Review of the *Right to Information Act 2009* and Chapter 3 of the *Information Privacy Act 2009* – Response to Discussion Paper (August 2013)

Submission by Megan Carter

1. Objects of the Act – 'Push Model' strategies

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?

2. Interaction between the RTI and IP Acts

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. At present, the separation between the Acts is confusing to applicants and agencies expend a great deal of time determining under which Act an application should be processed. This is made more difficult by the breadth of the term "personal information" and the phrasing in s.40 IPA of "to the extent…". I would rather the time and energy be spent on thorough searches or making better balanced decisions. While placing all rights of access in one Act raises the question of the payment (or otherwise) of application fees and processing charges, I make several suggestions in the other parts of this submission which I hope will minimise any negative consequences of this very necessary change.

3. Applications not limited to personal information

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?

I support the suspension of the processing period while consultations are being conducted under section 54 of the IP Act. However if the IP Act access arrangements are combined with the RTI Act as recommended in 2.1, this provision could be removed in its entirety, eliminating the need for amending s54 and its several problems.

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

I support the removal of this requirement. Again, placing all access under one Act means there is no need to amend this.

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?

If this provision is kept, it should be expressed as business days. Again, placing all access under one Act means there is no need to amend this.

4. Scope of the Acts

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, the RTI Act should include a refusal provision for this situation.

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

Yes.

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

Yes.

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?

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?

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?

This currently occurs in the NSW GIPA and Commonwealth FOI Acts. As far as I am aware from anecdotal evidence, this has not caused problems for those contracted service providers in terms of volumes or timeframes. However, I am aware that some providers are very small entities with minimal resources (and no training or current awareness) of the requirements of the Act. Nonetheless I recommend their inclusion to ensure there is no "contracting out of" the requirements of the Act.

In keeping with this, contracted service providers should be added to the list of "insiders" from whom confidential information, if received, cannot be exempted under Sch 3 Clause 8 (Breach of Confidence) or Sch 4 Part 4 Clause 8 (Prejudice future supply of confidential information), or its successor provision if Schedule 4 is amended.

5. Publication Schemes

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

The information from the publication scheme may be better placed and more able to be located on agency websites if it is integrated into the other parts of the website, where relevant, rather than a stand-alone publication. Multiple avenues to access information, combined with good structure and navigation, and an effective search engine, make the publication scheme contents easier for the public to find. They are more likely to search for information under the relevant subject, rather than via the RTI publication headings. In some cases, both may be effectively used.

5.2. Would agencies benefit from further guidance on publication schemes?

Yes.

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

6. Applying for access or amendment under the Acts

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?

Most importantly, a standard application form for all agencies should not be compulsory. It does not and cannot meet the diverse needs of all government agencies covered by the RTI Act. For example, agencies holding large amounts of personal information require details such as middle name, former names, date of birth, in order to correctly identify the records belonging to the applicant. These fields are unnecessary for agencies dealing with mainly non-personal applications.

The FOI Act specified that an application had to be “in writing”, using an optional application form, which could be designed by each agency (using models provided by the lead agency). Applications via letter or email easily met this requirement, whereas at present they would not.

As far as I am aware, the requirement to state that an application is made under the legislation is to facilitate early identification of a request for documents (which must be processed within statutory deadlines) within, say, a lengthy complaint letter, or letter to the Minister. Such a request may not be clear on first reading and therefore not forwarded to the RTI Unit for processing. If there is a mandatory application fee, then it is the presence of the fee which would make an application compliant. However, as will be argued below, I consider there should be discretion to waive the application fee, and for those cases, reference to the legislation may be needed.

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

The current amendment application form could be retained but should not be compulsory.

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?

I consider the list is adequate.

6.4. Should agents be required to provide evidence of authority?

As far as this relates to agents who are solicitors representing their clients, strictly there should be no need for an authorisation from the client, nor a separate requirement for the agent to provide evidence of their own identity. Misrepresentation of either their identities or the authorisation would constitute professional misconduct for those solicitors. However, under FOI, a handful of cases occurred where the solicitor overstated the scope of their instructions, and to that extent, the authorisation plays a role. From feedback from practitioners, the requirement for solicitors to provide evidence of their own identity has been a source of needless annoyance and delay, and has been in practice ignored by many agencies who deal with the same firms of solicitors on a regular basis. I do not support retaining the requirement for agents' evidence of identity in the case of solicitors. However, I do support it for agents (such as family members or friends) who are not legal representatives, unless the information applied for is non-personal in nature.

While not strictly responsive to this question, I also recommend clarifying that a compliant application is taken to be received only when the requisite evidence of identity has been received (where personal information has been requested). In other words, amend s.24(3) to remove the reference to 10 business days.

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, I agree with agencies being given discretion to waive and refund both application fees and processing and access charges. Waiver of the application fee could be on the grounds of financial hardship and public interest. Most importantly, if the rights of access are in a single Act (RTI Act), the application fee could be waived where the application is substantially for documents containing personal information of the applicant, their child, or a deceased person in relation to whom they are an eligible family member.

It must say "substantially", or a similar phrasing, as I certainly do not intend there be waiver for a public servant who seeks access to every email containing their own name (including topics such as carpet cleaning or pest-spraying of the office, addressed to them on a mailing list of all staff, rather than information ABOUT the officer). I also do not mean it to apply to situations where the document contains, even on one page, the name of the applicant, which is the current interpretation in the OIC's guidelines for processing a document under the IP Act. As an example, my name is listed as a person who made a submission to a government review process (such as the Solomon Review). The Review report is over 400 pages but it is no way "about" me. In the

case of such a document, the application fee would not qualify for waiver. [I realise this is not a great example as the report is publicly available, but it is for the purpose of illustrating this point.]

