



LEGAL AFFAIRS AND SAFETY COMMITTEE

Members present:

Mr PS Russo MP—Chair

Ms SL Bolton MP

Ms JM Bush MP

Mr JE Hunt MP

Mr JM Krause MP

Staff present:

Ms R Easten—Committee Secretary

Ms K Longworth—Assistant Committee Secretary

PUBLIC HEARING—OVERSIGHT OF THE INFORMATION COMMISSIONER

TRANSCRIPT OF PROCEEDINGS

MONDAY, 23 MAY 2022

Brisbane

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The committee met at 9.32 am.

CHAIR: Good morning. I declare open the public hearing for the committee's oversight of the Office of the Information Commissioner. I respectfully acknowledge the traditional custodians of the land on which we meet today and pay our respects to elders past and present. We are very fortunate to live in a country with two of the oldest continuing cultures in Aboriginal and Torres Strait Islander people whose lands, winds and waters we all share. My name is Peter Russo, the member for Toohey and chair of the committee. The other committee members here with me today are: Ms Sandy Bolton, the member for Noosa; Ms Jonty Bush, the member for Cooper; Mr Jason Hunt, the member for Caloundra; and Mr John Krause, the member for Scenic Rim. Mrs Laura Gerber, member for Currumbin and deputy chair, is an apology.

Under the Right to Information Act 2009 and the standing rules and orders of the Legislative Assembly, the committee has oversight responsibility for the Office of the Information Commissioner. The committee's oversight functions include: monitoring and review of the performance by the Information Commissioner of its functions; reporting to the Assembly on any matter concerning the Information Commissioner, its functions or the performance of its functions that the committee considers should be drawn to the Assembly's attention; deciding, in consultation with the Information Commissioner, the statistical information agencies and ministers are to give to the commissioner for reports to the committee under section 131; examining each annual report tabled in the Assembly under the act and, if appropriate, to comment on any aspect of the report and to make recommendations; examining each strategic review report tabled in the Assembly under the act and, if appropriate, to comment on any aspect of the report and to make recommendations; and reporting to the Assembly any changes to the functions, structures and procedures of the Office of the Information Commissioner the committee considers desirable for the more effective operation of the act.

The purpose of today's public hearing is to hear evidence from representatives of the Office of the Information Commissioner as part of the committee's oversight. Only the committee and invited witnesses may participate in proceedings today. Witnesses are not required to give evidence under oath, but I remind witnesses that intentionally misleading the committee is a serious offence. These proceedings are similar to parliament and are subject to the Legislative Assembly's standing rules and orders. In this regard I remind members of the public that under the standing orders the public may be admitted to or excluded from the hearing at the discretion of the committee.

The proceedings are being recorded by Hansard and broadcast live on the parliament's website. Media may be present and will be subject to my direction at all times. The media rules endorsed by the committee are available from the committee staff if required. All those present today should note that it is possible you might be filmed or photographed during the proceedings by media and images may also appear on the parliament's website or social media pages. I ask everyone present to turn mobile phones off or to silent.

BOOTH, Mr Paxton, Privacy Commissioner, Office of the Information Commissioner

RANGIHAEATA, Ms Rachael, Information Commissioner, Office of the Information Commissioner

SHEPHERD, Ms Katie, Acting Right to Information Commissioner, Office of the Information Commissioner

CHAIR: I invite you to make a short opening statement after which committee members will have some questions for you.

Ms Rangihaeata: Good morning, Mr Chair and committee members. Thank you for the opportunity to make an opening statement. I would like to acknowledge the traditional custodians of the lands on which we meet and pay my respects to elders past, present and emerging. Today I am joined by the Privacy Commissioner, Mr Paxton Booth, and the Acting Right to Information Commissioner Ms Katie Shepherd. Right to information and privacy have a fundamental impact on trust and confidence in government. Government agencies with strong access to information privacy
Brisbane

practices that support open, accountable and transparent government that protects the community from privacy breaches can build and maintain trust. Trust and confidence is eroded as concerns are raised about secrecy, delay and access to information and appropriate privacy practices, privacy breaches and notification to those affected. When trust balance is low, it affects government's ability to engage the community and other key stakeholders to adopt new initiatives and ensure their effectiveness.

From 2021 we consciously moved our strategic focus to building agency capability, given the increasing agency maturity in most areas. This helps us to focus our resources on strategic and emerging areas, issues of high risk and impact on the community while continuing to support less mature agencies with targeted projects and engagement. Our approach is consistent with appropriate expectations for agency responsibility for leadership, awareness, systems and monitoring performance back through to leadership-driving actions to address risk.

