PART 1 – Objectives of the Act – 'Push Model' strategies

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

Sunshine Coast Council supports that the object of the RTI act is still relevant.

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

Sunshine Coast Council supports that the 'push model' strategy is still appropriate and effective.

PART 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?

Sunshine Coast Council would support a change to the legislation to allow for a single point of access for both personal & non personal information.

The main differences between processing an application under the RTI Act, compared to the IP Act, are:

1 Fees and processing charges
2 The charges estimate notice and revision period
3 Considering whether to include documents on the disclosure log

Section 34(4) of the RTI Act suggests the legislation has already been designed to be able to process applications which could have been made under the IP Act. However, the only occasion when they can be processed under the RTI Act, is when the requirements of section 34(4) are met.

When an application for access to personal information is processed under the RTI Act in accordance with section 34(4), we submit that the final access decision and outcome is the same.

A single point of access will eliminate the multiple steps and notices required to move the assessment of applications from one Act to another. It will bring the two duplicated processes into a single more streamlined process.

PART 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?

Sunshine Coast Council would support a change to the legislation to allow for the processing period to be suspended while consulting about what act the application can be dealt with as this can be a time consuming exercise, predominantly when waiting for a response from the applicant confirming their agreement.

Note - This question would become irrelevant if the RTI Act is made a single entry point (see response to section 2.1).

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

Yes. Ideally, if the application form was redesigned so that the applicant didn't need to make the decision on what Act, the agency could review the application details when received, make a call on what the relevant Act was for processing and include this in an acknowledgement letter issued to the applicant.

Note - This question would become irrelevant if the RTI Act is made a single entry point (see response to section 2.1).

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?

Sunshine Coast Council would support a change to the legislation to enable a consistent approach in the Act to reflect the use of business days instead of calendar days.

PART 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?

The first step to consider is the agency communicating with the applicant to guide them to the correct agency in which they need to make application. Administratively, this could be costly in the time taken to review the application, communicate with the applicant and arrange a refund of the application fee. However, if the applicant is determined that the receiving agency process their application the following two scenarios are considered.

1. If a document is not a document of the agency but the agency is in possession of a copy of the document, consideration should be given that the application could be processed and the document considered through third party consultation.

2. If the documents are not in the possession of the agency or Minister, section 52 could be referred to on the basis that the document is 'non-existent'.

Further consideration should be given to section 52 he problem, we submit, is that section 52 does not clearly specify whether every document that does not exist is also not a 'document of an agency'. For example, a document may exist outside of the agency, but if it "does not exist" in the agency, could section 52 be used?

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?

To protect the right of review for the applicant, it should be a reviewable decision.

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

10 business days is considered an acceptable period in which to make a decision regarding the scope.

4.4 Should the way the RTI Act and Chapter 3 of the IP Act applies to Government Owned Corporations (GOCs) be changed? If so, in what way?

This is not considered relevant to Council as an agency.

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?

This is not considered relevant to Council as an agency.

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.

Contracted service providers are already subject to competitive procurement or tender processes and scrutiny outside of the RTI Act. We submit this diminishes the weight of public interest factors favouring disclosure in relation to expenditure of public funds and accountability, while adding to the weight of factors favouring nondisclosure in relation to business affairs of contractors.

In accordance with legislative requirements, Council already publishes details of the value of awarded contracts and the names of the successful suppliers. These details are available on our website:

http://www.sunshinecoast.qld.gov.au/sitePage.cfm?code=awarded-tenders

Furthermore, agencies already hold copies of documents of a contracted service provider, or are entitled to access them, which means they are already a 'document of an agency' under the RTI Act.

The preamble to the RTI Act points out that the specific benefit of openness and accountability in government, is to improve government administration decision-making. This benefit specifically comes from openness in government, not openness in the operational details of how a business is performing particular services for which it is contracted by government. It is government administration and decision-making which determines the particular services being outsourced, and then monitors whether performance standards are being met. Decision-making by the contractor is limited to the methodology by which they perform the requisite services. Such methodology has previously been found to be exempt information, for example in the decision *Re Wanless Wastecorp Pty Ltd and Caboolture Shire Council; JJ Richards & Sons Pty Ltd (Third Party)*.

The preamble acknowledges that RTI legislation is *"only 1 of a number of measures"* to increase the flow of government information, with formal applications being necessary "*only as a last resort*". We submit that to expand RTI to include documents held by contracted service providers, should *only* ever be considered as a last resort.

In the event that the RTI Act was changed to apply to documents of contracted service providers, we submit that a threshold should be considered. For example, it should apply only where the value of the contract is over $1 million. We also submit that applicants should be liable for charges levied by a contractor for obtaining the documents, and we note this would currently be the case under section 6(1)(a)(i) of the RTI Regulation and section 4(1)(a)(i) of the IP Regulation.

