YOUR REF
OUR REF DJM:MLI:RTI

22 October 2013

RTI and Privacy Review
Department of Justice and Attorney-General
GPO Box 149
BRISBANE QLD 4001

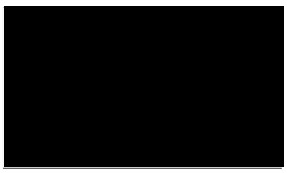
Review of Right to Information and Privacy Laws

Dear Sir,

Mackay Regional Council has reviewed the two (2) discussion papers, RTI Discussion Paper and Information Privacy Discussion Paper and enclosed is feedback in relation to these papers.

If you have any questions in relation to this feedback please contact the writer.

Yours sincerely,



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MACKAY REGIONAL COUNCIL - RTI REVIEW

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

Yes, the objective to give right of access to information held by the government, is still relevant.

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

The 'push model' that Government information will be released as a matter of course is still appropriate. It is agreed that a RTI application should be the last resort. Transparency is important and information should be released, where possible, without going through the RTI process.

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?

Cross referencing two acts when considering an application can be difficult and confusing. It would be more efficient if both personal and non personal information was covered by the RTI 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, if an agency is awaiting a response from the applicant on whether to proceed with an application under the RTI Act instead of the IP Act (as previously thought) the time period should be suspended, similar to third party consultations. The time stops for all other consultation, why should it not stop when consulting with the applicant on whether to proceed under RTI or IP Acts.

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

Most of Council's requests fall under RTI. Council very rarely gets a straight IP request, therefore it should be covered under the RTI Act and only referred to in the IP Act.

It is unlikely that an agency would change from a previously made decision, so it is believed that this requirement should not be retained.

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 - all other time frames are in business days.

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

Yes, there should be a provision to refuse an application on the basis that the agency does not possess these document/s.

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

Yes, this decision should be included in the list of reviewable decisions.

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

Yes – This timeframe should be the same as the decision timeframe of 25 days. In some instances you would not know if the document is outside the scope of the Act until you are assessing for the decision notice.

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

N/A

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?

N/A

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?

Processing of RTI applications can be a very time consuming and demanding on the resources of an organisation. To impose this burden on commercial entities could be detrimental to the service provided by the entity and also the costs associated with the functions provided under the contract.

Also, Council would normally have some form of documents on file regarding a contract and general correspondence in their records which would be available under the RTI process. The fee of $41.90 and low charge fees do not cover the extra impost that this would put onto Council.

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

Yes, if an agency has a website it is advantageous to both the agency and the general public to publish the publication scheme in this way. The easy accessibility, ease of amending and updating information, the ability to use links from RTI page are the main advantages.

5.2 Would agencies benefit from further guidance on publication schemes?

This is an individual Council discretion as what they consider should be in their publication scheme. General guidance by OIC is already provided.

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

N/A

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?

The statutory form should be retained to ensure each application contains the required information according to the legislation. The information included on the application provides important advice to the applicant and also acts as a reference to the RTI assessing officer. If the form was not compulsory, I believe most agencies would create a form of their own.

The only problem that Council has encountered is that some clients get confused as the form is developed by the State Government and has their logo displayed, rather than the agency they are dealing with.

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

N/A

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?

It is felt that the witness list is satisfactory.

6.4 Should agents be required to provide evidence of identity?

Agents should provide consent from their client that they act on their behalf. If the agent is a private individual then evidence should be provided, however if it is a solicitor – I think letterhead is sufficient with the signed client consent.

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

It is felt that the fee should only be refunded if the information requested falls under IP. Even if Council fails to make a decision (which would very rarely happen and would be through extenuating circumstances regarding the non-decision) I think that the application fee should be retained and not refunded. In most instances a fair amount of work would still be incurred even if a decision hadn't been reached within the stipulated timeframe.

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

Mackay Regional Council has not processed an application on behalf of a child, however the two Acts appear to have sufficient clauses in place to protect the information of a child.

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?

It is thought that the specified period should be added at the end of the processing period.

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?

N/A

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

Charges Estimate Notices are always tricky as to working out actual costings. However this is the only way that agencies are able to recoup some costs around the RTI applications and even then the charges recouped are minimal compare to the time actually spent processing a larger application.

A charges estimate notice is also beneficial for applicants as the applicant is given the opportunity to review the scope of the application to lessen the charges, if the costs incurred are too costly.

The applicant is able to see from the document list the description of each document, which assists them to decide which documents meet their criteria. Applicants are then able to narrow the search, to lessen the charges but ensure they obtain the required information.

The charges estimate notice should be retained but agencies need to be advised whether the application is going to continue as soon as possible in order to efficiently process the application.

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

Yes – applicants should receive two charges estimate notices only.

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

Experience has shown that the charges estimate notice does not go close to covering the expenses an agency incurs with processing an RTI application.