As noted by Professor Coaldrake in his interim report on accountability and culture in the Queensland Public Service, culture is critical to the effectiveness of the right to information legislation. The same is true for privacy. The tone is set from the top and modelled by every leader in an organisation. Their actions and inaction tell everyone what the culture is about transparency, openness, accountability and protecting people and their personal information from harm.

During 2021 our two key awareness campaigns also focused on trust and culture. The Privacy Awareness Week keynote 'I trusted you with my personal information' by the then Crime and Corruption Commission chair Mr Alan MacSporran QC reflected on lessons from Operation Impala about the misuse of confidential information and why building a privacy aware culture is fundamental to public trust in government.

Our five audits in 2021 included: key high-impact and high-risk topics with findings and recommendations for all agencies about topical privacy issues relevant to culture and trust, mitigating against privacy breaches and transparency about access applications. At the oversight inquiry hearing last year, I noted that a key area of concern over the past few years has been delay for the community in accessing information with increased external review demand driven by agencies not making decisions about access within statutory time frames and delays within the review process itself. We continue to actively monitor timeliness and use various strategies and tools across all our functions to address the drivers of demand within the push model of right to information and key issues we have identified. Our work, especially in external review, continues to be significantly impacted by challenging interactions which has real consequences for equitable and timely access for other users of our services.

As I noted last year and in this annual report, our 2020 Working for Queensland survey results also showed the substantial impact of challenging demand and interactions, with about a 30 percentage point increase in staff being overloaded and burned out by work. We are using tools and strategies available to us to ensure we are fair, with clear communication, while balancing the wellbeing, health and safety of our staff and appropriate use of public funds, including the first own initiative vexatious applicant declaration in late 2021.

We supported agencies in the community with contemporary advice related to COVID-19 through 2021 and collaborated with our national and international networks of commissioners to maximise our expertise and resources in a rapidly evolving environment. Despite the challenging landscape, our team can be incredibly proud of our performance in 2021. Even with the ongoing significant demand for external review, we finalised record numbers of reviews yet again and achieved strong performance across our functions. We dealt with delays across our services and functions as agencies in the community were affected by COVID.

Like the broader Queensland community, our workforce and functions have been most affected by COVID in 2022. Our service delivery capacity was also affected when our team was impacted in various ways by the February floods. Our performance of our statutory functions relies on strong corporate functions and contemporary ICT which is an ongoing challenge and an opportunity. With our in-house IT or finance personnel and increasing costs across our ongoing supplies and services, there is considerable pressure on our existing small team to manage these functions and costs. Together with broader resourcing of the office for effective and efficient performance in the future, this will be an important consideration for the 2020 strategic review.

Finally, I thank our executive leadership team: Adeline Yuksel; Paxton Booth; our Acting Right to Information Commissioners, Katie Shepherd and Anna Rickard; and, of course, our Right to Information Commissioner, Louisa Lynch, who unfortunately cannot join us today. I also thank our OIC Brisbane

team for their ongoing commitment and professionalism in upholding Queenslanders' right to information and privacy. If we may, Mr Paxton Booth will speak briefly to privacy and then Ms Katie Shepherd will speak briefly in relation to the external review functions.

Mr Booth: Thank you, Chair and committee members, for the opportunity to talk to you today. I also acknowledge the traditional owners of the land on which we meet today and pay my respects to elders past, present and emerging. We aim in privacy to assist agencies achieve compliance with the Information Privacy Act, including the privacy principles, and also provide information to the community about their privacy rights and how they can protect them. We continue to provide a number of training events and information sessions for a variety of government agencies to enable better privacy practices. These events include: our regular privacy practitioner forums; personalised training sessions to agencies when requested; and ongoing advisory services to agencies and members of the community.

During 2021 we provided training to over 8,000 participants and conducted 321 events aimed at improving awareness of privacy and RTI across the public sector. Another channel we use to promote good privacy practices and privacy by design is the privacy champion network. Since our last report, we have continued to support and build the privacy champion network across government agencies. Along with government departments, we have established a privacy champion network for hospital and health services and we will have the first local government meeting later this month.

An important function of the OIC is to receive and mediate privacy complaints. Where a person has been unable to satisfactorily resolve a breach of their privacy with an agency, they can lodge a complaint with the OIC. Last year we received 81 complaints and finalised 84. Dealing with complaints in a timely manner is something that we are currently examining for ways to improve. Last year, of the 15 accepted privacy complaints and closed, it took an average of 278 days to close those matters. Due to the relatively low number of complaints we receive, the figures are impacted by a few files that have taken a significant period of time to finalise. We have found that this is due to the time taken to respond to our requests for information by both agencies and complainants alike. We continue to look for ways to improve the timeliness of our mediation process, including introducing a mediation day for parties when they will be invited to attend in person or at an online meeting in an attempt to resolve complaints through more direct negotiations.

