LEGAL AFFAIRS AND SAFETY COMMITTEE

Members present:
Mr CG Whiting MP—Acting Chair
Mrs LJ Gerber MP (virtual)
Ms SL Bolton MP (virtual)
Ms JM Bush MP
Mr JE Hunt MP (virtual)
Mr JM Krause MP

Staff present:
Dr J Dewar—Committee Secretary
Ms M Salisbury—Assistant Committee Secretary

PUBLIC HEARING—OVERSIGHT OF THE OFFICE OF THE INFORMATION COMMISSIONER

TRANSCRIPT OF PROCEEDINGS

Thursday, 13 July 2023

Brisbane

THURSDAY, 13 JULY 2023

The committee met at 9.30 am.

ACTING CHAIR: Good morning. I declare open this public hearing for the committee's oversight into the Office of the Information Commissioner. My name is Chris Whiting. I am the member for Bancroft and acting chair of the committee. I would like to 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 peoples whose lands, winds and waters we all share. Other committee members with me here today are Laura Gerber MP, the member for Currumbin and deputy chair, who is appearing via videoconference; Sandy Bolton MP, the member for Noosa, who is appearing via videoconference; Jonty Bush MP, the member for Cooper; Jason Hunt MP, the member for Caloundra, who is appearing via videoconference; and Jon Krause MP, the member for Scenic Rim, who will be joining us very soon.

This hearing is a proceeding of the Queensland parliament and is subject to the parliament's standing rules and orders. Only the committee and invited witnesses may participate in the proceedings. Witnesses are not required to give evidence under oath or affirmation, but I remind witnesses that intentionally misleading the committee is a serious offence. I also remind members of the public that they may be excluded from the hearing at the discretion of the committee. I remind committee members that departmental officers are here to provide factual or technical information. Any questions seeking an opinion about policy should be directed to the minister or left to debate on the floor of the House. These proceedings are being recorded and broadcast live on the parliament's website. Media may be present and are subject to the committee's media rules and the chair's direction at all times. You may be filmed or photographed during the proceedings and images may also appear on the parliament's website or social media pages.

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

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

WINSON, Ms Stephanie, Right to Information Commissioner, Office of the Information Commissioner

ACTING CHAIR: I welcome officers from the Office of the Information Commissioner who will brief the committee. I now invite you to brief the committee, after which committee members will have some questions for you.

Ms Rangihaeata: Good morning, Mr Acting Chair and committee members. Thank you for the opportunity to make an opening statement. I would also like to acknowledge the traditional custodians of the lands on which we meet, the Turrbal and Jagera people, and pay my respects to elders past, present and emerging, including those here today and joining us online. Today I am joined by the Privacy Commissioner, Mr Paxton Booth, and the Right to Information Commissioner, Ms Stephanie Winson, who joined us in January.

Building trust and accountability through transparency is one of the dominant themes that I spoke to in my message in the 2021-22 annual report that continued through the 2022-23 and current financial years. Professor Coaldrake's final report, *Let the sunshine in: review of culture and accountability in the Queensland public sector*, was published in June 2022, closely followed by a commitment to adopt all recommendations by the Queensland Government. These recommendations intend to strengthen both the availability of documents and response to breaches of personal information and the independence of the office. As Professor Coaldrake emphasised, culture and leadership are critical, and we have consistently found this to be the case in right to information and privacy. The effectiveness of policy and legislative reforms will rely on clear, authentic, consistent commitments modelled by ministers and agency leaders and a legislative framework with push-model objectives and contemporary privacy reforms. A contemporary legislative framework is essential for Queensland to effectively protect rights and position Queensland well to meet evolving future opportunities and challenges in a digital economy.

Also, in June 2022 the Queensland Government consulted the community and agencies about proposed reforms to the Information Privacy Act and the Right to Information Act. The proposed reforms address a range of recommendations across several important reports since 2017. We all know there have been significant changes to the environment for information rights since the 2009 legislation was introduced shortly after the iPhone 1 was released. The proposed reforms address the importance of consistency with other jurisdictions, where appropriate, to streamline interactions between government, community and business and provide certainty and strengthen protections for information rights. The mandatory data breach notification scheme, also a Coaldrake recommendation, is a key example and will help ensure stronger governance, general awareness, culture and better privacy practices in agencies. Most importantly, it will ensure community members are aware in a timely way of when their personal information has been involved in a serious privacy breach, which for vulnerable members such as family and domestic violence victims and survivors can be a matter of life or death or mitigating significant further trauma. In our 2021-22 annual report we had anticipated a bill may be considered by parliament last financial year. We look forward to the earliest possible introduction to progress the legislation as soon as possible.

