and non-government owned infrastructure providers ensure the security of the personal information held.
6.0	Does section 33 present problems for agencies in placing personal information online?	Yes, in instances where no mechanisms are in place (see 5.0 above) s.33 requirements could be inadvertently breached.
7.0	Should an 'accountability' approach be considered for Queensland?	The privacy statement on collection needs to include information in disclaimers that information may be published online
8.0	Should the IP Act provide more detail about how complaints are to be dealt with?	No comment. Not used frequently by our department.
9.0	Should the IP Act provide more flexibility about the	No comment. Not used frequently by our department.

	timeframe for complaints to the OIC to be lodged?	
10.0	Are additional powers for the Information Commissioner to investigate matters potentially subject to a compliance notice?	No comment. Not used frequently by our department.
11.0	Should a parent's ability to do things on behalf of a child be limited to Chapter 3 access and amendment applications?	No comment. Not used frequently by our department.
12.0	Should the definition of 'generally available publication' be clarified? Is the Commonwealth provision a useful model?	No comment. Not used frequently by our department.
13.0	Should the reference to 'documents' in the IPPs be removed; and if so, how would this be regulated?	No comment. Not used frequently by our department.
14.0	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?	Yes. The term 'reasonable steps' ensures that the department would not be liable if a breach occurred.
15.0	Should the words 'ask for' be replaced with 'collect' for the purposes of IPPs 2 and 3?	Yes. The department agrees with the term 'collection' rather than 'ask for'.

Attachment B

Review of the *Right to Information Act 2009* and Chapter 3 of the *Information Privacy Act 2009*

- **Responses to issues for Consideration**

Section	Issue for consideration	Department's response
1.1	Is the Act's primary object still relevant? If not, why not?	Yes.
1.2	Is the 'push model' appropriate and effective? If not, why not?	Yes, it is appropriate but currently not effective. • The **publication scheme** does not meet the needs of the public. It is a replica of what information is already available on departmental websites. With the technical advancement in search engines this seems to be redundant. Currently each agency categorises some information into: "About us, our services, our finances, our priorities, our decisions, our policies, our lists". Revise the categories to three – About us (include about us, our services, our decision, our priorities), Our finances, Our lists. • **Administrative Release** should be pushed throughout each agency with RTI /IP as the final access pathway. According to s.19 of the RTI Act there are other ways to access information other than by application under this Act. *Examples—* 1 A document may be accessed under administrative arrangements made by an agency, including under its publication scheme or disclosure log or under another Act. 2 A document may be available for public inspection under the *Public Records Act 2002* or in a public library. 3 A document may be commercially available. Suggestion: Remove <u>examples</u> and make them items and expand on Item 1. A document may be accessed under administrative arrangements made by an agency in accordance with their Administrative Release Program.
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 as this would reduce duplication, applicant confusion in determining whether to submit applications under RTI / IP legislation, and errors in deciding applications under the wrong Act.

3.1	Should the processing period be suspended while the agency is consulting with the applicant about whether the application can be dealt with under the IP Act?	Yes as determination as to which legislation applies is a matter of pre-processing determination rather than a processing task and should not consume processing time.
3.2	Should the requirement for an agency to again consider whether the application can be made under the IP Act be retained?	Yes in relation to split applications where the applicant withdraws the RTI component of the request from the scope of their request.
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 as per recommendation, this was an oversight in the previous legislation where business days were not specified, as per timeframes in the rest of the Act.
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?	No. Maintain current process. This would lead to an increase in red tape if introduced.
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?	No. Although this is a right for an applicant, this right would allow for further distribution of that 'non-agency document' and possibly waive any protection that the document may have under other acts or confidentiality agreements etc. The trained decision makers possess a suitable level of assessment in relation to the application of section 32 of the RTI Act.
4.3	Should the timeframe for making a decision that a document or entity is outside the scope of the Act be extended?	Yes. It would be reasonable in processing an application that 10 days for processing one part of the documents and 25 days for the remainder should be changed to 25 business days for the entire consideration of the application.
4.4	Should the way the RTI Act and Chapter 3 of the IP Act applies to GOCs be changed? If so, in what way?	Yes. Government Owned Corporations (GOCs) Suggestion: Remove these from Schedule 2, Part 2 and include a provision for the type of documents, the release of which would not be in the public interest for these entities. This would allow application still to be made to these entities and promote accountability and transparency (as they are government funded entities). Even where the entity does have a community service obligation, the public are still interested in the actions of these GOCs.