PART 5 – Publication Schemes

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

Further discussion and consideration needs to occur regarding this topic. There are agencies of differing size, capacity and ability levels who may find it difficult to comply should this become a mandatory requirement of the act. Council has experienced has no real issues in regards to publication schemes up to this point.

5.2 Would agencies benefit from further guidance on publication schemes?

Further discussion and consideration needs to occur regarding this topic. Council has no real issues in regards to publication schemes up to this point. Please see comments in section 5.1 above.

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

There are no submissions or comments in regards to this item.

PART 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?

By making the form compulsory, applicants are prompted to provide specific information that makes processing of an application easier. Although some applicants do not provide adequate information, prompts on an application for can assist in the decision making process starting quickly once an application is received. It is noted that there are regular applicants (ie. Media) who would benefit from the ability to not be regulated by an application form but streamlining this requirement through an application form is a good process decision for managing applications under the Acts.

In compromising what information the applicant needs to know or provide, consideration should be given to the applicant not having to specify under what legislation their application is made. Agencies should have flexibility to determine this at the time the application is lodged. Applicants should be encouraged to make contact with the agency prior to making application to determine the need for a fee or not when it involves documents of a non personal nature.

Another observation is that the current form has the Queensland Government branding and logo. At times, applicants intending to apply to Council have instead submitted their application to a State Government agency.

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

There are no submissions or comments in regards to this item as council has not received any amendment applications.

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?

The list of qualified witnesses should be expanded to include an officer of the agency to which the application is made. At Council, this would allow our customer service staff at the public counters across our region to certify applicants' evidence of identity.

6.4 Should agents be required to provide evidence of identity?

As with verifying an applicant's identity, the legislation's non-exhaustive list of the types of evidence of identify allows agencies to be satisfied of identity by any means deemed appropriate. OIC guidelines clarify that a letter printed on the law firm's letterhead and signed by the principal of the firm may be sufficient to verify a legal representative's identity.[1]

Under the previous FOI regime, evidence of the agent's identity was not specifically required.

In these circumstances, we submit that agents should not be required to provide evidence of identity. We submit that a return to the simpler arrangements set out in section 105 of the repealed *Freedom of Information Act 1992* should be considered.

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

We note that the only specific provisions which the legislation makes for the application fee to be refunded, are if the application is transferred to the IP Act, or if a deemed decision is made. However, the legislation does not otherwise specifically prohibit or prevent a fee being refunded. On some rare occasions we have refunded the application fee when the applicant withdrew their application.

It may be useful if an OIC guideline or the legislation clarified that an agency may refund the application fee in other circumstances, at the agency's sole discretion.

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

There are no submissions or comments in regards to this item as council has not received any applications of this type.

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 would be useful for this further specified period to begin at the end of the processing period. Whilst we endeavour to continue to meet our deadlines, there may be instances where we may not always continue processing the application until we have received confirmation from the applicant.

[1] http://www.oic.qld.gov.au/guidelines/for-government/access-and-amendment/receiving-and-assessing-applications/evidence-of-authority-and-identity

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?

The Act currently sees an application that doesn't meet the decision date to be a deemed refusal. It would be inappropriate for an agency to continue processing an application outside of the timeframe without the consent of the OIC to do so.

If the Act was to be amended to allow further processing then there needs to be strict guidelines in place for agencies to follow in this regard. Whilst it may allow agencies to resolve applications without them proceeding to review, there is concern about administering this and keeping a good rapport with applicants and having clear timeframes in place for the processing of applications.

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

In our experience, it is difficult to estimate charges and provide a schedule of documents under section 36 without first obtaining all the relevant material. Conducting searches and retrieving documents can itself be quite time consuming, depending on the scope of the application.

Once we have the estimate of charges, it is true that applicants have then withdrawn or narrowed their application. The legislation review could consider imposing a minimal amount to be paid (perhaps a percentage) of the original charges estimate should it be narrowed (especially for a case where a charges estimate is high, considerable work has been done to collate information for the CEN then the scope is narrowed so that no charges are payable).

We submit that the schedule of documents in section 36 is only ever beneficial to an applicant in considering how they may narrow the scope of their application. The requirement to provide this schedule should be removed or it should be an opt-in requirement which an applicant can ask for if considering how they may narrow their application.

The charging system should be reconsidered.

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

Yes, to allow agreement for processing of an application to continue in a timely manner.

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

No.