During 2021, we have implemented all of the recommendations made by the Crime and Corruption Commission during Operation Impala which do not require legislative amendment. There are still a number of recommendations from Operation Impala which cannot be progressed without legislative amendment, including mandatory notification of data breaches. We look forward to working with the government and agencies to implement a mandatory data breach notification scheme in Queensland.

We currently promote and encourage a voluntary reporting breach scheme in Queensland. Some agencies notified the OIC of data breaches. Last year we received 86 such notifications, mostly the result of human error. There were also two audits finalised and tabled last year which involved privacy issues. The first audit of privacy and public data examined how well two government agencies managed the risks associated with the identification of published datasets and the privacy risks associated with de-identifying those which contained personal information to start with. The audit made a number of key findings, including the need to carefully assess the risk of re-identification from the data that has been de-identified. Simply removing obvious personal identifiers such as names and addresses is often not sufficient.

The second audit looked at awareness of privacy obligations, which was a follow-up audit from 2018 into how three government agencies educated and trained staff about their privacy obligations. All three agencies had undertaken significant improvements in their training of staff and fully implemented the 12 recommendations that had been made. We also have a follow-on audit examining how a number of other agencies are informing their staff of privacy obligations at the moment.

Ms Shepherd: Thank you for the opportunity to make an opening statement today. I would like to acknowledge the traditional custodians of the land on which we meet, the Jagera and Turrbal people, and pay my respects to their elders past, present and emerging.

The OIC continues to experience high demand for its external review services, and this is consistent with the trend over the last five years. Last financial year we finalised a record 753 applications, with 90 per cent of those matters resolved informally thereby not requiring a formal decision. We have also worked extremely hard to reduce the number of on hand reviews to under 300. This is continuing to steadily fall this year. We use innovative ways to deal with demand by: distributing our resources across small teams; providing parties with high-level merit assessments of their case at Brisbane

an early stage of the review; promoting informal resolution strategies throughout the review process; and using the tools available to us in the legislation to deal with agency delay and difficult participant behaviour.

There is a small percentage of complex cases which do take longer to finalise. We can generally attribute this to three key challenges: delays in obtaining information from agencies; allegations of missing documents raised by applicants; and entrenched participants who demonstrate difficult and high-conflict behaviour. A legislative tool we use to tackle agency delay is to issue a notice to produce document. Last year we issued 11 of these notices and this year we have issued 15. The agency we issue most of the notices to is the Queensland Police Service. We are aware that this agency experiences very high demand for its RTI services and suffers resulting resourcing issues.

The number of deemed refusal of access decisions is also an indicator of agencies unable to meet statutory time frames. This accounts for about 20 per cent of our external review matters. Again the Queensland Police Service has the most deemed refusal decisions, reiterating the resourcing issues I referred to earlier. However, we have made efforts to engage with senior leadership to encourage more timely outcomes for applicants.

There is a small but growing number of external review applicants who exhibit high-conflict behaviour. We are conscious of the impact this has on our staff in terms of burnout, stress and vicarious trauma. We provide training to our staff and encourage staff to debrief within the office and virtually in a hybrid working environment. Staff also have access to our employer assistance provider, Benestar.

Lastly, I would just like to touch on the issue of missing documents, which is regularly raised by applicants on review. Unfortunately, this is an area where the community can lose trust in government, particularly where further documents are located through the external review process. What these matters highlight for us is that there are opportunities for improved information management across government in order to build that community trust and find documents in the first instance.

Mr KRAUSE: Thank you for your briefings. I want to firstly ask the Information Commissioner—hopefully you are the right person for this question, but if not please feel free to pass it to another person—how many requests to review RTI outcomes have you received in the last 12 months?

Ms Shepherd: We have received 520 to 30 April. Those are the last statistics we have.

Mr KRAUSE: How many times in relation to the process has your office requested the RTI officer to provide more information to the person seeking information?

Ms Shepherd: In terms of releasing further information?

Mr KRAUSE: That is right; releasing further documents to the applicant.

Ms Shepherd: I do not have that statistic on hand. I will have to take that on notice.

Mr KRAUSE: That is fine, thank you. Maybe that is the same with this question. Can you tell us how many times your office and the Information Commissioner have completely reversed the decision of an RTI officer from a refusal to nonrefusal to make disclosure?

Ms Shepherd: Again we would have to take that on notice. I would have the statistics from 2020-21 in terms of decisions we have made, which I can quickly turn to.

Mr KRAUSE: Sorry, what was that you are going to go to?

Ms Shepherd: From the last financial year I would be able to look at the decisions that we issued and the outcomes of those in terms of where we decided to release information. I could pull that up for you now.