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?	Yes. See above
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	Yes. To continue to maintain an open and transparent government, the current arrangement may provide an avenue whereby agencies do not have access to information that directly relates to its function. With the introduction of more outsourcing/contractors for services, there is a greater likelihood that: a) access to agency information will become limited/distorted and increasingly inaccessible b) contractors may not have the same level of responsibility for maintaining/protecting information that is currently the responsibility of an agency c) breaches of compliance in regard to the IPP's would be more commonplace. Where contractors are providing a service, compliance with the IPP's needs to be included in their costs of providing the service, with reporting mechanism to the agency responsible i.e. under the existing regime, outputs from external contractors which are in the possession of the department would still be subject to the act. An alternative would be for the external contractor to provide reports setting out the reasons for decisions which then could be accessible to consumers if requested. This is a complex issue and the paper raises many relevant concerns. We believe on balance that this requirement would place an unrealistic and heavy burden on external providers and that the additional requirements of complying with this regime would be passed on to government or alternatively the government may find it more difficult to find contractors willing to undertake the work.
5.1	Should agencies with websites be required to publish publication schemes on their website?	No. The Publication scheme is a replication of information already available on an agency's website. Local governments (councils) who have websites do not always have the resources to maintain and update their website and this would be an impost on that local government, especially where the

		information available in a publication scheme may already be available on their website or at their office.
5.2	Would agencies benefit from further guidance on publication schemes?	No, current guidelines regarding requirements provide a satisfactory level of detail.
5.3	Are there additional new ways that government can make information available?	No, open data, administrative access and formal application processes provide comprehensive arrangements.
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?	Yes. No. No, the process needs to be a customer-focussed action. Introducing additional information about applying under legislation may dissuade individuals from accessing information.
6.2	Should the amendment form be retained? Should it remain compulsory?	No comment. Not used frequently by our department.
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. Perhaps the same as for passports or postal vote or residency papers i.e. public servant, teacher, bank officer, chiropractor, dentist, medical practitioner, nurse etc to make it more accessible and available to all people.
6.4	Should agents be required to provide evidence of identity?	Yes this assures security in relation to access to information being provided to the appropriate person on behalf of another individual.
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. • At the discretion of the agency • when the combination of no documents discovered for consideration and the processing time is under five hours.
6.6	Are the Acts adequate for agencies to deal with applications on behalf of children?	No comment. Not used frequently by our department.
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?	After the end of the processing period. Currently if we request an extension of time before a charges estimate notice or consultation notice is sent we waive the right to these allowable time periods under the Act. In the circumstances where

		searching and retrieving has taken a considerable amount of time, or negotiation of the scope of an application, additional time periods should be allowed to be added to the end of the processing time.
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?	No. If there is no agreement to extend a timeframe it should be considered a refusal to extend, making it a deemed decision (refusal), whereby a prescribed written notice regarding that deemed decision is sent to the applicant and no further consideration should be required unless it is subject to review, and whereby fresh consideration will apply.
6.9	Is the current system of charges estimate notices beneficial for applicants? Should removing the charges estimate notice system be considered?	Yes. It gives the applicant an opportunity to refine what information they wish to access. No. It works effectively for our agency and the types of requests that we receive.
6.10	Should applicants be limited to receiving two charges estimate notices?	Yes. The current sections of the RTI Act conflict with the issuing of the second charges estimates notices (CEN). This needs to be amended so that the second CEN is the final CEN.
6.11	Should applicants be able to challenge the amount of the charge and the way it was calculated? How should applicant's review rights in this area be dealt with?	No. There is no secret to the method of calculating a CEN. It is an estimate and as such is based on estimations from divisions on searching for documents, approval, consultation, examination (a guideline of two minutes per page) and writing the decision letter. Maybe include the method used to calculate (i.e. time control sheet) as a requirement with the CEN to prevent any need for a challenge. It should remain with no review rights available over fees and remain at the agency's discretion. If review rights were to be included as reviewable, a set structure (or parameters) of calculating fees would need to be introduced into the RTI Act or regulations. In addition this would need to be linked with the s.41 notice as charges are linked to hours and each agency has a different limit on the number of hours that is a diversion of their agencies resources which is based on many factors, one of which are the size of the agency.
6.12	Should the requirement to provide a schedule of documents be maintained?	No. This is duplication of information and not beneficial to the general public. Perhaps if they wish to have a schedule provided it could be at an additional cost to be included in the charges estimate notice and processing fees.