The 2022 strategic review of our office was tabled in parliament on 31 January 2023. The independent reviewer, Mr Dominic McGann, commenced this review in July 2022 immediately following Professor Coaldrake's final report. The strategic review report draws important connections between the Coaldrake report findings and our role and the objectives of the legislation more broadly. The review report made positive findings about OIC's efficiency and effectiveness across our functions within a constrained and changing operating environment, including legislative framework technology, unreasonable conduct and resources. Mr McGann concluded that, if the Queensland community is to be able to fully exercise their rights related to access to information and information privacy, it will be essential that OIC and Queensland government agencies receive additional and adequate resources to enable each to properly perform those increased functions under the Right to Information Act and IP Act following the legislative reforms. This is consistent with the statement I made in the 2021-22 annual report that OIC was not in a position to manage any additional demand on its services, expansion of its functions or nature of those functions. Once the bill is available, we will be able to better assess and project requirements. In terms of the timing of the receipt of additional and adequate resources, Mr McGann emphasised delay remains the deadliest form of denial.

We have commenced implementation, where possible, to work with stakeholders and the government to progress the report's recommendations, noting many of the recommendations relate to the implementation of the proposed reforms. OIC will have both new functions and substantial implementation roles to support the community and a wide range of diverse agencies for the proposed reforms. Implementation will have a significant impact on our office for a two-year period. It will also be important to review the resourcing requirements to effectively perform the new statutory functions within a reasonable period to avoid the extended delay in resourcing established demand that occurred after the introduction of the 2009 legislative policy reforms for external review functions. I note in relation to resourcing the temporary approval of access to cash reserves until 30 June 2023 for 4.8 FTE has been addressed by allocation of ongoing funding from 2023-24, addressing the outstanding budgetary 2017 strategic review recommendations. The Right to Information Commissioner will also speak to ensuring timely and equitable access to information which continues to be a key theme and issue for the community and agencies and the focus of our work across our support and oversight functions and of course intersects with many of the matters I have spoken to today.

Finally, I would like to take the opportunity today at my last oversight inquiry meeting as Information Commissioner as I approach the end of my 10-year term to thank the committee for your engagement and support of the office and our critical functions for the Parliament, community and agencies across Queensland. It has been an honour to serve as an officer of the Parliament and for the people of Queensland to protect their information rights through this dynamic period. I am incredibly proud of our OIC team and their professionalism, excellence, innovation and commitment to the fundamental human rights we protect together as an independent integrity body building trust through transparency. I thank them all and my executive leadership team members whom I have had the privilege to work alongside, including those that have stepped up during extended vacancies. Thank you, Mr Acting Chair.

ACTING CHAIR: Thank you very much, Ms Rangihaeata. Mr Booth or Ms Winson, did you want to add anything?

Mr Booth: Thank you, Mr Acting Chair and committee members, for the opportunity to make an opening statement today. I would also like to add to the acknowledgment of our traditional owners on whose lands we meet today, the Turrbal and Jagera peoples, and pay my respects to elders past, present and emerging.

Since I last met with the committee there have been some significant changes in the privacy landscape in the last 12 months. Some of the significant data breaches that we have seen play out in the media in recent times have no doubt changed the landscape and perceptions of people around their protection of their personal information by organisations and government. We have seen a number of big privacy breaches including Optus, Medibank and Latitude, to name just a few, which have impacted hundreds of thousands of people in the community across Australia and Queensland.

With this risk at the forefront of the community's concerns about how safe their personal information is, we are pleased to see that the Queensland Government has endorsed all of Professor Peter Coaldrake's recommendations, including the recommendation to have a mandatory data breach scheme commence in Queensland. The expected benefits of the mandatory data breach scheme in my view include improved internal reporting of privacy breaches to CEOs and CIOs; increased agency accountability and capability to respond to data breaches when they occur which are likely to result in serious harm; improved visibility for people in the community to take action to mitigate the risks of such a breach; the provision of certainty to both the public and the community about what their obligations are and rights are in the event of a breach; and lastly, but very significantly, the increase in public trust in relation to an agency's handling of their personal information and how they will manage a data breach should it occur. We look forward to working with the Department of Justice and Attorney-General to implement this recommendation. We are also working proactively with agencies already to try and get them ready for such a scheme when it commences.