Having this as a discretionary decision would also enable agencies to waive application fee for a first or second request for personal information by an applicant, but to charge the fee on repeat or subsequent applications. This would work in tandem with the refusal provision to assist agencies to deal with repeat (unreasonable) applicants. The discretionary waiver of the application fee should not be a reviewable decision, although the decision to charge processing and access charges should remain reviewable.

Another option, sometimes used in relation to frequent applicants (such as the media) is to offer to hold the application fee in credit for future applications if the applicant agrees. My main reason for suggesting this option is that the cost of processing both payments and refunds usually exceeds the amount of the fee, and is therefore costly to agencies.

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

The former FOI Act s50A was introduced to deal with this situation, mainly because of the drafting which required the payment of an application fee (and charges) when parents applied for records relating to their children. If my recommendation to allow waiver of application fees is accepted, then the need for the provision on this basis is removed.

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?

At the end of the processing period, in other words, it adds to whatever other extensions (or clock-stopping) would normally occur.

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?

Yes.

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

The CEN process, or a request for an Advanced Deposit as it was under FOI, is beneficial to applicants who might otherwise receive a bill for large processing costs at the end of the process when it is no longer open to negotiation. The CEN process should be seen as one of a number of tools in the Act to negotiate the scope and size of an application, and it therefore plays an important role for agencies as well.

There are some elements of the CEN process which need to be changed, for instance, an amendment is required to deal with the situation where no charges are envisaged, and hence, no

CEN would need to be sent. At present, s.36 makes this mandatory. The addition of the words "if a charge is payable" into s.36(1)(b) would deal with this.

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

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?

If such review rights are given, they should be available only when the estimate exceeds a threshold such as $500.

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

As long as this "schedule" is regarded as an approximate grouping of documents/ topics, rather than a page-by-page listing, it should not be too onerous. Part of the problem is that a significant amount of time can be spent searching and preparing such a schedule at a stage where the applicant may well decline to proceed in full. It could be an option rather than mandatory, perhaps where charges in excess of a threshold (say, $500) are estimated.

6.13. Should the threshold for third party consultations be reconsidered?

The omission from s.37 RTI Act of the word "substantial" from the equivalent provision (s.51) in the FOI Act, has led to a significant increase in the number of third party consultations which are found to be necessary using the much lower threshold of "may reasonably be expected to be of concern…". From my own experience and anecdotal evidence of other practitioners, the increase has not led to any improvement in quality of decisions or the ability to more effectively protect sensitive information. Rather it has increased the amount of work for agencies, the processing charges for an applicant, and increased the delays in providing access to an applicant, even more so if a review is sought by the third party. It runs counter to the pro-disclosure stance of the Act, and the review process is sometimes exploited by third parties simply as a delaying tactic. This is exacerbated by delays in dealing with reviews by the OIC. Perhaps there could be a time limit in the Act on the OIC to finalise third party appeals as a priority, with a fixed time limit (no more than 2 months).

On the subject of third party consultations, the disclosure log provisions have had a detrimental effect on the willingness of third parties to agree to disclosure, when the consequences of consent are publication literally to the world. As noted elsewhere in this submission, amending the requirements for Disclosure Log publication may reduce the chilling effect.

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

I consider that the identity of the applicant is a significant factor for virtually any third party in the consultation process, and that it should be able to be disclosed as a matter of course. Not disclosing it can lead to unnecessary angst for the third party who inevitably speculates as to the worst possible inquirer. I have witnessed many times the distress of third parties when

confronted with the consultation letter, and even telling them that they know the applicant, or that it is a family member, can reduce their concern (as they may fear it is a media applicant for example).

Even though it is the case that the applicant can distribute the documents without limitation, many situations are such that the applicant would be highly unlikely to do so (eg: intra-family requests). In relation to this question, see also my comments at the end concerning an amendment similar to s.55 of the NSW GIPA Act, where the relationship of the applicant and other parties can be taken into account in making the access decision.

I recommend that the Act give the discretion to release the applicant's identity, and this should be made clear to an applicant on the application form or in the acknowledgement.

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?

Yes; the Act should permit full and part-transfer of applications similar to the provisions in the repealed FOI Act.

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

The requirements of a prescribed written notice, with full reasons for decision as per the Acts Interpretation Act, with findings on material questions of fact and the evidence on which those findings are based, are difficult for decision-makers to write, and for applicants to read. Reducing this requirement for what might be called "expanded reasons" would definitely help reduce both the length and complexity of notices.

Another option is the use of a single page summary letter as a covering letter, with a much longer attachment or attachments fulfilling the legal requirements. The single page would set out a brief statement of the documents sought; the numbers of pages released in part, in full or withheld; a plain English reason ("because they contain information about another person who has not consented to their release"); a reference to an attachment (and a 1-sentence summary) for rights of review, and a contact person. Some agencies already take this approach and templates /examples could usefully be proposed by the OIC and circulated amongst agencies.

A number of other proposals under consideration in this review would also assist to simplify the notices. Placing the right of access in a single Act would eliminate the complex (and confusing) explanation to applicants concerning decision making under s.67 IPA. The changes to Schedule 4 (particularly amalgamating Parts 3 and 4) would reduce complexity and what must sound like duplication to the applicant. Some of my proposed simplifications of the content of current Parts 2 and 3 of Schedule 4 should also assist.

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?

The effectiveness of this provision in the Act would be undermined if there were too onerous a requirement to provide details of the prescribed information which may or may not exist. Too much detail would tend to suggest that there is a real document which contains this, and so the applicant would assume that it does exist, the very harm the provision is trying to avoid. Although I understand the difficulty which applicants have when they receive a decision notice in these terms, I doubt it is possible to provide more information without doing harm. The fact that this is a reviewable decision limits the groundless application of this provision by agencies (if anything, in my 30 years experience, I regard this provision as under-utilised rather than over-utilised).

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?