6.13	Should the threshold for third party consultations be reconsidered?	Yes. It should be returned to the previous "substantial concern". Currently this section is too widely interpreted and many third parties (including other agencies) expect consultation on any document. This is creating 'over-consulting' culture and increasing the complexity of the process for the agency and the applicant. In addition, where no consultation has been undertaken (as the decision maker has determined that access to the document is to be refused as it is exempt), upon External Review it may be viewed that the decision is not a sound decision as the decision maker has not gained the third party's views to support their claim for an exemption. This action at the review stage is compelling some agencies to over consult, even when not considered necessary for the third party or the applicant, solely as a means of protection. This is not in the spirit of the Act. Reinstating the threshold would go a long way to assisting with this process. DSDIP agree that third party consultations create an administrative burden for agencies. However, given the increasing use of the RTI Act as a means by which competitors seek to gain competitive advantage by gaining access to information which they could not otherwise obtain, means the possibility of release of sensitive information remains a real concern by businesses that deal with the government. This concern is heightened when it can be difficult for a processing officer to know enough about the third party's business to adequately assess whether or not a certain threshold of concern has been reached. The identities of applicants should be able to be made available to third parties in order that they can more accurately determine their response to an agency request.
6.14	Should the Acts set out the process for determining whether the identity of applicants and third parties should be disclosed?	Yes. If it is set out in the Acts, the disclosure can only then be revealed under the Act. However, the names should not be disclosed until the end of the processing period. Any disclosure prior to this may interfere with due process in many other regards. DSDIP agree that third party consultations create an administrative burden for agencies. However, given the increasing use of the RTI Act as a means by which competitors seek to gain competitive advantage by gaining access to information which they could not otherwise obtain, means the possibility of release of sensitive

		information remains a real concern by businesses that deal with the government. This concern is heightened when it can be difficult for a processing officer to know enough about the third party's business to adequately assess whether or not a certain threshold of concern has been reached. The identities of applicants should be able to be made available to third parties in order that they can more accurately determine their response to an agency request.
6.15	If documents are held by two agencies, should the Act provide for the agency whose functions relate more closely to the documents to process the application?	No. Whichever agency is in the possession of the documents should process the request. It would seem unfair to then redirect the applicant especially if a substantial amount of time has lapsed.
6.16	How could prescribed written notices under the RTI Act and IP Act be made easier to read and understood by applicants?	Suggestions: a) Waive the schedule b) Group the exemptions and reasons on larger applications and remove specificity on each page. c) Make changes to the way the Office of the Information Commissioner (OIC) reviews decisions made by agencies. OIC should offer suggested thresholds for public interest test so that consistency is achieved and less agency decisions are overturned or varied. d) The complexity of decisions letters is increasing by necessity due to the risk that is increasing with the type of access applicant (lawyer on behalf of client) and the increased frequency of access applicants lodging External Reviews. For these reasons agencies are more frequently having to 'Legal Proof' their decision letters. The decision letter should be secondary to the applicant's request for documents and not the main focus. Keeping it simple should be the focus as is the spirit of the Act. e) Without changes to legislation, to remove this need for overcomplicated letters, the OIC could produce templates for agencies and guidelines to assist applicants to interpret decision letters.
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?	Limited detail should be provided. Any information provided would negate the purpose of identifying the existence of the prescribed information.
6.18	Should applicants be able	Not frequently used by this department.

	to apply for review where a notation has been made to the information but they disagree with what the notation says?	Yes. Applicants should be afforded the right to know what the notation states.
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?	No comment. Not used frequently by this department.
7.2	Are the exempt information categories satisfactory and appropriate?	No. • Intergovernmental relations should include State and local government relations. • Deliberative process – needs a wider capture. Often details that seem innocuous to an agency may have a large impact on a business or the progress of a state project. In some instances projects may be temporarily halted and resurrected 5 years later. • Cabinet – Information (not documents) already published by Cabinet in any format may not be exempt. Don't specify a) to g).
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?	No – it is overcomplicated and could be simplified Yes – Part 3 and 4 should be combined (refer below).
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	Yes. If combining Part 3 and 4, there may be capacity in the Act to be more specific about those factors with high thresholds and what is required to meet them. In addition, where several consequences must be met (i.e. if x and y are met but z does not apply, should this factor be split into two factors. E.g. Adverse effect and future supply - separate these factors. Sch4(7)(1)(c)(ii) No comment.