We also look forward to working with DJAG to build a contemporary legislative framework which will meet the needs of the community and the agencies which are required to comply with these requirements. Last year the Department of Justice and Attorney-General issued a consultation paper seeking the views of stakeholders on a number of proposals to improve the privacy regime in Queensland. The OIC provided a submission in relation to the consultation paper supporting a number of possible reforms including one that I have already mentioned about the mandatory data breach notification scheme; a single set of privacy principles to be applied in Queensland and, where practicable, that those privacy principles are aligned with the Commonwealth Privacy Act; and also changes in definitions including making the definition of 'personal information' more contemporary to what is required in a quickly evolving environment in Queensland and across Australia.

Since the consultation was released from the department we have also seen a further consultation released from the Commonwealth in relation to the proposed changes to their Privacy Act. It is unclear at this time exactly how some of those changes might impact on changes in Queensland's Information Privacy Act, but some of the proposed changes which could have an effect or influence proposed changes in Queensland would include introducing a fair and reasonable test to how personal information is collected, used and managed by agencies; reducing the time for organisations to determine if they need to report a privacy breach under a mandatory data breach scheme, possibly reducing it from 30 days down to 72 hours; and the right of objection for the collection, use and disclosure of personal information in certain circumstances and a right of erasure of personal information, again in particular circumstances.

In relation to the privacy performance under the act, one of the OIC's primary functions is to mediate privacy complaints where a complaint has already been made to an agency and has been unable to reach an outcome which was satisfactory or the complainant has not obtained a reply from the agency. Those complaints can be referred to the OIC. Approximately a third or 29 per cent of complaints that the OIC received during the reporting year were declined on the basis that the complainant had not been dealt with as a privacy complaint with the agency in the first instance or in our view had been prematurely referred to the OIC.

In relation to our performance regarding our mediation of accepted privacy complaints, the OIC achieved the following results: percentage of agencies satisfied with the privacy complaint mediation service was 91 per cent against a target of 75 per cent and the mean average days to finalise an accepted privacy complaint was down from 278 days the previous year to 257 against a target of 140 days. I am also very pleased to add that that improvement has continued and in this most recent financial year we have met the target. During the reporting year we received 69 complaints, down from the previous year of 81.

The OIC also seeks to promote best practice in relation to privacy systems and procedures and we do this through a variety of mechanisms, including providing advice to agencies and contributing to discussions about new proposals and reforms and ensuring good privacy practices are adopted by agencies. During the reporting period we participated in meetings and provided advice to agencies on

359 occasions. During the reporting year COVID remained one of the significant issues for the office as well, with the focus being on a number of requests for advice around some complaints which were related to the collection of people's personal information about their vaccination status.

The OIC also chairs a privacy champions meeting twice a year with three separate groups across government—one for government departments, one for the local government and one for the hospital and health services. We use these groups as an opportunity to champion matters of interest in relation to privacy for these agencies and arrange guest speakers at times to talk about significant changes or impacts in relation to privacy that are coming from technology or other reforms. We also take part in presentations to promote good privacy practices across agencies. In the reporting year we also made four formal submissions to parliamentary inquiries and commissions in relation to impacts of privacy on proposed reforms. Thank you.

ACTING CHAIR: Thank you very much. Ms Winson, over to you.

Ms Winson: Good morning, Mr Acting Chair and honourable members. Thank you very much for the opportunity to make a submission. Before I start I just wish to acknowledge the traditional custodians of the lands on which we meet today and pay my respects to their elders past and present.

As the recently appointed Right to Information Commissioner, I wish to recognise the work done by those who acted in my role while the role was vacant. You will notice from the report that is before you that we are discussing today that demand for external review of agency decisions remained high during the year and the team met all but two measures. Before I speak to those measures and some of the work we have done, I do believe my recent recruitment as the Right to Information Commissioner provides a good opportunity to place context that I see that the role is in. As you know, the Right to Information Act records parliament's—your—recognition of the importance of access to government information in a free and democratic society. This advances accountability of government, increases public participation in decision-making and it is important to advance good public administration. We are all affected in one way or another by government decision-making and as citizens of this state it is important for us to be able to have access to that information to inform our matters and our personal affairs.