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

The ability for the applicant to choose no schedule should be allowed. The schedule, whilst being a timely exercise to create in some instances, can work well as a cross reference for both the agency when processing the application and the applicant when receiving their documents. However, the content of the 'description' of the document in the schedule should be considered so to protect the document (ie. No personal information of other parties in the schedule)

6.13 Should the threshold for third party consultations be reconsidered?

For any consideration to change the threshold, the review should consider the affect any change would have on whether it is reasonable to disclose applicant's identities to third parties under the IPPs.

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

No. Currently, OIC guidelines have set out considerations for determining whether the identity of applicants should be disclosed. OIC has the freedom and flexibility to amend and update the process in their guidelines, without any need for legislative review.

If some or all of this process were to be set out in the Acts, this would take away take away the OIC's ability to amend the process.

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?

Council consider retracting back to the requirements of the repealed FOI Act while allowed an agency to transfer an application where it held a document but the document was more closely related to the functions of another agency.

This may become an issue for Council as we are currently going through de-amalgamation so clear guidelines on this matter would be appreciated.

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

As previously noted, having a single point of entry would make prescribed notices easier to understand.

Council also consider that issuing an acknowledgement notice would benefit the ability to set out the application received, process to be followed by the agency and confirmation of the legislation that is being applied for the processing of the application.

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?

Council tend to rely on the OIC guideline in this regard but would accept any clarification through legislative change to make this more streamlined. Council tend to err on the side of caution in providing details of a documents existence and in providing details of documents before a decision is reached regarding release

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?

There are no submissions or comments in regards to this item as council has not been presented with this scenario to date.

PART 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?

Council have no current concerns about the current categories of excluded documents.

7.2 Are the exempt information categories satisfactory and appropriate?

Council have no current concerns about exempt information categories.

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?

Council have no current concerns about applying the public interest balancing tests.

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?

Council have no current concerns about applying the current public interest factors.

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

Not relevant to Council as an agency.

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

Not relevant to Council as an agency.

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?

Not relevant to Council as an agency.

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

Not relevant to Council as an agency.

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

Council have no current concerns about these provisions and have not dealt with applications of this kind to date.

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?

Council have no current concerns about these provisions and have not dealt with applications of this kind to date.

PART 8 – Fees & Charges

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

Council would support a review of the current fees & charges regime to recognise the actual work involved in providing access to documents. Council agrees that fee structure does not always reflect the time imposed to process a request.

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

Council would support equal charging for all applicants. Council would support the review considering the ability to waive processing charges. In our experience, we have processed large applications which incurred no processing and access charges because the applicant held a concession card. Council would support waiving the application fee over waiving processing and access 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?

Council have no current concerns as we have not been in this situation to date.

8.4 Should the RTI Act allow for fee waiver for applicants who apply for information about people treated in multiple HHSs?
8.5 If so what should be the limits of this waiver?

Not relevant to Council as an agency.

PART 9 – Reviews & Appeals

9.1 Should internal review remain optional? Is the current system working well?
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 our experience, internal review is valuable when the matter is resolved without proceeding to external review.

We consider that the current system is sound.

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. Even if the current period is not able to be met, give the agency the ability to provide 1 notification to the applicant extending the period by a further 10 business days to complete

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.

Even if the current period is not able to be met, give the agency the ability to provide 1 extension notification to the applicant extending the period by a further 10 business days to complete. It is in the best interests of the applicant to allow a further extension for the agency to complete their review as it may alleviate the need for the applicant to seek an external review.

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.

Council would consider that once an information resolution had been met, any further queries that resulted in the future would need to go direct to external review.

An OIC guideline would be appreciated if this was to be implemented so that agencies could all follow a similar process. It is then easier to amend a guideline as required.

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

Council have no submission regarding this point.

PART 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?
10.2 Are current provisions sufficient for agencies?

It is necessary to strike a balance between affording applicants the opportunity of a sufficiently thorough and independent review, while also preventing repeat applicants consuming too much of OIC resources. It may be inevitable that a few individuals will take advantage of the system to excess.

We consider that some decisions on external reviews by repeat applicants have provided some good and useful case law, which is of benefit to all agencies and the wider community.

In our experience, charges have certainly helped to discourage repeat applicants from abusing the system. It may be beneficial to consider a fee system for external reviews.

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

Council consider that the current provisions are sufficient.

10.4 Should legislative time frames 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?

Although Council would like to see external reviews finalised quickly, we also understand some of the research and review that is required on a large case file presented to them. It may be difficult to impose a timeframe. Council consider that as long as an agency and the applicant are kept informed of the progress then we are happy for the OIC to do the work required to reach a satisfactory outcome.

PART 11 – Annual Reporting requirements

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

Council are comfortable with the current reporting regimes for the annual report.