	consumer protection and/or informed consumers should be added? • Whether any additional factors should be included?	Guidelines on thresholds that are acceptable would be beneficial. A decision maker may interpret a threshold for a public interest factor lower that is expected in the Act.
7.5	Does there need to be additional protection for information in communications between Ministers and Departments?	Yes. It is important for frank and open discussions to be facilitated between the government of the day and each agency. When promoting an open and transparent government, difficulty may sometimes arise where information is exchanged on a project, policy or service and may not be recorded for the fear or misinterpretation. Protection should be added to the Deliberative Process exemption to include communications and opinions offered by both parties (Departmental officers and Ministerial officers) during the creation of a project, policy change or service. Once the project, policy change or service is made public, then these documents would be available for consideration. There needs to be sufficient protection to ensure open communications between Ministers and their departments to ensure Ministers receive full and frank briefings to enable good decision making.
7.6	Should incoming government briefs continue to be exempt from the RTI Act?	While an open and transparent government ethos would ensure that the public is aware of new government's interests and the focus of their direction, there would need to be a safeguard to ensure briefing material containing matters of a sensitive or confidential nature are not made publicly available. This is necessary because none of this material would be Cabinet documentation, meeting the requirements for that exemption. However, the material may still be sensitive and ultimately form part of a deliberative process of Cabinet.
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?	No comment. Not used frequently by our department.

7.8	Is it appropriate or necessary to continue the exclusion of Commission documents from the RTI Act beyond the term of the inquiry?	No comment
7.9	Are provisions in the RTI Act sufficient to deal with access applications for information relating to mining safety in Queensland?	No comment. Not used frequently by our department.
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?	No. We should implement a section of the RTI Act where these type of documents are not a documents to which the RTI or IP Act applies. Any information of this type should be accessed through an Administrative Release program and the release should be assessed by the Director of the relevant Human Resources area where natural justice can be afforded. Disclosing this type of information under the RTI and IP Act could have an ongoing effect on the value of the recruitment process. In addition, access to this type of information should be excluded where ongoing departmental investigations are still active. The mere act of lodging an access application may interfere with the ongoing investigation process even at the early stage of searches before the information may be refused under Sch. 3(10)(1)(a).
8.1	Should fees and charges for access applications be more closely aligned with fees, for example, for access to court documents?	No. This would be inconsistent with the object of the RTI Act. It would also make some documents inaccessible for the general public. Processing fees vary according to the type of documents discovered and the scope of the access application. Applicants have a choice to narrow, revise, change the scope of their application if they do not wish to have excessive fees for consultation, searching time etc.
8.2	Should fees and charges be imposed equally on all applicants? Or should some applicants pay higher charges?	Yes. A consistent approach to charges regardless of the type of applicant should be maintained. No.
8.3	Should the processing period be suspended	Not in the current waiting period for assessment of the financial hardship waiver. If the time period for

	where a non-profit organisation applicant is waiting for a financial hardship status decision from the Information Commissioner?	approval by the OIC is less that 60 business days, then yes it would be appropriate to suspend the processing period. Whether the applicant does or doesn't have financial hardship status does not affect the way in which an agency processes the application.
8.4	Should the RTI Act allow for fee waiver for applicants who apply for information about people treated in multiple HHSs?	No comment. Not used frequently by our department.
8.5	If so what should be the limits of this waiver?	No comment. Not used frequently by our department.
9.1	Should internal review remain optional? Is the current system working well?	Yes. Yes. It seems reasonable to maintain the Internal Review as optional. The applicants who find more value in Internal Review gravitate towards that option. Other applicants wishing to have a more formal decision made will lodge an External Review.
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?	No. The current arrangements under the Act provide flexibility for applicants to choose their course of review and to reinstate previous arrangements could mean delays in outcomes for applicants.
9.3	Should applicants be entitled to both internal and external review where they believe there are further documents which the agency has not located?	Yes. Alterations to entitlements could affect applicants as above.
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?	Yes. This should be achieved as in extension of time for access applications with both parties agreeing to the extended date – with no more than a additional 20 business day extension.
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 authority around which documents the OIC directs the agencies to release in the 'negotiation process', pre-preliminary view and preliminary view (PV) of the informal resolution process. This would create a more structured approach that is in line with the object of the Act. In addition, some restrictions should be placed