No.

7. Refusing access to documents

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?

The essential principle of government accountability means that all government bodies, including government business enterprises, should be covered by the Act. Also, all bodies receiving government funding or fee for service under a contract should also be covered to the extent of the funded service.

All full or part exclusions should be regularly assessed to check their appropriateness. History has shown the tendency for such lists to gradually increase, item by item, over the years. The exemption and public interest provisions are quite robust and adequate to protect even some of the functions currently in Schedule 2. The full exclusion of the Office of the Information Commissioner should also be re-assessed, as it requires protection only in the area of its review functions. Courts and Tribunals are covered in respect of their non-judicial (and non-quasi-judicial) functions, so it would be appropriate to have the OIC covered to the same extent. It should be noted that the Office of the Australian Information Commissioner is covered by the federal FOI Act.

7.2. Are the exempt information categories satisfactory and appropriate?

The most important single change which I would recommend to the exemption categories relates to the Cabinet provision, which I deal with separately below.

There is little justification or need for the exemption in Clause 3 (Executive Council) and I recommend it be omitted. If it is retained, then I recommend that it be returned to its 1992 form,

as I have recommended below for the Cabinet exemption, and that it be subject to a fixed 10 year time limit.

The Solomon Review proposed time limits of 3 years for incoming Ministerial briefs, parliamentary estimates briefs and Question Time briefs, and I recommend implementing these time limits.

I do not consider the new exemptions 4A and 4B are warranted, especially as local government seems to have managed adequately for 17 years without the benefit of them. I also do not consider additional protections specific to the mining industry are necessary.

I recommend the addition to Clause 7 Legal Professional Privilege of provisions similar to those in the NSW *Government Information Public Access (GIPA)* Act, for its equivalent provision in Schedule 1 Clause 5:

> *"(2) If an access application is made to an agency in whose favour legal professional privilege exists in all or some of the government information to which access is sought, the agency is required to consider whether it would be appropriate for the agency to waive that privilege before the agency refuses to provide access to government information on the basis of this clause."*

I recommend that contractors for services to government be included in the list of those from whom deliberative process material would not constitute a breach of confidence in Clause 8(2). They are, in effect, "insiders", as are the other entities on the list, and with the increase in outsourcing government functions, they should be included here.

The Solomon Review recommended omitting Clause 11 (Investment Incentive Schemes) and I recommend that this unnecessary exemption be removed.

In clause 12(2), I recommend that the exception be clarified by the addition of a word such as "merely" or "solely", that is:

> *(2) Information is not exempt information under subsection (1) in relation to an access application if it is solely personal information for the applicant.*

Cabinet exemption

I recommend amalgamating Clauses 1 and 2 into a redrafted Cabinet provision. Having 2 Cabinet provisions is unnecessarily cumbersome and confusing. I propose drafting a single provision which more closely resembles the terms of the original Cabinet exemption in the 1992 FOI Act, with a number of changes. The original terms of the Cabinet provision were as follows (omitting the conclusive certificate power which I do not recommend reinstating):

> ***Cabinet matter***
> *36.(1) Matter is exempt matter if—*
> *(a) it has been submitted, or is proposed by a Minister to be submitted, to Cabinet for its consideration and was brought into existence for the purpose of submission for consideration by Cabinet; or*
> *(b) it forms part of an official record of Cabinet; or*

(c) it is a draft of matter mentioned in paragraph (a) or (b); or
(d) it is a copy of, or contains an extract from, matter or a draft of matter mentioned in paragraph (a) or (b); or
(e) its disclosure would involve the disclosure of any deliberation or decision of Cabinet, other than matter that has been officially published by decision of Cabinet.

(2) Matter is not exempt under subsection (1) if it is merely factual or statistical matter unless—

(a) the disclosure of the matter under this Act would involve the disclosure of any deliberation or decision of Cabinet; and
(b) the fact of the deliberation or decision has not been officially published by decision of Cabinet.

(4) In this section—
"Cabinet" includes a Cabinet committee.

This has great benefits in terms of its brevity and simplicity, and maintains a better balance between accountability at the highest level of government with the need to protect collective Ministerial responsibility. A tightly drawn Cabinet exemption is one of the hallmarks of excellence in FOI legislation, and in 1992, Queensland was at the forefront of excellence in FOI. It was a great disappointment that the 2009 reforms did not take the opportunity to bring back the balance to this crucial provision. While I acknowledge the enormous improvements in the government's approach to proactive publication of some Cabinet material, the unnecessary breadth of the 2 current Cabinet exemptions reduces accountability at the heart of government, which detracts from the other improvements in the Act.

If it is seen as desirable, a sub-paragraph protecting documents prepared for the purpose of briefing Ministers in relation to matters being considered by Cabinet would be in keeping with some other Australian jurisdictions.

I would also apply a fixed 10-year time limit on the application of the Cabinet exemption, which is in keeping with NSW and Tasmania, rather than the movable 10-year period as at present.

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?

The public interest test is conceptually excellent, but difficult in practice. Decision-makers find it difficult to apply confidently, exacerbated by the confusion in Part 3 and 4 of Schedule 4, and applicants find the statements of reasons confusing. So all changes being considered should have the key principles in mind of keeping the test as simple and understandable as possible, while maintaining its integrity.
The factors in Schedule 4, Parts 3 and 4 should absolutely be combined into a single list, with a better balance between the factors in favour of, and those against disclosure.

As it stands, Part 4 factors read as if they are of much greater significance than those in Part 3, partly from their wording and partly from their sheer length. Added to this is the hangover in the memories of decision-makers and applicants of the FOI years when these were exemptions,

giving them greater weight. This completely unbalances the public interest test and would tend to result in anything but a pro-disclosure outcome.