If an agency is recording the process correctly, it would have more than enough proof to back up a charges estimate notice which has been issued. To give an applicant the right to challenge the amount of the charge would not achieve anything other than ensuring the application takes longer to process.

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

Eventhough a schedule of documents proves time consuming when processing an RTI application, it is a useful tool for both the assessing officer and the applicant to make easy reference to required documents.

6.13 Should the threshold for third party consultations be reconsidered?

It is not believed that the threshold be reconsidered. These are done by a case by case basis.

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

Yes, the Act should be clear and concise in outlining whether the identity of applicants and third parties should be disclosed?

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

This matter may be addressed a little clearer.

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

A set of standard templates could be considered by OIC, but again this is a Council preference on how they like their written notices formatted.

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

I believe that the detail should be very minimal and should need to be justified. Why would you use "neither confirm nor deny" if you have to provide further information as to why you used that particular section as an exemption?

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

Those applicants not happy with a decision will already do this.

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?

N/A

7.2 Are the exempt information categories satisfactory and appropriate?

I think that general the exemption information is satisfactory, however they can get confusing with similar clauses between Part 3 and Part 4 under Schedule 4.

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

Public interest testing is very subjective – as it comes down to the weighing by the decision maker and how strong of an argument officers provide as to why information can or can't be released.

An explanation of the public interest balancing test is often difficult to make to the general public, however once an RTI has an understanding of the process, it is believed that it does work well. Also once an understanding of the core pro-disclosure basis has been gained, the balancing test for factors favouring disclosure/non disclosure does give the RTI Officer a clear direction in decision making. To assist with this process, the combining of Schedule 4 Parts 3 and 4 would be advantageous to decision makers.

7.4 Should existing public interest factors be revised considering-

- **Some public interest factors require a high threshold or several consequences to be met in order to apply;**
- **Whether a new public interest factor favouring disclosure regarding consumer protection and/or informed consumers should be added?**
- **Whether any additional factors should be included?**

A provision could be added to the factors favouring non disclosure, to protect employees in government agencies from the harm of an RTI application from, for example a disgruntled co-worker, unsatisfied customer or unsuccessful applicant for employment. If an RTI application is received seeking information provided in job applications or resumes, HR records, or any employment information held by their employer, there currently is no real provision to restrict access to this information other than *Schedule 4 3 Disclosure of the information could reasonably be*

expected to prejudice the protection of an individual's right to privacy. This should be relevant for all government agencies – local, state and federal.

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

N/A

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

N/A

7.7 Are the current provisions in the RTI Act sufficient to deal with access applications for information created by Commissions o Inquiry after the commission ends?

N/A

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

N/A

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

N/A

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?

An added provision in the factors favouring non disclosure could be added to protect individual's personal information provided in job applications or resumes. This should be relevant for all government agencies – local, state and federal.

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

Fees for RTI applications should remain affordable to the general public but also recognise the work involved in providing access. The current fee of $41.90 does not recognise the amount of work that needs to be undertaken by agencies, for even the most basic of RTI applications.

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

This should be considered.

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

No. The legislation states that application fees cannot be waived and it is believed it should be the same in this instance.

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

N/A

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

Yes, the internal review should remain optional, as it enables applicants to decide on what type of review is suitable to their needs. On some occasions, an internal review is chosen by applicants and other times an external review is preferred. The flexibility for the applicant to make this decision, works well, rather than the option of insisting the applicant undertakes an internal review prior to 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?

In the current system, the applicant determines what type of appeal he/she wishes to undertake. To reinstate mandatory internal reviews, would only lengthen the appeal process and force applicants to undertake steps which they may not have been comfortable with, ie applicant would prefer the OIC to undertake the review due to the complexity of the decision, however must go through the internal appeal first.

For the Information Commissioner to also remit matters to agencies would also undermine the decision of the applicant to appeal to the OIC rather than with the agency involved.

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?

This is seen as no different to the complaint process. If an applicant is not happy with Council's decision they have the right to a review, either internally or externally.

Currently they have the option and if they are not happy with the internally review they can have an external review. Whilst this takes time I believe this is a fair process.

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

Yes. Depending on workloads, it may be necessary from time to time to extend the review decision period.

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

N/A

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

No. Once this hits the QCAT system, the timeframes on a decision is lengthen and extra work load is required.

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

No.

10.2 Are the current provisions sufficient for agencies?

The current provisions are sufficient in regard to use of agencies resources by repeat RTI applicants. The ability to refuse to deal with an application where processing would unreasonably divert resources or where a previous application has been made for the same documents seem to sufficiently account for repeated RTI applications.

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

N/A

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

No – I think the timeframes are sufficient.

10.5 If so, what should the timeframes be?

N/A

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

Council already includes information in its annual report regarding RTI stats. Council also provides an annual return regarding stats for the financial year to be included in the annual report for OIC.

Mackay Regional Council is happy to provide what information is requested to include in the report.