Ms Rangihaeata: One very important context with our decisions is that we often really scope down what we are looking at by the time we arrive at a decision. As the Acting Information Commissioner said, we informally resolve 90 per cent of our reviews completely, but we also informally resolve a large amount of each external review before we arrive at the decision-making part of the process even when we need to resolve completely by decision. While those decisions may be to set aside or vary the decision, it may be 10 per cent of the decision that was made by the original decision-maker. It is important to understand that, when we say we set aside the agency decision, it could be that a legal professional privilege exemption applied to one particular document and we have informally resolved 500 other documents between the parties.

Mr KRAUSE: I understand the context. It could be the other way too though.

Ms Rangihaeata: Yes.

Mr KRAUSE: You indicated you may wish to take that on notice.

Ms Shepherd: Yes, we can.

Mr KRAUSE: As much information as possible would be appreciated. What is the main reason right to information requests are being refused, as you said, within government departments?

Ms Shepherd: In terms of the nature of the applications we receive, around 85 per cent are from individuals in individual contexts, so engagement with law enforcement, health providers, complaints, local councils. There is no one key reason for refusal because there can be a wide variety of reasons for refusal. There can be exemptions—for example, cabinet, legal professional privilege, breach of confidence—but there can also be public interest reasons.

Mr KRAUSE: I understand there are a wide range of reasons, but do you know which one is the main reason given at the departmental level for a refusal?

Ms Shepherd: I would not be able to answer that at the moment. I would say the ground of contrary to public interest is the most commonly raised ground, but that is on a variety of factors.

Mr KRAUSE: From a systems perspective, does the Office of the Information Commissioner keep a log of the decisions that are made, or is it only the ones that are appealed that you keep track of the reasons for?

Ms Rangihaeata: May I just clarify the question, please?

Mr KRAUSE: Yes, sure.

Ms Rangihaeata: Do you mean as they are raised on external review or in terms of the original decision?

Mr KRAUSE: That is a good point.

Ms Rangihaeata: The Attorney-General has the annual report, of course, which does have information about exemptions and other bases for refusal to deal and refusal of access, so there is a certain amount of information within that report that is provided on an annual basis. In external review, of course, we only see about four per cent—

Mr KRAUSE: Yes, of actual decisions. So you would keep track of those and the reasons made, I assume. Can you confirm that?

Ms Shepherd: Yes, that is right. As Rachel mentioned earlier, over 90 per cent of the matters are informally resolved, so it does not end up in a formal decision of our office. Last financial year we issued 70.

Mr KRAUSE: You do not have visibility on the actual reasons that are made at the department which do not come to you?

Ms Rangihaeata: No, but we do in terms of seeing the report that is issued by the Attorney-General each financial year. What I would say in addition to what we have noted is that, as Ms Shepherd has already said, we do see quite a lot of what we call sufficiency of search about missing documents raised with us as a standalone issue and also alongside other grounds for refusal when applications come to us. That is something that is a common thread and, as Ms Shepherd said, that comes back to good information management right back at the beginning. The foundations for right to information and privacy really sit on good information management. That is something that for many years we have seen raised with us and, as Ms Shepherd says, it really has a large impact on trust.

Mr KRAUSE: Is cabinet-in-confidence being used more than previously to restrict RTI releases?

Ms Rangihaeata: It is a small part of what we see.

Ms Shepherd: I would not say that there has been an increase in recent years. It comes up fairly rarely compared to other grounds for refusal in terms of what we see on external review.

Mr KRAUSE: There were a couple of questions taken on notice there; I appreciate that. Chair, thank you for that series of questions. I might leave it at that. If I have another chance I will have another go.

Ms BOLTON: Commissioner, in the annual report on page 2 you speak about the output of the team not being sustainable. In your opening remarks you talked about challenging interactions. Ms Shepherd also spoke about high conflict. You did mention strategies. Are these interactions purely with clients coming through or does that expand beyond somebody coming to you with a request?

Ms Rangihaeata: It is across our functions. We can also have challenging interactions in our inquiry service and in our privacy and complaints, but we have most frequently seen it across our external review service. While, as Ms Shepherd said, it is often a small proportion of the people we deal with, it can lead to a disproportionate use of our resources. Over the past few years, we have had to apply lessons learned and used various strategies to ensure that we look at how we bring down the Brisbane

amount of time that we are applying to those particular applicants and their files. Of course, usually it is a large number of files, but it not just files; it is the amount of correspondence that we receive in a very short period and the nature of the correspondence. The own-initiative vexatious applicant declaration that I made in late December captured the nature of what we can see in these cases.