The enormous level of duplication and overlap between Parts 3 and 4 make decision-letters overly lengthy and confusing to applicants. It also can cause decision-makers to take an approach of simply using the Part 4 factor (which sounds weightier and resembles the familiar exemptions), and sometimes "double-counting" with the counterpart Part 3 factor. When the Right to Information Act was enacted, government took a decision to treat the Schedule 4 Parts 3 and 4 elements as being less absolute and of less weight than the Schedule 3 factors, yet some of the decisions I have read treat the Part 4 factors as if they are indeed exemptions.

So, for many reasons, I strongly recommend amalgamating the Part 3 and 4 factors into a single Part. They should be worded in a comparable manner to the Part 2 factors, rather than sounding as if they are more important. I have drafted a very rough rewrite of Parts 2 and 3 which is at Attachment 1 to this submission. I recommend that it be circulated for comments to the practitioners who are making decisions under it every day, whereas I only make a few dozen decisions under RTI each year, although I conduct RTI /IP training regularly. They would be better able to assess the necessity and frequency of the factors in the two lists.

I employed several guiding principles in the re-draft attached. One was to keep the both the length of the two lists, and the length of the individual factors within them, as short as possible. Another was to keep the lists as close to "mirror images" of each other to ensure a better overall balance in the public interest test. I have also suggested grouping the factors in both lists roughly by subject, similar to the approach of the NSW GIPA Act in s.14 (only for its factors against disclosure). Within each group, I tried to sequence the factors by aspects such as their overall importance as public interest factors and their frequency of use in decisions. I also reminded myself, and perhaps drafting within the Parts could also do this, that the list of factors in both Parts is not exhaustive. Only those which are of greatest importance or most frequent use should be listed, as any others can be developed and applied as needed. This is another reason I do not support adding more public interest factors to the lists as redrafted; in fact, I have omitted quite a few from both parts. Future reviews of the Act can consider whether the importance or frequency of need for certain factors should lead to additions, omissions, or re-ordering of the lists.

All of these principles should facilitate more confident and pro-disclosure decisions by decision-makers, and more readable and comprehensible decision-letters for applicants.

The details within the longer versions in Part 4 could be captured in what the Solomon Review called its Time and Harm Based Weighting Guide, and I am confident some drafting can be developed to deal with the relatively small amount of detail omitted from my proposed re-draft. (Although my time did not permit drafting a proper Time and Harm-based weighting guide, I have at Attachment 2 some notes towards such a Guide, and the Solomon review of course provides more detail on this concept).

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?

See my comments above.

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

I consider the current provisions in the RTI Act are adequate to deal with this.

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

Queensland is one of the few jurisdictions which give this level of protection to the incoming government briefs. If the provision is to be retained, I recommend that the period of protection be reduced from 10 years to 3 years as per the recommendation of the Solomon Review.

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?

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

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

Yes.

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?

The Commonwealth FOI Act has had a provision for many years in section 15A which requires public servants to attempt access under the administrative schemes of their agency before applying under FOI. A similar provision in the RTI Act may reduce the volume of such applications, as they would be dealt with (more appropriately) by the HR staff of each agency. Such processes would be less formal and hopefully cause less disruption than formal RTI processes.

I would like to add a few points in relation to this topic. I have had experience from virtually every angle in regard to this: I have been an RTI (FOI) applicant for selection documents; I have been a consulted third party; referee and selection reports I have written have been accessed under RTI; I have many times been a decision-maker and have consulted with many third parties. I have also been an HR Manager who implemented changes in HR feedback and administrative approaches to minimise the need for FOI requests. I do not wish to remove any rights of public servants under RTI, but as with other areas (such as health information),

there are other avenues which may be more effective and appropriate to deal with such inquiries.

There are some difficulties which have been noted as a consequence of RTI access. One is that plagiarism of job applications has increased. By this, I am referring to the structure and formatting of CVs, and the wording of statements against selection criteria (which have a degree of generality about them, and are frequently used for numerous positions). I have personally witnessed this as a member of a selection committee, as well as an HR Manager and consultant. This concern, to prevent plagiarism, is one reason that consideration was given to the protection of the copyright of the successful job applicant, so that the RTI applicant would be given the right to inspect the CV and statement against the criteria, without providing a copy (which would facilitate plagiarism). While I consider the copyright argument is still valid, this may be a situation where the form of access exceptions should be amended to exclude access where there is an overriding public interest against disclosure in that form. Such a provision is in section 72(2) of the NSW GIPA Act:

(2) The agency must provide access in the way requested by the applicant unless:
(d) there is an overriding public interest against disclosure of the information in the way requested by the applicant.

8. Fees and charges

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

The comparison with access to Court documents is not an appropriate one to use to set the rates.

8.2. Should fees and charges be imposed equally on all applicants? Or should some applicants pay higher charges?

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?

Yes.

8.4. Should the RTI Act allow for fee waiver for applicants who apply for information about people treated in multiple Hospital and Health Services (HHSs)?

Yes.

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

Perhaps a limit on the number of times in a given period that this waiver can be given. This might assist in dealing with repeat (unreasonable) applicants.

9. Reviews and appeals

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

I have always regarded internal reviews as performing a number of useful roles, and recommend that internal review should be made mandatory as it was under the FOI Act.

Properly undertaken, internal review is an opportunity for an agency to correct its own errors (if any), search more thoroughly, consider new arguments, re-assess its own position, and present a more favourable decision, or a better set of reasons to the applicant. It should also reduce the number of cases proceeding to external review. If an agency regards internal review as a "rubber stamp" or a "loyalty test", then it simply wastes the time of the applicant and the agency. I support a proper internal review system, and would prefer that it remain mandatory (other than when the original decision was made by the agency head or Minister). I also consider it enhances accountability of the agency, and of the original decision-maker, instead of "letting things go through to the keeper" (the OIC).

