REVIEW OF THE INFORMATION PRIVACY ACT 2009
RIGHT TO INFORMATION ACT 2009 and
CHAPTER 3 OF THE INFORMATION PRIVACY ACT 2009

INFORMATION PRIVACY ACT 2009		
	Question	**Comments**
2.0	*Does the IP Act inappropriately restrict the sharing of information? If so, in what ways? Do the exceptions need to be modified?*	As outlined in the Discussion Paper, at times it is necessary for two or more agencies of government to work together in the interests of the community; and there are times when they also expect or prefer, that their information is shared between agencies rather than have to repeat the information to a number of agencies. From time to time Council receives correspondence that does not come under its jurisdiction. For example, where the individual has identified a specific issue that they want rectified, however they have misdirected their request. It may be a matter that should be referred to the Queensland Police Service, or Main Roads Department, etc for action. It is often a risk for agencies to rely on 'implied agreement' as an authority to disclose personal information as it is an objective test that is made by the agency to determine what the individual's actions mean. This necessitates seeking the individual's express consent to pass the information onto another agency to ensure that personal information is not inappropriately disclosed.
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, would be consistent with other jurisdictions and international instruments.
6.0	*Does section 33 present problems for agencies in placing personal information online?*	Yes. The identification of the storage location of information provided by contractors and vendors has always been problematic as they are uncertain of not only where the data is stored, but also when some cloud services are replicated overseas for disaster recovery.
7.0	*Should an 'accountability' approach be considered for Queensland?*	No.
8.0	*Should the IP Act provide more detail about how complaints should be dealt with?*	The IP Act does not clearly state the role of the Information Commissioner should the complainant wish to appeal the agency's decision in relation to an alleged breach under the Act.
9.0	*Should the IP Act provide more flexibility about the timeframe for complaints to the OIC to be lodged?*	Yes. While some privacy complaints may require 45 days or more to resolve, where the complainant receives a response to their privacy complaint quickly, they should not have to wait until 45 business days have elapsed before bringing the complaint to the Information Commissioner. The timeframe in the Act could be amended to be either 5 business days after receipt of the response by the complainant or 45 business days after making the complaint which ever is sooner.
12.0	*Should the definition of 'generally available publication' be clarified? Is the Commonwealth provision a useful model?*	The suggested amendment would provide clearer guidance about what constitutes a 'generally available publication'.
13.0	*Should the reference to 'documents' in the IPPs be removed; and if so, how would this be regulated?*	No.

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, IPP4 should be amended. What is 'reasonable' will depend on the individual circumstances, eg the nature of the information, the cost of the measure to be taken, available resources, physical limitations. OIC may need to develop guidelines about the 'reasonable steps' agencies should take to prevent the misuse and loss of personal information.
15.0	*Should the words 'ask for' be replaced with 'collect' for the purposes of IPPs 2 and 3?*	Yes.

RIGHT TO INFORMATION ACT 2009 and CHAPTER 3 of the INFORMATION PRIVACY ACT 2009		
	Question	**Comments**
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 outlined in the Discussion Paper, the grounds to refuse access to information, the timeframes and all other processes are the same under both Acts (except for an application fee and processing charges under the RTI Act). The same form is used for both access applications. The overlap can lead to confusion for agencies and the public. Determining which Act applies is difficult to determine in some cases. However, agencies are directed to the RTI Act when deciding the grounds on which they may refuse access to personal information. The process to be followed when an application is made under the wrong Act, also adds to the administrative burden. While it is agreed that access and amendment rights regarding one's personal information are generally regarded as fundamental privacy rights, the cross referencing between the two Acts has not made the process simpler or quicker for applicants or for agencies.
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.
3.2	*Should the requirement for an agency to again consider whether the application can be made under the IP Act be retained?*	No. As stated in the Discussion Paper, if an agency has decided the application cannot be made under the IP Act, it is unlikely to change its decision at a later time.
3.3	*Should the timeframe for section 54(5)(b) be 10 business days instead of calendar days, to be consistent with the timeframes I the rest of the Act?*	Yes.
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?*	No. This would mean that if the RTI/IP Acts extended to documents held by a contracted service provider delivering services to the public on behalf of Council, we would need to take contractual measures to ensure that if an RTI request is made, Council receives documents that relate to the performance of the contract. The administrative burden of the proposal and potential cost to the contractor would be a concern. No doubt, issues such as disclosure of trade secrets, information of commercial value, the purpose or results of research, or other information of a confidential nature, including personal information, would have implications.