Most of you are clearly aware that the Right to Information Act introduced a push model—in other words, advancing proactive release of government information. Formal applications for access to decisions by agencies is not the primary tool in which to gain that access and the reason this is really important is that the Office of the Information Commissioner's reports—the annual report of our activity—in relation to those things and the report that most of you will have no doubt seen already which was tabled by the Attorney-General in relation to the performance of the legislation really is only a small subset of the transparency picture because access to information applications is really a small subset. In the report from the Attorney-General in the year that we are discussing, 2021-22, agencies recorded the receipt of 16,979 formal applications. Of that, only 3.5 per cent were submitted to our office on external review. As an officer of parliament, the Information Commissioner plays a really important role in providing independent oversight and in my role as the Right to Information Commissioner I play the role of deputy to the Information Commissioner in undertaking the independent merit reviews of those decisions. The reason I raise all of these contextual issues is that the work that I am about to discuss really shows that what we are really talking about here in our report is therefore a small subset of what might be going on in relation to access to information and transparency generally in Queensland.

With that in mind, here are some of the key themes from the 2021-22 year. Demand for external review remained high, so it has been tracking upwards over the years, and we received 606 applications during the year. During this time the team met all but two of the measures that we report on. Most importantly, they reduced the mean average days to finalise external reviews down from 155 days to 139 days. They exceeded the target on informally resolving applications without the need to go to formal decision and they also exceeded the target of the percentage of external review applications finalised to received—in fact, 107 per cent, which is an outstanding effort considering the context and the circumstances.

The two targets that were not met include files that were 12 months or older at the time of the year end and applicant satisfaction. Our experience shows that in relation to files that take more than 12 months factors like complexity and difficulty with participant engagement are contributing to those numbers, and I am happy to talk more deeply about that if you wish. The other thing that we do see is—and it seems to be a pattern that we have seen certainly in the period of COVID—the challenging conduct that both agencies and our office experience with applicants who are frustrated.

The profile of agencies that are subject to external reviews includes the following, and I thought that I would just give you a snapshot so that you get a flavour: 59 per cent of external review applications relate to departments, 15 per cent local government and then the rest. Ministers only made up 2.4 per cent of the external review numbers. In terms of the profile of the people who are making applications for external review, 83 per cent of those during the year were from individuals, and that speaks to the interest that citizens have to know about their affairs. Journalists only make up 3.6 per cent and politicians only 2.1 per cent, so it is a small number comparatively. During the year the number of external reviews that involved deemed refusals—this is when agencies do not make a decision in line with the legislative requirement and are therefore deemed to have refused the application—comprised 22 per cent of our work, and this is similar to the numbers from the years before. It seems to us that constrained resourcing within certain agencies is and has been the primary factor that leads to those deemed decision-making situations. This has been discussed with this committee previously and resourcing will certainly be an issue that we think requires continued effort. The agency that dominates our external review numbers, which is the QPS, has certainly raised that issue with us.

Other issues that are influencing deemed decisions include more systemic matters, and this is, for example, where improved use of administrative access would assist those agencies in our view, records management, training of staff and agency culture. We also note that the challenging conduct of applicants does affect the performance of agencies. The outcomes of reviews during the 2021-22 year is something that you might be interested in; it is not something that we have necessarily reported in the annual report. Of the 73 external review decisions that went to formal decision—because it is a smaller number than the overall number—10 per cent involved us setting aside the agency decision, 41 per cent involved us varying the decision of the agencies and the majority actually involved us affirming the decision of the agencies.

Finally, I wish to finish off by just noting that record keeping and concerns about missing documents continue to be evident to us in the 2021-22 year, and this was reinforced by some of the sentiments expressed by Professor Coaldrake in his work. As noted by the acting RTI commissioner last year before this committee, the appearance of this issue does undermine confidence in the public sector and in my view should be addressed as a priority by public sector leaders to avoid the impression that there is a systemic problem with transparency. Thank you very much for the opportunity.

ACTING CHAIR: Thank you very much, Ms Winson. I will start with the member for Caloundra and then go to the member for Currumbin. Member for Caloundra, do you have any questions?

Mr HUNT: I will start with the smaller of my two questions. First of all, thank you for coming again and thank you for that comprehensive coverage. I noticed that you have your first vexatious applicant declaration; is that correct?

Ms Rangihaeata: With regard to the first own initiative vexatious applicant decision, we have previously had applications from agencies. This is the first time that I have made a decision on my own initiative because of the evidence that we had before us at the time, so it is actually the first one in Australia across jurisdictions. If you have read the decision you will see that it was quite comprehensive in terms of the evidence before us as to why we took that action, yes. It speaks to what the Right to Information Commissioner was talking to in terms of challenging conduct that we were particularly seeing during that period and really the last few years, but I am pleased to say that it has been a little bit better over the last financial year. However, it is an ongoing challenge for us to manage.