There is the difficulty too, sometimes, of understanding what somebody is sending through in correspondence, whether it relates to their external review applications or it relates to complaints that they are making simultaneously about various functions of the office. Often they have different interactions with a number of our functions at the same time that they have complaints made so people are trying to understand what that piece of correspondence is about. It might be about the Ombudsman or it might be about the Human Rights Commissioner. It can take a lot of time to ensure we are not missing something that is important to one of our functions because we need to make sure that we take on board all relevant information in attending to that file as well. It is quite complex but it is often also quite stressful in terms of abuse. There can be serious threats made and so on towards our staff. It is very difficult to deal with.

We have learnt about what we need to do earlier in the piece and be clearer with directions that we make and then take action quicker because, as Ms Shepherd said, we have a lot of applications on hand. We need to ensure equitable access to all users of our services, some of which have been waiting for the first decision on their access application as they come to us because it is a deemed decision from the agency itself. They need to have their time as well in the queue, if you like.

Ms BOLTON: As part of the strategy dealing with this, are the additional two temporary FTEs to assist in that or overall?

Ms Rangihaeata: That was to assist overall. Of course, we have had a big uplift in demand over the past five years and that demand has really settled as an established ongoing demand. From about 2016-17 it really jumped up. It peaked in, I think, 2018-19 and it has come down a little, but certainly it is not going all the way back down. It is about demand and it is about complexity—because we are having complexity as a component in that—and the challenging interactions that we are having as well, which are definitely adding to the workload. It is a mixture.

Ms BOLTON: In your opening remarks you mentioned that delays with agencies in responding are adding to the statistics on the average time to do these external reviews. Do you put recommendations through to the agencies as to how they could maybe improve their flow?

Ms Rangihaeata: In terms of the initial process or the external review?

Ms BOLTON: Yes, the initial response times.

Ms Rangihaeata: We have been working with the Queensland police as a key driver of our demand in particular. They have at times been up to 30 per cent of our demand but generally it is around 25 per cent on a long-term basis. A lot of that work has been about looking at the overall push model, because they have some great administrative access schemes that, of course, are where someone applies on a more formal request basis. What we deal with is intended to be the last resort under the legislation so administrative access comes before it. It is an easier, quicker and often less costly process and more responsive to the community. They have established administrative access schemes but they are not always visible to the community or to the Queensland police personnel themselves.

The work that we have done with the executive is to talk about how we highlight the visibility and ensure they are being used more frequently to ensure that people are not coming through to the formal access application process. We have talked about what we are seeing in the external review process, the sorts of things that are coming through and then providing that feedback to the Queensland police executive and working with specialised areas to talk through how we can do this better. That work has been good. Of course, they have had a lot of diversion of resources over COVID, but that is now stabilising.

We have not seen the progress that we would like at this point. We are still seeing a lot of work coming through. We know that they still have not got the resources in place in the QPS RTI unit that they need. They are committed but are having difficulty getting them on the ground, as we all are. We are having difficulty with recruiting as well. As Ms Shepherd said, they are still seeing that difficulty in delays in our external review process as well because of that. That is something that we are monitoring, as I said in my opening statement, and it is a key driver of our demand.

Ms Shepherd: I will just add to that a little, if I may. In terms of your question about giving support to agencies and helping them with managing those time frames, while that is not something that we could do directly within the external review function, we liaise with our information and assistance team

and our training and stakeholder relations to provide feedback from our experiences in external review. That leads to the development of guidelines and targeted training programs for agencies to really encourage them to focus on more timely outcomes for applicants.

CHAIR: In relation to the staffing issues, I have a two-pronged question. Are there vacancies within the Office of the Information Commissioner that have been difficult to fill at this time?

Ms Rangihaeata: Yes. During the current year we have had a lot of difficulty backfilling and filling. We have been through a number of processes where we have not been able to fill vacancies and moved onto successive processes and gone to other options to fill. We do have an underspend in our employee expenses that you will see reflecting that. It has really impacted our capacity to deliver.

I think we have dealt quite well considering, but I think it is reflected across all organisations at the moment. It is a very competitive market. We have a lot of short-term and unexpected vacancies. We are a very small entity so we cannot pull from elsewhere quickly. Of course, we have requirements in our recruitment directives and so on about periods of time so we need to operate within that framework. When you add all of that together, it can make it quite difficult to backfill and place people at times.

CHAIR: You may not be able to answer the next question: with staffing at the Queensland police in relation to their RTI unit, do you have any indication of what their shortages are?

Ms Rangihaeata: I know that they did recruit successfully to the initial positions, but they came from within. Now they are trying to fill again, to backfill those positions. They are dealing with similar issues to what we are. They are recruiting at present, is my understanding.

CHAIR: Is it fair to link the delay in getting information from the Queensland police to the staffing issues?