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. Previously, Council designed its own form which provided relevant details to the applicant, and also assisted the applicant in submitting their request in writing. Generally, this Council's need to deal with non-compliant applications under the current legislation has been minimal. The application form, however, does create confusion, both with applicants and agencies, and needs to be simplified. One way of reducing some of the confusion, and the amount of information applicants are required to enter on the form is to provide a "template form" which allows each agency to tailor the form for their organisation. As stated in the Discussion Paper, other Australian jurisdictions simply require applications to contain an address to which notices can be sent, and provide a certain amount of detail about the documents or information requested. The current application form could be reduced to one page containing the following information: • Applicant details, eg surname, given names, telephone, address where notices relating to the request can be sent (postal address or electronic) • Identification (if they are seeking access to their personal information) • Legal representative or other party acting on behalf of the applicant • Application details (description of the documents sought) • Form of access • Signature, date A brief and simple one page information sheet containing other relevant information could accompany the application form, eg fees and charges which may apply, agency contact details.
6.2	*Should the amendment form be retained? Should it remain compulsory?*	Our agency rarely receives amendment applications. However, the amendment form does not create the confusion that the access application form does. As stated in the previous response, an application form is preferred, so that all necessary information is captured.
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. • As mentioned in the Discussion Paper, if an applicant mistakenly applies for documents under the RTI Act which are available under another scheme. • If an applicant withdraws their application prior to any significant processing of the application.
6.9	*Is the current system of charges estimate notices beneficial for applicants? Should removing the charges estimate notice system be considered?*	The process for charges estimate notice is complex and it is difficult to estimate the charges. To be able to estimate the charges, agencies have usually done a good percentage of the work involved in processing the application. Where an applicant reduces the scope of their application, agencies have to "write off" the work that they have already done. The processing charges should be based on two elements: • A charge for work already done by the agency, for example, in search and retrieval of documents. • An estimated charge for work still to be done to make a decision whether to grant access, such as examination of documents, consultation with affected third parties.

	If an applicant does not respond to the charges estimate notice within 20 business days, the application is taken to have been withdrawn, and a new application is required with new application fee. If the second application is exactly the same as the original application, then agencies should be able to charge for work done on the first application. The Act should clearly state that once the applicant has accepted the charges estimate notice, they are liable for the charges, whether or not they access the documents. A charges estimate should only be required when the estimated time to process the application exceeds 5 hours.
6.10 *Should applicants be limited to receiving two charges estimate notices?*	Yes. After the applicant is given notice of the estimate of charges, and the applicant contests the charges, the agency has 20 business days to notify the applicant of the decision on the final amount of the charge payable. The applicant has a right to seek internal or external review of the decision to impose the charge.
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?*	Calculating the amount of the charge is one of the most difficult aspects of the legislation. The way one agency calculates their charge will be different to another.
6.12 *Should the requirement to provide a schedule of documents be maintained?*	Yes. As outlined in the Discussion Paper, the aim of the schedule is to allow applicants to identify documents they wish (or do not wish) to seek access to. There have been occasions where applicants have reduced the scope of their applications on the basis of the schedule. Having said that, the ability to consult direct with the applicant should also be available. Where charges are likely to be high, for example, where there is a high volume of documents within the scope of the request, agencies should consult with applicants about the possibility of reducing charges by reducing the scope of the request, before a charges estimate notice is sent. This helps agencies and the applicant focus their request on the documents they really want. Consulting at an early stage in the evaluation process has the benefit of providing the applicant with an opportunity to reconsider the scope of his or her request. The applicant may then choose to proceed or, alternatively, refine or withdraw the request. Consultation will also allow agencies to plan their resources for the purpose of processing the application.
6.13 *Should the threshold for third party consultations be reconsidered?*	No. What is "substantial" concern? It's either a concern or it is not.
6.14 *Should the Acts set out the process for determining whether the identity of applicants and third parties should be disclosed?*	The identity of the applicant should not be released unless permission has been sought from, and granted by, the applicant. As stated in the Discussion Paper, failure to seek consent could amount to a breach of the privacy principles. Nevertheless, in some situations, a person being consulted may be more likely to agree (or disagree) to the disclosure of their information if they know the identity of the applicant. It may help them frame specific and valid objection to the disclosure. Also, it may assist the decision-maker to know the attitude of the consulted party to disclosure to a particular applicant. However, the decision-maker must take care not to allow his or her decision to be influenced by any stated or assumed purposes of the applicant in making the request for access.