In light of the average times taken at external review, the original intention of making internal review optional as "fast-tracking" of decisions, has simply not eventuated. If anything, the increased volume at the OIC level has led to an increase in their workload and consequent delays. Internal review deals more efficiently and quickly with sufficiency of search issues, and happens much closer in time to the original decision, facilitating better searches. By the time 5 or 6 months have elapsed, the staff involved in the original case handling have often left the area, or forgotten intricacies of the case due to the passage of time.

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?

As said above, internal review should be reinstated as mandatory. In addition, the OIC should have adequate remit powers.

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?

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. In particular additional time should be allowed for consulting third parties at internal review, either new third parties, or documents newly proposed for release relating to previously-consulted third parties.

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. The same protections should apply as for releases under initial and internal review decisions. Some agencies are prevented from agreeing to disclosure in early resolution because of the strength of their secrecy provisions, which hampers resolution.

As an aside, the (understandable) emphasis on early resolution has led to a decline in the number of formal decisions published, with a consequent reduction in the case law available for practitioners. I would recommend that the OIC publish case notes on at least some, selected, matters resolved informally in order to keep practitioners aware of the approaches taken and the issues arising in reviews.

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

No. However, following the Commonwealth model, the Information Commissioner could be provided with the ability to refer a matter to QCAT.

10.Office of the Information Commissioner (OIC)

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

It would appear not, from the excessive use of resources by repeat applicants which have been evident over many years.

10.2. Are current provisions sufficient for agencies?

No. The current provisions for repeat applicants are useful, although they could be enhanced by adding in where access had previously been sought under Administrative Access schemes as well as FOI, and RTI/IP.

However, the single most important provision which I would recommend is that agencies are given the power to refuse an application as vexatious. While it has traditionally been regarded as a draconian power, and anathema to the ethos of RTI, I would argue that even the avenue of seeking a vexatious applicant declaration from the OIC has been under-utilised since its enactment, so it is unlikely that agencies would abuse such a power. This decision would, of course, be subject to full review.

This is distinct and separate from the provision enabling an agency/ies to seek a declaration from the OIC that an applicant is vexatious. This provision should remain; however, the rarity of such declarations to date has left agencies believing that the threshold is so high as to be unachievable. The fact situation of the one declaration to date would also suggest this, based on an extraordinary number of applications in a short period, added to the quite unreasonable and unacceptable conduct of the applicant. Prior to the declaration, the respondent agency (and

many others in Queensland) had expended at least hundreds, if not thousands of publicly-funded hours on this one applicant. Based on anecdotal and some first-hand evidence, this represents a gross waste of public resources and should have been prevented at a much earlier stage.

Other RTI practitioners would be able to provide more quantifiable evidence to support the need for this provision, however even based on my own personal experience as a consultant to agencies, I am aware of a number of cases where a single applicant has made dozens of applications, not quite identical (thereby not falling into the repeat application provision), and often personal in nature (thereby not being deterred by charges). When a single applicant in effect causes the expenditure of thousands of dollars of public money for nil or negligible benefit to themselves or the community, then it is obvious that a solution has to be found, or the hostility towards these few applicants taints the perception of the Act as a whole in the eyes of senior managers of agencies. The additional stress and burn-out caused to the RTI/IP decision makers in agencies, who have to keep dealing with the unreasonable applicants is too high a price to keep paying.

I would note here that significantly, the Queensland Ombudsman, previously the Queensland Information Commissioner, in his submission to the Solomon Review, recommended that agencies be given the power to refuse a vexatious application.

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

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

10.5. If so, what should the timeframes be?

Very few jurisdictions nationally or internationally have imposed timeframes for external review. It is well known that many Information Commissioners have been swamped with reviews, with consequent delays and backlogs. “Justice delayed is justice denied”. From an applicant’s point of view, delay can significantly reduce the value of the information finally obtained, for both media and individual applicants. Ireland requires that the Commissioner make a decision within 4 months of receipt (s.34(3) Irish FOI Act). The OIC’s current turnaround for early resolution matters is around 4-5 months. While a deadline in the Act would impose some additional strain on the OIC, its existence may speed up the current delays waiting for applicants and third parties to respond to correspondence and submissions.

Additional delays are caused by third party appeals, where the agency decision to release is not implemented for months. Perhaps an amendment could be that priority, or a shorter timeframe (say 2 months), is given to dealing with third party appeals in order to fast-track the release of documents which have already been determined as in the public interest.

11.Annual reporting requirements

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

At the outset, I should emphasise that I am no longer in a position where I have to check and collate the statistics for the annual report, but I recall the process as very time-consuming. I am probably one of the few people who look in detail at the statistics published, and use them for a variety of research purposes, such as preparing for an in-house training session, to see the most commonly-used exemptions, the volume of material processed etc. Of course, the real value of the statistics is for more important evaluation activities, and to that extent, I would prefer not to see the requirements reduced. However, I am mindful of the burden on agencies whose resources are already stretched to the limit, and so I would support some level of reduction, or development of IT systems to assist agencies and streamline the collection of the data.

12.Other issues?

Are there any other relevant issues concerning the operation of the RTI Act or Chapter 3 of the IP Act?

There are a number of other issues which I will address briefly due to time constraints.

12.1 Definition of "Personal Information"

I would strongly recommend defining the term to specifically include certain aspects, and exclude others (particularly those relating to public officials.) At a minimum, some information relating to routine work information of public servants should be excluded in the definition, rather than merely in OIC Guidelines as at present. The breadth of the current definition has led to excessive third party consultation with public servants, excessive redaction of harmless information relating to public servants, and to voluminous applications by public servants where charges are not applicable. (Example: "I want all emails containing my name in X period held by Y agency" by a member of staff. The emails located would include emails about agency activities (office cleaning, pest control etc) addressed to the applicant as one of thousands of agency staff).