Ms Rangihaeata: I think it can be attributed in part to that. It is very important that there is a further raising of the visibility of the existing mechanisms to provide access to information outside of the last resort of formal access applications. It is important that the community do not need to go to that last resort, that the existing mechanisms that they have are used to their maximum capacity and that they also look for new opportunities. They have promoted with us, for International Access to Information Day last year, some of the mechanisms around information about—I am just trying to think. There was some information about access to information with vehicle accidents, I think.

Ms Shepherd: Yes, motor accident insurance. It is insurers seeking information on an administrative basis, which increasingly they are able to provide through an administrative scheme.

Ms Rangihaeata: They are looking for opportunities there to promote that visibility.

CHAIR: Is the information in relation to motor vehicle accidents provided through another external source or directly from the Queensland police?

Ms Rangihaeata: Through the Queensland police.

CHAIR: So you do not have to—I cannot think of the acronym.

Ms Shepherd: CITEC.

CHAIR: CITEC, yes.

Ms Shepherd: There is an issue with CITEC for insurers that they cannot immediately get access to all of the information they need. However, our experience with the Queensland police is that they have now identified administrative mechanisms to release that without them having to go through the RTI and external review process.

CHAIR: They do not need to go directly to CITEC; they can get that information on motor vehicle accidents directly from the RTI provision within the Queensland police or is it external? How does a layperson get information about a motor vehicle accident?

Ms Rangihaeata: It depends on the administrative access scheme. The idea is that you would go onto the website or call the Queensland police and they would direct you to the right place within Queensland police or the provider. They are trying to make it as easy as possible with you ringing up Policelink or going online. A lot of people go online. You should be able to do a search or go onto their home page and very easily have a clear pathway to find that information, preferably at any time of the day, online. With some of the administrative access schemes you need to qualify for the criteria because it might be about you. It will depend on whether you qualify.

CHAIR: There would be some information that would not be available because it is not about you?

Ms Rangihaeata: That is right.

CHAIR: And that is in accordance with the way that the act is drafted anyhow; is that right?

Ms Rangihaeata: Yes. It narrows down who has to filter through to that last resort, which is a good thing.

Ms BUSH: The questions of the member for Scenic Rim raised some questions for me. Not to labour the point but, as part of the monitoring and oversight functions that you have, is there a role for you to play in monitoring the decisions to refuse an RTI request from agencies and looking at trends and issues, for example, why a particular agency is refusing more proportionately than others or another agency might suddenly start refusing some on public interest grounds at a disproportionate level? Do you do that function currently?

Ms Rangihaeata: We do look at those reports for trends. It informs our scan in relation to our strategic audit function. We now look for high impact and high risk in our strategic focus. Because we are small, we need to target our resources to maximise our impact. Most agencies are now fairly mature in their application handling, but we are looking for particular things that stand out. I am currently looking at timeliness and delay, because it is something that has caused us concern. We are seeing it through our external review and we are seeing it across other jurisdictions, as well. It can be used, in some cases, to strategically delay the process. It is not necessarily the case, but it is a concern that people have.

At the moment, I am looking at the impact of access on the community and the risk for people when access is delayed and sometimes lost—we certainly do look at that. We definitely look at it in terms of privacy. In our 10 years working on the report, there were a number of key privacy risks that we identified. There was a lot less maturity in terms of privacy, than there was in terms of RTI, but, yes, we definitely look at trends. There is a lot more data on RTI than there is on privacy at the moment, with the recommendation in relation to refining the data that is available and moving that data reporting function to our office. We seek to balance that data and have it more strategically focused to reflect the objectives of the legislation.

Ms BUSH: Thank you for the clarification. I think I may have misunderstood that earlier. You mentioned the level of data availability around privacy; is that around the host agency's ability to catalogue those types of complaints or the systems involved in capturing and categorising those types of matters? Is it a systematic data issue?

Ms Rangihaeata: It is partly driven by the fact that the legislation does not require it. Agency systems are set up by what is required to be produced, in part. Agencies will have their own data for internal reporting. In terms of external reporting, there is a heavy focus on application handling. When we look for information for our audits, it is a lot harder to acquire the information that we need.

We have requested certain information on privacy more and more since 2009, but, as Mr Booth said, we are looking to the implementation of the recommendations in that data breach notification. We have had voluntary data breaches increasingly made through our office, however it is a very small proportion of agencies and of breaches that are reported. It is not representative of the sector. We are not sure whether there is strong internal reporting, which leadership definitely need and the agencies definitely need, to ensure they are understanding what is happening inside their agencies and responding appropriately and ensuring it is fed back into the development of good practices. Do you have anything further on that?