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?*	This additional provision would ensure that the final decision is made by the most appropriate agency. This means if there are other documents that fall within the scope of the request it must consider those documents as well the documents which were transferred. Agencies would need to be clear on the meaning of 'more closely related to'. To determine whether the documents are '*more closely related*' to the activities of the agency, the functions of the agency must be determined. Just because a document was produced by an agency does not necessarily make that document more closely related to that agency.
6.16	*How could prescribed written notice under the RTI and IP Act be made easier to read and understood by applicants?*	A statement of reasons should not be required where an agency is allowing access to all documents in accordance with an applicant's request.
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?*	All of the factors in Part 4 cross-over into Part 3 factors to some extent, and should be amalgamated. Some of the factors in favour of disclosure may appear to contradict the factors favouring non-disclosure. This is why applying the public interest test can be difficult and complex.
8.2	*Should fees and charges be imposed equally on all applicants? Or should some applicants pay higher charges?*	As outlined in the Discussion Paper, costs recovered under the RTI and IP Acts are only a small proportion of the actual costs spent by agencies in administering the legislation. Quite often, the work in processing an application under the IP Act is greater than applications under the RTI Act. Processing charges should also apply to requests for documents that contain personal information about the applicant, at the same rate as for non-personal information, but perhaps with a ceiling amount attached to the charge, for example (based on current charges), $6.45 per 15 minutes or part thereof, to a maximum charge of $51.60. Amend the 15 minute rate to an hourly rate.
9.1	*Should internal review remain optional? Is the current system working well?*	Yes. I believe that the current optional system is working well. In addition to the reasons for optional review outlined in the Discussion Paper, is that it removes the perception of the Act operating in an overly bureaucratic fashion, when applicants were forced to go through two processes when they were dissatisfied with an agency's decision.
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. The term 'sufficiency of search' should also be included in the list of 'reviewable decisions'.
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. Agencies should be able to request an extension of time so that they can continue to deal with internal reviews, similar to seeking an extension of time to process an access application. While the Act considers that a reasonable time for completing an internal review is 20 business days from the date of the request for review, there may be a small number of cases which involve exceptional circumstances where it may be reasonable to take longer. In these circumstances, the agency should notify the requester, explain why more time is needed and give an estimate of the completion date. However, in our view, the total time taken for review should not exceed 40 business days. If appealed, the agency would be required to demonstrate that it had acted promptly in response to the request for review and that it had actively worked on it throughout that period.

	Internal review is an important second opportunity for agencies to engage with an applicant and there are clear benefits to both parties if the review is concluded within a reasonable timeframe. Circumstances relating to a request might change between the time the authority made its decision about a request and the time it undertakes an internal review. Agencies should reconsider their decisions based on factors at the time the original decision was made. However, if circumstances at the time of review are such that the agency can now release the information, it should do so.
11.1 *What information should agencies provide for inclusion in the Annual Report.*	It could be argued that community interest in the information contained in the annual report, is minimal. Information that agencies should provide should be limited to: • Number of applications received (access and amendment) • Number of refusals to deal • Number of refusals of access (excluding number of times provision invoked as a provision could have been invoked a number of times on the same page) • Number of deemed decisions • Number of refusals of amendment • Number of internal reviews received • Number of external reviews received