One example is in the Irish FOI Act (based on the Canadian Privacy Act s.3): [I have omitted parts of the definition]

> *s. 2 ''personal information" means information about an identifiable individual that:*
> *(a) would, in the ordinary course of events, be known only to the individual or members of the family, or friends, of the individual, or*
> *(b) is held by a public body on the understanding that it would be treated by it as confidential,*
> *and, without prejudice to the generality of the foregoing, includes:*
> *(i) information relating to the educational, medical, psychiatric or psychological history of the individual,*
> *(ii) information relating to the financial affairs of the individual,*
> *(iii) information relating to the employment or employment history of the individual,*
> *(v) information relating to the criminal history of the individual,*

(vi) information relating to the religion, age, sexual orientation or marital status of the individual,

(vii) a number, letter, symbol, word, mark or other thing assigned to the individual by a public body for the purpose of identification or any mark or other thing used for that purpose,

(x) the name of the individual where it appears with other personal information relating to the individual or where the disclosure of the name would, or would be likely to, establish that any personal information held by the public body concerned relates to the individual,

(xi) information relating to property of the individual (including the nature of the individual's title to any property), and

(xii) the views or opinions of another person about the individual,

***but does not include**: [my emphasis]*

(I) in a case where the individual holds or held office as a director, or occupies or occupied a position as a member of the staff, of a public body, the name of the individual or information relating to the office or position or its functions or the terms upon and subject to which the individual holds or held that office or occupies or occupied that position or anything written or recorded in any form by the individual in the course of and for the purpose of the performance of the functions aforesaid,

(II) in a case where the individual is or was providing a service for a public body under a contract for services with the body, the name of the individual or information relating to the service or the terms of the contract or anything written or recorded in any form by the individual in the course of and for the purposes of the provision of the service, or

(III) the views or opinions of the individual in relation to a public body, the staff of a public body or the business or the performance of the functions of a public body;

Australian examples can be seen in the WA Act (Schedule 1 Clause 3(3)):

"(3) Matter is not exempt matter under subclause (1) merely because its disclosure would reveal, in relation to a person who is or has been an officer of an agency, prescribed details relating to —

(a) the person;

(b) the person's position or functions as an officer; or

(c) things done by the person in the course of performing functions as an officer.

(4) Matter is not exempt matter under subclause (1) merely because its disclosure would reveal, in relation to a person who performs, or has performed, services for an agency under a contract for services, prescribed details relating to —

(a) the person;

(b) the contract; or

(c) things done by the person in performing services under the contract."

Also in the NSW GIPA Act in Schedule 4 Clause 4:

(3) Personal information does not include any of the following:

(b) information about an individual (comprising the individual's name and non-personal contact details) that reveals nothing more than the fact that the person was engaged in the exercise of public functions.

12.2 Extension of "Neither Confirm nor Deny" provision

The definition of "prescribed information" for Section 55 (Neither Confirm nor Deny (NCND)) should be extended to cover the exemptions in Schedule 3, Clause 7 (Legal Professional Privilege) and 8 (Breach of Confidence). I have experience of applications framed in terms which require the NCND response, for example: "I seek any legal advice provided to the agency supporting Decision X, or that the interpretation of term Z excludes ABC", in other words, an affirmative response exempting the documents would reveal at least part of their substance. For Clause 8, an application could be framed as "I seek any information provided by person / company X about topic Y " where the information was given in confidence (but not in a law enforcement context or Clause 10 would cover it) and confirming its existence would cause detriment. If it would assist the steering committee I would be happy to discuss and provide more examples in support. The UK FOI Act allows the NCND response to be provided in relation to all of their exemptions.

12.3 Factors Particular to Applicant – Marke decision

The NSW GIPA Act includes a provision in section 55:

> ***55 Consideration of personal factors of application***
> *(1) In determining whether there is an overriding public interest against disclosure of information in response to an access application, an agency is entitled to take the following factors (the* ***"personal factors of the application"*** *) into account as provided by this section:*
> *(a) the applicant's identity and relationship with any other person,*
> *(b) the applicant's motives for making the access application,*
> *(c) any other factors particular to the applicant.*
> *(2) The personal factors of the application can also be taken into account as factors in favour of providing the applicant with access to the information.*
> *(3) The personal factors of the application can be taken into account as factors against providing access if (and only to the extent that) those factors are relevant to the agency's consideration of whether the disclosure of the information concerned could reasonably be expected to have any of the effects referred to in clauses 2-5 (but not clause 1, 6 or 7) of the Table to section 14.*
> *(4) An applicant is entitled to provide any evidence or information concerning the personal factors of the application that the applicant considers to be relevant to the determination of whether there is an overriding public interest against disclosure of the information applied for.*
> *(5) An agency may, as a precondition to providing access to information to an applicant, require the applicant to provide evidence concerning any personal factors of the application that were relevant to a decision by the agency that there was not an overriding public interest against disclosure of the information and, for that purpose, require the applicant to provide proof of his or her identity.*
> *(6) An agency is under no obligation to inquire into, or verify claims made by an access applicant or any other person about, the personal factors of the application but is entitled to have regard to evidence or information provided by the applicant or other person.*

This explicitly allows consideration to be given to particular factors of the applicant in making an access decision, following the decision in *Marke* by the Victorian Court of Appeal[1], which has been endorsed by the Queensland Information Commissioner as applicable in Queensland. Given the long-standing view of "Release under FOI is release to the world", the insertion of a provision similar to the NSW s55 would make clear to decision makers that it is quite valid to take into account, where relevant, factors particular to an applicant. This increases the number of release decisions, which is in keeping with the pro-disclosure bias.