Mr Booth: That is exactly right. We probably have a very large gap in information about privacy breaches in Queensland agencies, in terms of what is happening.

Ms BUSH: Welcome, Paxton. I think this is your first oversight hearing; it is nice to see you. It is great to have legislation that mandates agencies that operate in a particular way, but it is a pretty blunt tool. You mentioned privacy by design: what is their role in managing some of these issues? Can you expand on what that means and looks like?

Mr Booth: Privacy by design is about building in privacy considerations that are relevant for a project at the very beginning of a project, reviewing it throughout the entire life cycle of the project and coming back to it. Often what we find is that when privacy is seen as a challenge or obstacle, it is because it is thought about towards the end of the life cycle of a project. People then have to remodel or rebuild a project, particularly with ICT, to make it privacy compliant. What we are trying to get people to do, as Rachael said earlier, is to change the culture within agencies to make it one of the first things people think about. As the name suggests, privacy by design is designing systems and new processes with privacy in mind at the very beginning. It is changing the mindset of people to think about privacy first rather than at the end of a project.

Ms BUSH: Do you struggle working with agencies on what that value proposition looks like? Recognising that agencies have a primary role, which might be child protection or health, what is the value proposition for agencies in having that as a central feature of their IT systems and their culture?

Mr Booth: It is very important, and we see a diverse application of that principle across different departments and agencies. There are certainly some, I would say, very mature agencies at the moment that are taking that on board and have a privacy by design approach to new projects, which is encouraging for us to see. They engage with us early and engage with other external stakeholders to assist them in considering those privacy impacts on new software and new services. At the other end of the spectrum, there are some agencies that are less mature and probably do not take that into consideration as early as they should. It is a challenge for some of the smaller agencies which do not have dedicated privacy officers. It is often down to someone who is wearing multiple hats to think about those things when they are beginning a new project.

Mr KRAUSE: Information Commissioner, have you or your office have found any information that would indicate that RTI officers are not acting independently of government?

Ms Rangihaeata: We are not aware of any indications of that nature. Certainly, we have had that question at previous hearings. We have consistently advised, in a proactive way, agencies and ministers when we have met with ministers and ministerial officers about our model protocols about briefing practices with executives and ministers—this is about getting the balance right when briefing about decisions about application processes. That includes the ability to brief about a proposed decision that is about to be made to ensure that, say, a director-general or a minister can prepare for public debate. However, it is not to delay a decision, not to share personal information where it is not appropriate to do so and, of course, not to interfere with the actual decision-making.

There are a number of principles in those briefing practices and model protocols that I know have been adopted. Many departments have taken them on board and prepared their own guidelines and policies. Very recently, I had conversations with agencies about this. It is an ongoing topic that we raise. In the most recent briefing that Katie were both in, we both talked about it. They said, 'Yes, we have it and we are going to review it again.' It is an ongoing issue that people manage.

Mr KRAUSE: Is your annual report reviewed by the department or the minister's office before it is tabled?

Ms Rangihaeata: No, it is not provided. It is provided directly to the Speaker.

Mr KRAUSE: Have you ever had an IT device removed from your office by the Public Service Commission or any other body?

Ms Rangihaeata: Never, no.

Mr KRAUSE: Did you make a submission to the Coaldrake review? I was very interested in what you said about the cultural aspects of privacy, in particular.

Ms Rangihaeata: We did not provide a written submission because a short submission was required as per the process, but our whole executive team met with Professor Coaldrake, had a long meeting and discussed it in detail.

Mr KRAUSE: What did you discuss?

Ms Rangihaeata: It was a very long meeting. We discussed a range of issues, but we did not discuss any specific matters, as is the nature of the terms of reference.

Mr KRAUSE: No, I understand.

Ms Rangihaeata: It is broader.

Mr KRAUSE: Around the cultural issues relating to privacy that you indicated in your opening statement; things like that?

Ms Rangihaeata: Yes. We mentioned the briefing protocols and key trends. We talked about how missing documents affect trust and confidence. There were a lot of similar issues to what we have discussed today and in our annual report and previous oversight hearings and our audits.

Mr KRAUSE: You said only a short submission was able to be made to the Coaldrake Review?

Ms Rangihaeata: The process talked about short submissions. We met with Professor Coaldrake and also provided supplementary information by email.

Mr KRAUSE: You did not make a written submission?

Ms Rangihaeata: Not a written submission as such, no.

Mr KRAUSE: Was there a word limit?

Ms Rangihaeata: On the website, yes, there was.

Mr KRAUSE: Do you know how many words were allowed?

Ms Rangihaeata: I cannot recall, sorry.

Mr KRAUSE: No worries. I was just interested in what happened with the Coaldrake review.