Mr HUNT: They are extremely rare, aren't they, which is why—

Ms Rangihaeata: Yes.

Mr HUNT:—it caught my eye? Are you able to expand just fractionally on why this one landed where it did?

Ms Rangihaeata: Yes, it is the exception. It is the last tool in the toolbox, if you like. The legislation has a number of tools for both agencies and the OIC to use on external review to manage requests that can become challenging, both in terms of managing the scope of an application when it can be voluminous or unclear and so on, which can be elements of those applications.

We have also done quite a few things over the years from lessons learnt, if you like, to take action earlier and be firmer with our directions in terms of how we are going to proceed with the external review. We found that that can be quite useful in ensuring also equitable access for others that are waiting. We have now a lot more applications on hand due to the greater demand since 2017, so we need to be mindful of equitable access for people.

In terms of this particular application, we had voluminous correspondence that was often unclear and very difficult to understand. It took a lot of time to understand and ensure that we were managing it in the correct way. We have to be careful that we are directing it to the right function across the office because, of course, we have privacy complaints, we have our own internal complaints, external review, and enquiries service, so sometimes such correspondence would be any one of these things or a number of these things, and in a number of the different vexatious declaration decisions that we have made, we have actually had to create separate correspondence systems due to the overwhelming amount of correspondence that we have. In this particular decision, I think we talked about the amount of gigabytes of correspondence that we had received, not just pages or documents, because it was so huge. We focused on two particular agencies—Queensland Police Service and Gold Coast Hospital and Health Service—and we made conditions in relation to those two agencies as well as ourselves. The declaration operates for two years—it will finish in December this year, if I recall correctly—and conditions can be placed on any vexatious declaration that is made by the Information Commissioner appropriate to the situation.

Mr HUNT: I should add that I am actually quite pleased with this outcome. Frivolous and vexatious complaints are extremely frustrating and they take advantage of what is otherwise an essential and highly useful process. Where do you think this particular application will land? Given that you have not done it before, what do you think will be the end outcome for the applicant?

Ms Rangihaeata: The applicant rights were changed in relation to the right to information and privacy access, or the access to information process, for a period of two years, as I said, in relation to the QPS and Gold Coast health service, and also in relation to external review services. That two-year period provides a bit of a reset and it really puts a pause to this momentum that is so problematic. I think that it is a really important tool to have there, but as the exception. We strongly encourage and provide training on the correct use of the tools that are in the Act because we find that in some cases agencies are not using them when they should be, and then we have problematic situations that run on too far, if you like, and then in other cases agencies might be using them a little too vigorously and not preserving people's rights. Providing that training on the correct use of the tools is very important and we have done that regularly over the years. Also, we observe those issues through our functions on both enquiries service and external review. It is a really important part of the work. As the Right to Information Commissioner said, it is an ongoing challenge for agencies and our office.

Mrs GERBER: Rachael, thank you for your 10 years of service and all the work you have done over that period of time. My question is probably best to the RTI Commissioner. Thank you for your appearance and oral and written submissions today. It has been reported to me that it is taking around six months to get an RTI back. I want to read out to you a comment that I have received in relation to RTIs that have been put in. The constituent says—

> The RTI officer asked for an extension at the last hour on the last day. They seem to be understaffed. They give ministers heads-up about what RTIs are in and they also seem to give ministers advanced notice of what is being released. They could all be in together and it appears they hunt for excuses not to release. Anything to do with policy they claim cabinet-in-confidence and use that as an excuse not to release. In my view, the system does not work.

I want to give you an opportunity to address any aspect of that that you think you can and advise the committee if there is anything in place or any review that you are recommending to address any aspect of that that you think you can address.

ACTING CHAIR: Before we go to an answer, member for Currumbin, you have some information there that the rest of us do not. If you could share with us what you have there, that would be great, provide more substantiation of what you have. You are talking about issues around delays, correct, in a very general sense?

Mrs GERBER: No. I read out the concern, Acting Chair. I am happy for the Information Commissioner to answer any aspect of that that she thinks she can.

ACTING CHAIR: It will be difficult to answer if we do not have the rest of the information of the specifics around that, but I will let the commissioner—

Mrs GERBER: Acting Chair, sorry, I have read into the record what I am able to read in, and I am happy for the Information Commissioner to—

ACTING CHAIR: I appreciate you have an anonymous complaint there, but I will let the commissioner answer that as she sees fit.