12.4 Fees and Charges – other

Agencies should be given the power to refuse a new application from the same applicant if past charges have not been paid. I know of cases where an applicant abandons their application before paying the charges, then makes a new application, knowing that the documents have been assembled and the work effectively completed, with little additional time required. Although the agreement under a CEN forms a basis for an agency to attempt recovery of a debt due, virtually no agency pursues this approach. A "penalty" of this nature within the RTI Act would be a more effective deterrent to this conduct by an applicant.

The Irish FOI Act has a provision allowing for this in section 10(1)(f) which provides that the agency may refuse a request if:

> *"(f) a fee or deposit payable under section 47 in respect of the request concerned or in respect of a previous request by the same requester has not been paid."*

12.5 Substantial and Unreasonable Diversion of Resources

This refusal provision has in my view been under-utilised in the past, leading to applications where hundreds of agency hours have been expended on a single application. This is sometimes linked with the behaviour of unreasonable and repeat applicants, which have been addressed several times elsewhere in this submission.

While there has always been understandable reluctance to place a quantifiable upper limit to the resources which would be "substantial and reasonable" (changing as it does with factors such as the size and capacity of the agency, and the value of the information sought, amongst many others), I would like to point out that the Australian Information Commissioner in his review of Fees and Charges, recommended placing an absolute cap of 40 hours on the equivalent Commonwealth provision. As this is coming from an Information Commissioner, rather than from agencies, this review should give more weight to his recommendation.

12.6 Form of Access exception

As referred to above (in 7.10) , I recommend an additional exception be provided in section 68(4) Form of access, that access in the form requested would be contrary to the public interest. This would allow some flexibility to decision-makers where the disclosure of the material itself does not cause the harm, but the form of access may lead to harm.

[1] *Victoria Police v Marke* [2008] VSCA 218

Another situation, other than my example in 7.10, where this may be useful would be as follows: During a child protection case conference, allegations made by a child against their parents are read out to the parents in an attempt to resolve the case. When the parents apply for a copy under RTI , it is difficult to argue confidentiality as it has been read out. However, a hard copy in the hands of the parents could be damaging to the child at some future point. The decision on access could be to allow inspection but not a copy.

Such a provision is in section 72(2) of the NSW GIPA Act:

> *(2) The agency must provide access in the way requested by the applicant unless:*
> *(d) there is an overriding public interest against disclosure of the information in the way requested by the applicant.*

12.7 Stay pending appeal

There should be a provision for a stay of release of documents pending appeal to QCAT.

12.8 Disclosure Log

The purpose of the Disclosure Log, from its first appearance in the UK FOI Act, was to maximise public access to the information disclosed under FOI requests. A crucial difference between the UK FOI Act and the Queensland RTI Act is that it is not possible to seek personal information under the UK Act and so this could never appear in released documents.

Necessary exceptions to publication include not only whether the documents include any personal information of the applicant, but also first-party access to one's own business or research information, and also where factors particular to the applicant led to the release decision (see recommendation in 12.3 above re Marke decision). Both the NSW and federal Acts include some useful exclusions. A clearer statement of the exclusions, and greater discretion whether or not to include documents, should also improve the situation where third parties are less likely to agree to release to the applicant, when they are told of the necessity for inclusion in the Disclosure Log. Many of these cases are of little or no interest to anyone other than the parties concerned (often dispute or complaint-related).

However, I also think the general discretionary element for inclusion needs to be reinstated or given more emphasis. Disclosure logs brimming over with released information of dubious interest or benefit to the public, undermine the very purpose they were designed to achieve: finding useful information is like looking for a needle in a haystack. Items which had been requested (either under RTI or via the Disclosure Log) more than once should also received some priority ranking, or a way of being more easily located, as they have demonstrated their value to the public.

The recent amendments to s78, requiring the publication of the request before it has even been determined, are completely misplaced in something called a "Disclosure Log". I consider these amendments are a disincentive to investigative journalists, who lose the benefit of their initiative before they have even received any documents. They should be repealed.

12.9 Offences

The NSW *GIPA Act* includes 2 additional offence provisions which I would recommend be included in the Right to Information Act.

> ***116 Offence of acting unlawfully***
>
> *An officer of an agency must not make a reviewable decision in relation to an access application that the officer knows to be contrary to the requirements of this Act.*
>
> *Maximum penalty: 100 penalty units.*
>
> ***120 Offence of concealing or destroying government information***
>
> *A person who destroys, conceals or alters any record of government information for the purpose of preventing the disclosure of the information as authorised or required by or under this Act is guilty of an offence.*
>
> *Maximum penalty: 100 penalty units.*

_____

Note about the author:
I have been working in the field of FOI since late 1981. Initially I was involved in the implementation of FOI in the Commonwealth government, then in NSW, Queensland, and the Northern Territory; I have also worked on implementing FOI in Ireland, the United Kingdom, the Cayman Islands and China. Much of this time has been as an FOI practitioner, consultant and trainer.

I worked with the Department of Justice and the Attorney General on the implementation of FOI into Queensland in 1992-3, and since that time have regularly provided training and advice to decision-makers in Queensland. I was closely involved in the development of guidelines under, and training decision-makers in, the new *Right to Information* and *Information Privacy Acts* since 2009. I have trained over 1000 staff of Queensland agencies in the new provisions.

I have been the Director of Information Consultants Pty Ltd since 1998. I was appointed an Honorary Senior Research Fellow with the Constitution Unit at University College London in 2003. In 2006 I coauthored a book on "FOI: Balancing the Public Interest" (2nd edition, published by UCL London).

Attachment 1: Redraft of Schedule 4 Parts 2 and 3 – omitting Part 4

Schedule 4 Part 2: Factors favouring disclosure in the public interest

Government Accountability
Disclosure of the information could reasonably be expected to enhance accountability of the Government or an agency.
Disclosure of the information could reasonably be expected to enhance accountability for expenditure of public funds.
Disclosure of the information could reasonably be expected to reveal environmental or health risks or measures relating to public health and safety.
Disclosure of the information could reasonably be expected to reveal deficiencies, or assist inquiry into possible deficiencies, in the conduct or administration of an agency or official.
Disclosure of the information could reasonably be expected to reveal the reason for a government decision and any background or contextual information that informed the decision.