Ms Rangihaeata: We certainly were not limited. We provided sufficient information.

Mr KRAUSE: Just not in writing.

Ms Rangihaeata: We provided supplementary material afterwards.

Mr KRAUSE: But it was not in writing?

Ms Rangihaeata: We provided all the supplementary material by email afterwards, yes.

Ms BOLTON: Is there a central portal or a page on the government website that clearly outlines or articulates the avenues for finding information as you discussed earlier?

Ms Rangihaeata: In general?

Ms BOLTON: Across a raft of information. You spoke about the QPS, but it can be difficult for anyone to find information. Is there a page on the website which details how you can access information before going to the last port of call?

Ms Rangihaeata: There is a right to information page and there are other different ways to access government, in terms of finding current campaigns about consulting. It depends what sort of information you are looking for. There are central pages, depending on different information, that are quite good in terms of finding what you want to know and locating the service, or non-services as well. I think we are getting better at becoming user-centric; that is really the way of the future. The focus of government is—in terms of Queensland government; of course our jurisdiction is broad and includes local government, universities and various sectors—to move away from ‘I go to the Department of Transport and Main Roads’ or ‘I have to think about which part of government I am engaging with before I go down that path of what service do I want’ and then, ‘that is what I am looking for.’ I think that focus is definitely changing—it is about the user, rather than the provider—and that is a good direction to take.

Mr HUNT: I am about to open the door for you to be shamelessly self-congratulatory. I am looking through the statistics here. I know that there are areas that you could probably identify off the top of your head where you would like to see some improvement, but, by and large, your data tables tell a very good story. Looking at the review process, your target for satisfaction with reviews was 70 and you got to 51. For agencies, it was 96 per cent. Your target was 75 and you got to 96 per cent.

If people ask for a review, they feel aggrieved to some extent. That can range from mildly disappointed with the outcome to a towering rage and all points in between. To achieve 51 per cent—even though your target was 70—is quite remarkable, for people who have asked for a review. How do you collect that data and what do you ascribe your success to? Some 51 per cent for individuals and 96 per cent for departments is a good outcome by most metrics. How do you collect the data, and what do you put that level of success down to?

Ms Rangihaeata: We conduct an annual survey in relation to agencies and across all of our services that we have survey questions in relation to. In relation to applicants it is following the respective external review. In relation to the external review I note the response rate is extremely low, which has long been an issue. We have tried various things to try to increase the response rate over the past years to facilitate it and make it easy for people to respond. In the 2020-21 year we had only 51 responses as compared to 753 reviews finalised, so it was quite low. I think there were 20 who expressed dissatisfaction.

Mr HUNT: To me that also speaks well. The people who respond are the people who I would argue have a little bit of a head of steam. If you have 51 per cent from the people who are still feeling annoyed, that is quite good, isn't it?

Ms Rangihaeata: We get a lot of feedback during the process and we deal with that, whether it is good or bad. With our complaints process, the first step is to raise it with the supervisor during the process. We deal with and manage expectations as best we can. Often things do not get to the point where they need to make a formal complaint. As you may have seen in our annual report, we only had five formal complaints made during the year in the unsubstantiated, and only three of those related to our external review or privacy complaint functions. As you said, that is really quite remarkable in the context of dealing with significant and challenging interactions, as we have talked about. We are dealing with all of that in the context of our reviews, correspondence and the range of mechanisms we have in the act. There were other parts to your question that I am trying to remember.

Mr HUNT: With regard to agencies you were aiming for 75 per cent and you got 96 per cent satisfaction with the reviews. Again, I am guessing there was a similar methodology to collect the data. Again, 96 per cent is quite staggering. What do you put that down to? Do you have a similar issue with return rates from agencies, or is the return rate from agencies higher?

Ms Shepherd: The return rate from agencies is much higher. I would put it down to the fact that we engage with agencies at an early stage of our external review process. Our staff are available over the phone. We provide support, as I was mentioning earlier, through our training and information and assistance services, which are an adjunct to external review. We afford procedural fairness to agencies and are conscious that there are demands outside of external review that many agency staff are dealing with. We are often just one component of their workload. Extensions of time are requested and without them very few cases would be not granted. We have a cooperative relationship with agencies and I think they value our expertise.

Mr HUNT: I think that is reflected in the report.

CHAIR: Thank you for your time this morning. I understand there may have been one or two questions taken on notice. Is it possible for those answers to questions on notice to be provided to the secretariat by Monday, 6 June? That concludes the hearing with the Office of the Information Commissioner. Thank you to the secretariat and Hansard staff. A transcript of these proceedings will be available on the committee's parliamentary webpage in due course. I declare this public hearing closed.

The committee adjourned at 10.34 am.