Mrs GERBER: That is exactly what I asked her to do.

Ms Winson: I think what you are raising, if I understand correctly, is the concern around the conduct of officials, and I think the reason the Information Commissioner has drawn on the Coaldrake report is because that is a linkage that we have seen, and certainly our review has seen that, too. I cannot obviously comment on the specifics or which particular agency, but the reason I did talk about the deemed decisions and the volume there is there is certainly a pattern. What is driving those delays and the conduct of officials, we cannot comment on other than those that we see coming to us. I think the report that we are talking about today—and certainly the information I have seen since I have taken on the role—would suggest that agencies are struggling to cope with the load, certain agencies more than others. The suggestion that there might be activity that is not honest and/or not driven by an agenda to be as transparent as possible is certainly not something that we have any particular evidence on, but certainly if there are concerns and it comes to an external review, the office would certainly look at that.

Ms Rangihaeata: One small addition to that in response to your question about briefing ministers, we have model protocols about briefing chief executives and ministers to clearly set out what is appropriate and what is not appropriate which recognises that it is appropriate to prepare a minister or chief executive for public debate, but not to delay a decision, and particularly not to miss any deadlines or anything like that. It clearly sets out what is appropriate in those circumstances and what is not. Many agencies, we know, have developed their own protocols and are continuing to review them over time to ensure that they have clear protocols in place and working with their chief executives and ministers so that they can support their independent decision-makers so that those boundaries are in place.

Mrs GERBER: I might need a little bit more detail around the protocols. I am sorry, I may have missed what you just said then, but did you say every agency has a different set of protocols?

Ms Rangihaeata: We have model protocols in place.

Mrs GERBER: In relation to briefing the minister, sorry, yes.

Ms Rangihaeata: OIC developed model protocols back in about 2012, I think, and we did that in consultation with all agencies. This was with the Queensland government sector. I know that every time we speak with agencies and so on, we talk about these issues and often they are talking about how they are reviewing their own protocols that they have developed on the basis of those model protocols again. In our audit work, we have also made recommendations that an agency develop protocols, particularly where we have seen situations where there are unclear boundaries or there has been delay because of briefing and that has caused applications to go deemed because they have missed the statutory time frames and there are issues there. So, we have made recommendations that they adopt them, or we have discussed them in many situations.

Mrs GERBER: Does the OIC oversee those protocols? Do you have an oversight responsibility in relation to the individual protocols that the agencies develop in uniform with the overarching one that the OIC has?

Ms Rangihaeata: It would be limited to when we go in and do a compliance audit. Because of our resourcing, as a small agency we are targeted in what we can do in our oversight functions. Our role there is, as the Right to Information Commissioner said, that if we saw an issue coming through external review, we would take appropriate action. It may be that there would be a referral to the CCC if there was corrupt conduct; there would be various outcomes there. However, we also look at that in the course of a compliance order of an agency, yes.

Mrs GERBER: Following on that line, so that I can understand, do you have a template protocol or one of your protocols that you would be able to table for the committee so that we could have a look at it?

Ms Rangihaeata: It is online, so that would be very easy to do. We can certainly provide that.

Mrs GERBER: Maybe email the link then if it is easy enough to find.

Ms Rangihaeata: Yes, I will certainly do that.

Ms BOLTON: Rachael, I also want to congratulate you on a decade of service. It is quite incredible.

Ms Rangihaeata: Thank you.

Ms BOLTON: You mentioned the Coaldrake report which, yes, we all know identified a needed cultural shift and more openness in government, including particularly the more ready release of cabinet documents and the need for greater scrutiny over what is deemed commercial in confidence. Can you clarify what role the commission has in ensuring that occurs?

Ms Rangihaeata: In relation to the Coaldrake review recommendations about proactive release of cabinet documents, we have been consulted by the integrity taskforce and provided some preliminary advice which was some time ago. We are standing ready to provide further advice particularly in relation to any required consequential amendments because we expect that there may be a requirement to accommodate changes in relation to cabinet documents.

We also are very keen to engage on the cultural level. It is going to require a cultural change; we know that. As I said in my opening, culture and leadership at all levels to really model the commitment to that is going to be critical because people will not believe until they see. I think this is a really important recommendation because when they see ministers and directors-general proactively releasing cabinet documents—appropriately, of course, because there will be some information that will not be appropriate to share—that will send quite important signals to the agency that there is change and there is going to be a greater proactive release.