Participation in Government
Disclosure of the information could reasonably be expected to promote open discussion of public affairs.
Disclosure of the information could reasonably be expected to contribute to informed debate on important issues or matters of serious interest.
Disclosure of the information could reasonably be expected to inform the community of the Government's operations, including, in particular, the policies, guidelines and codes of conduct followed by the Government in its dealings with members of the community.

Individual Rights
The information is the applicant's personal information.
Disclosure of the information is reasonably considered to be in a child's best interests.
The information is the personal information of an individual who is deceased (the ***deceased person)*** and the applicant is an eligible family member of the deceased person.
Disclosure of the information could reasonably be expected to assist a person to seek a legal remedy.
Disclosure of the information could reasonably be expected to advance the fair treatment of individuals and other entities in accordance with the law in their dealings with agencies.
Disclosure of the information could reasonably be expected to contribute to the administration of justice generally, or for a person, including procedural fairness.

Other
Disclosure of the information could reasonably be expected to reveal that the information was—
(a) incorrect; or
(b) out of date; or
(c) misleading; or
(d) gratuitous; or
(e) unfairly subjective; or
(f) irrelevant.
Disclosure of the information could reasonably be expected to contribute to the facilitation of research.

AND any other factors favouring disclosure in the public interest.

Part 3: **Factors favouring nondisclosure in the public interest**

Functions of Government
Disclosure of the information could reasonably be expected to prejudice the effectiveness, or conduct, of tests, investigations, audits or reviews.
Disclosure of the information could reasonably be expected to prejudice the management functions of an agency, including staff management or the conduct of industrial relations.
Disclosure of the information could reasonably be expected to prejudice an agency's ability to obtain confidential information.
Disclosure of the information could reasonably be expected to prejudice a deliberative process of government.
Disclosure of the information could reasonably be expected to prejudice intergovernmental relations, including by divulging information of a confidential nature that was communicated in confidence by or for another government.
Disclosure of the information could reasonably be expected to prejudice the security or good order of a corrective services facility.
Disclosure of the information could reasonably be expected to prejudice the economy of the State.
Disclosure of the information could reasonably be expected to expose any person to an unfair advantage or disadvantage as a result of the premature disclosure of information concerning any proposed action or inaction of the Government or an agency.

Individual Rights:
Disclosure of the information could reasonably be expected to be an unreasonable interference with [or have an unreasonable impact on] an individual's privacy.
The information is the personal information of a child and disclosure of the information is reasonably considered not to be in the child's best interests.
The information is the personal information of an individual who is deceased (the ***deceased person)*** and the disclosure of the information could reasonably be expected to impact on the deceased person's privacy if the deceased person were alive.
Disclosure of the information could reasonably be expected to prejudice the fair treatment of individuals and the information is about unsubstantiated allegations of misconduct or unlawful, negligent or improper conduct.
Disclosure of the information could reasonably be expected to impede the administration of justice generally, or for a person, including procedural fairness.

Business :
Disclosure of the information could reasonably be expected to prejudice the business, professional, commercial or financial affairs of entities.
Disclosure of the information could reasonably be expected to diminish the value of trade secrets of, or information of a commercial value to, an agency or person.
Disclosure of the information could reasonably be expected to prejudice the competitive commercial activities of an agency or person.
Disclosure of the information could reasonably be expected to have a substantial adverse effect on the financial or property interests of the State or an agency.
Disclosure of the information could reasonably be expected to prejudice the conduct, effectiveness or integrity of research of an agency or a person.

Other
Disclosure of the information could reasonably be expected to impede the protection of the environment.

AND any other factors favouring non-disclosure in the public interest.

Attachment 2: Time and Harm Based Weighting Guide

This is not a draft of such a Guide, but merely a list of suggested elements which could be included. The Solomon Review Report provides a number of other elements.

Inter-governmental relations: 10 year time limit
Financial and property interests of agency or government: 8 year time limit

Deliberative Process

- If the deliberative processes include public consultation, the public interest against disclosure can only be considered until the public consultation starts.
- This public interest consideration does not apply for information to the extent it consists of factual or statistical information; or expert opinion or analysis.
- It also does not apply to the record of, or statement of the reasons for, a decision, order or ruling.
- 5 year time limit

Personal Information

- likely to be greater harm if it was also conveyed in circumstances of confidentiality;
- likely to be greater harm when it consists of "sensitive information" as per definition in Information Privacy Act;
- likely to be less harm if information about another person is being disclosed to the person who provided the information
- consider the following as likely to reduce potential harm of release:
    - (a) the extent to which the information is well known;
    - (b) whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document;
    - (c) the availability of the information from publicly accessible sources.

Business Information:

- 5 year time limit – can be extended once by a further 5 years on application to OIC.
- likely to be greater harm if it was also conveyed in circumstances of confidentiality
- consider the following as likely to reduce potential harm of release:
    - (a) the extent to which the information is well known;
    - (b) whether the person / entity to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document;
    - (c) the availability of the information from publicly accessible sources

Prejudice future supply of confidential information:

- likely to be less or no harm when government agency has power to compel provision of information
- Contractors to government – add into the list of those excluded for deliberative process information
- for non-personal information - 5 year time limit – can extend once by 5 years on application to OIC;
- personal confidential information – no time limits

General Principles of Time-Based Harm

- likely to be greater harm before decisions are made and announced
- likely to be less or no harm after the decision has been made or announced
- likely to be greater harm before investigations, reviews, audits have been completed
- likely to be less or no harm after they have been completed