		around the number of times an agency is directed to release documents within the one application. The OIC should have the power to only direct twice. Once at PV and once with a formal decision. The current system is a duplication of resources. In addition, documents should be 'marked up' by the OIC as per their pre-PV, PV or final decision and then and returned to the department for consideration and release.
9.6	Should applicants have a right to appeal directly to QCAT? If so, should the Commonwealth model be adopted?	Yes applicant's rights of appeal should be broad and extensive and in line with other jurisdictions.
10.1	Are current provisions sufficient to deal with the excessive use of OIC resources by repeat applicants?	This is a matter for OIC consideration i.e. the OIC could use its powers with more vigour in order to deter repeat applicants.
10.2	Are current provisions sufficient for agencies?	No comment.
10.3	Should the Acts provide additional powers for the OIC to obtain documents in performance of its performance monitoring, auditing and reporting functions?	No. Current arrangements are sufficient and further requirements would unnecessarily impede agencies in self-monitoring of their functions.
10.4	Should legislative time frames for external review be reconsidered? Is it appropriate to impose timeframes in relation to a quasi-judicial function?	Yes. Timeframes would assist the External Review applicants and promote faster negotiation and early resolution with applicants. It would also provide a more efficient and coherent response from agencies instead of agencies having to revisit a 12 month old access application. Yes.
10.5	If so, what should the timeframes be?	No longer than 180 business days.
11.1	What information should agencies provide for inclusion in the Annual report?	It should be reduced. • Number of applications, number of pages considered, number released in full, part and refused (not exemption specific) • Number of Internal Reviews • Number of External Reviews. In addition, local governments should report directly to DJAG instead of through the

		Department of Local Government, Community Recovery and Resilience.
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. Create a new section s.42(7) <u>Multiple applications by one applicant</u> Where an access applicant has three current access applications with the one agency, any subsequent access applications will be suspended until all review rights have been exhausted on any one of the three existing applications. This will ensure that other "one off" applicants are afforded the appropriate timeframes for their application. Create a new requirement s.81 and s.94 <u>Processing fees must be paid</u> Processing fees must be paid and/or documents accessed before an Internal or External review may be lodged. If the access applicant has requested the information, a decision has been made and the documents were not accessed, on what basis can they lodge their review if they have not seen any full or part release documents. <u>Circumvent another process</u> The purpose of the information request is not to attempt to circumvent/abuse another process. It is suggested that the application form be amended where the applicant states the information requested is not currently being requested by another means. <u>Vexatious applicant s.114</u> Amend the Vexatious applicant section to reflect more detail of the Commonwealth model. DSDIP have seen increasing use of the act by companies trying to gain access to commercial information of their competitors. This makes it difficult for us to gain the trust of companies that the department wants to deal with as they are afraid to speak openly and provide data as they are conscious that the information may be released under the Act. DSDIP have also seen an increase in the use of the Act to try and gain access to information to use in litigation against the state. The method of deciding appeals by the OIC, by making the decision at the time of the review, not at the time the original decision was made, means that many documents are being released because the Commissioner takes the view that as, in some cases, a number of years has passed, the

		documents may no longer be part of the deliberative process or may no longer be confidential. This may not always be the case. In addition, it can reflect poorly on the original decision maker in the eyes of the applicant, when their decision may have been justified at the time. The OIC decision should be a review of the decision and not a 'fresh decision'. A reviewed decision reviews aspects of the decision, at the time the decision was made. A 'fresh decision' is made in a new timeframe where different considerations are undertaken in regard to the disclosure of information. <u>Decision review and business/industry implications</u> Decision reviews need to carefully consider the cumulative impact of review decisions concerning matters of a commercial nature and economic development. The impact of review decisions that make public the dealings of commercial entities with Government can have a negative impact and cause a loss of confidence by businesses in communicating and dealing with Government to the overall detriment of the economy of Queensland. The public interest test involving matters of deliberative process and business affairs and matters of commercial in confidence dealings should be strengthened to ensure there is no economic detriment to the State caused by an "unbalanced" pursuit of openness and transparency principles at the expense business confidence and frank and fearless discussions with government.

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