As the Right to Information Commissioner talked about, the right to information is about the push model. It is not just about formal access applications. I still hear too often in 2023 people talk about RTI as being formal access applications. We really in a legislative sense left that behind in 2009. I think the more we see the emphasis on proactive release through initiatives like this, it is going to be really important. That leadership we have seen through our audit work and all of our functions is critical to the success of the overall agency in how they perform across all aspects of right to information and privacy. This is really all about leadership. You had another part of your question that I may not have addressed yet, my apologies.

Ms BOLTON: Yes. It was regarding commercial in confidence and the role to ensure there is greater scrutiny over whether it really should be commercial in confidence. A lot have been deemed commercial in confidence that really did not have to be. I am trying to get a better understanding of the role of the commission in that scrutiny and how that would actually occur.

Ms Rangihaeata: The Information Commissioner has a role as champion of the legislation, and of course that is maximising the flow of information to the community. In the external review role, which is the focus that the Right to Information Commissioner has spoken about, we have to apply the law as it is. In terms of where we have exemptions that are set, we apply the law. Until parliament changes the breach of confidence exemption, for example, that is set.

In what Professor Coaldrake was speaking about, he recognised that explicitly. With what the Auditor-General has spoken about in the machinery of government audit report just recently and a number of other reports, there is a connection there in terms of the documentation, the guidelines about confidentiality clauses. The Auditor-General and Professor Coaldrake have spoken about that. We had these discussions with Professor Coaldrake; it really starts right at the beginning. We have had these discussions with ministers and agencies—that it is about managing expectations; looking at the opportunities to set up the expectation that you are dealing with government. The expectations of the community are that you be as open as possible—that certain information will need to be shared for accountability and openness and to build trust and confidence in government.

To really make that possible, you need to do that in that early part of the process so there are no surprises and to make it possible in the contracts. We already have existing requirements in those guidelines that the Auditor-General and Professor Coaldrake referred to in his report. It is about working within that framework and maximising disclosure of information and minimising what we can in the confidentiality clauses. That is consistent with what I have spoken about in relation to the legislative frameworks and the legislative amendments that have come through in terms of new exemptions within the Right to Information Act. It is what is consistent with the objectives of the legislation, with the policy for right to information. It is about improving the flow of information to the community; being open and accountable; trust and confidence in government; building that trust through transparency. It is those opportunities. That is what the Information Commissioner's role is. I think where we can be most effective is talking about the policy with parliamentary committees and agencies and their engagement. Certainly, with the external review role, we have no discretion. Unlike agencies, we must apply the law. I trust that answers your question.

Ms BOLTON: Yes, thank you.

Ms BUSH: Rachael, congratulations on 10 years. Thank you for everything you have contributed, particularly for our committee, and best of luck on your next chapter. Given the time, I will focus on a couple of key areas, and this question might go to you, Paxton. Something that is raised with me often in my role is privacy breaches, both the prevention and the mop-up. I know you are doing a lot of work in that, including meeting with privacy authorities across Australia to discuss trends and issues. What have been the learnings from those conversations, particularly for a Queensland context?

Mr Booth: Some of the learnings we are seeing is that these privacy breaches are impacting everyone. I would be comfortable saying that no-one is safe. It is a space where constant vigilance is necessary by all agencies and organisations to maintain high level standards to prevent breaches from happening in the first place. What we are seeing from some of the data that is coming out from the OAIC—the Commonwealth oversight agency—is that a lot of these breaches are happening through bad actors and cybersecurity breaches. The underlying cause of a lot of these is what I would describe as human error—that is, someone clicking on a link from a phishing email, or someone not closing off a port that allows access to the internet or some access to their database. It requires a lot of training and vigilance from agencies to make sure their staff can be their best line of defence to prevent the breach from happening in the first place. That is what I would say is one of my key messages.

In terms of the mop-up once the breach occurs, I think any agency which goes through a breach is on a very steep learning curve in relation to how to respond to a breach. Often if it is a cybersecurity breach, the bad actors have been in their systems for some time before they even realise there has been a breach of their systems, and they are then playing catch-up to work out what type of data has been exfiltrated, to identify who that has impacted and to mobilise to make sure the people who have been impacted are notified in an appropriate and timely manner. That is certainly one of the struggles in the feedback I am getting from agencies which have been affected by a breach—that is, balancing the need to do a timely response to the people affected versus the time it takes to understand who has been impacted and the types of data that has been taken from their system. Being prepared and having a good privacy breach response plan for agencies will be really important going forward to manage a privacy breach.

Ms BUSH: Do you feel the mandatory breach regime plays into this in helping the maturity of Queensland government responses?

Mr Booth: I believe it will. It will require agencies to start having a good think about what they are going to do in response. Depending on what is introduced in terms of the legislation and requirements in terms of how quickly they will have to act, it may require them to take steps to mitigate the breach immediately and to notify those people who have been affected of what they have done as an agency to mitigate the risks of the breach as well. My view is I think it will bolster the capacity for Queensland government agencies to respond to a breach if it happens. Obviously, the goal is to minimise those breaches in the first place.

Ms BUSH: I will make this as a comment. My mind goes to the AO3s and AO4s who are under immense pressure to service requests in a tough service delivery environment plus also be mindful of the important role they play in closing off those doors, as you say. It presents a big workforce challenge I think for the Public Service. That is a comment.

My next question might be to Rachael or Stephanie. It is around treaty and truth-telling and responding to Indigenous rights and the role that you see your agency having in that and helping with the release of historical information. Do you play a role in that at all?

Ms Rangihaeata: Yes. Together with all information and privacy commissioners across Australia, we have made a commitment with The Healing Foundation to implement the principles developed with The Healing Foundation to improve access to information for survivors and families of the stolen generation. We actually had Ian Hamm of The Healing Foundation present the Solomon Lecture last year. That helped explain the 'why'—that is, why that was so important. I think that was very revealing for many people who attended or watched the lecture online.

We have built on that with further work we have done this year. Together with our partners, with State Archives, Link-Up Qld and others, including The Healing Foundation, we have had a forum for practitioners and people who may be the front door and dealing with applications. I must recognise State Archives and the personal and cultural histories team at the Department of Treaty, Aboriginal and Torres Strait Islander Partnerships, Communities and the Arts who have for 20 years been providing an exceptional service in terms of providing records to people.

We provided a forum for the 'how'—that is, how we are going to implement these principles. Paxton was on the panel. I think this work is critical. Ian Hamm emphasised with all of us that the stolen generation are ageing, and it is critical to them that they have the opportunity to access their information before they pass on so they can know for themselves and share with their family. Those delays that we have spoken about, and also the formal access application route are not appropriate, so the emphasis of our commitment and The Healing Foundation's principles is that the administrative access approach of informal release is appropriate and a focus and is the only way to go.

There are some complex issues there. That is what Paxton and others spoke about with the practitioners. Both of those recordings are available on our website. We are continuing to develop further information to support there. That is a big commitment and focus of our work. It has been really important. I think all of our people have found that critical and have gotten behind that over the past couple of years. Paxton, did you want to add to that?

Mr Booth: No.

ACTING CHAIR: We will extend this session by five minutes.

Mr KRAUSE: My questions are to the Information Commissioner and this goes back to what we were talking about before about model protocols. Do you have a copy of protocols from departments that you might be able to furnish to the committee—ones that are actually in use?

Ms Rangihaeata: I am aware of some that may wish to share. They may have them on their websites. We can certainly follow up with a couple of them. We can look on their websites as well. When we provide the link, we will endeavour to—

Mr KRAUSE: They are public documents, are they, for each agency?

Ms Rangihaeata: Certainly ours is a public document.

Mr KRAUSE: I understand that.

Ms Rangihaeata: Yes. I can see if theirs are and approach a couple as well.

ACTING CHAIR: Are you looking for RTI protocols for any particular department?

Mr KRAUSE: Each of them.

ACTING CHAIR: All of them?

Mr KRAUSE: Yes. Thank you for that. I appreciate it. In relation to external review for RTIs, I noted 3.4 per cent get an external review. How many employees in the team deal with those external review applications?

Ms Winson: There are 20 employees in the external review team, of which there are some administrative support staff, so it is a very small team.

Mr KRAUSE: In relation to external review but also RTIs generally, do you think there is a cost barrier especially for individuals involved who are interested in obtaining information? Do you have any information about that or any inkling about that matter? It is certainly something that is raised occasionally.

Ms Winson: I cannot say in the short time I have been here that that is a specific issue that has been raised with me. The legislation does allow for hardship applications for certain parties. It is not inconceivable that that could be a problem for some. However, that is the reason for the importance around the legislative context that I spoke to at the beginning and would emphasise—that is, the legislation does advocate proactive release so that applications are the last resort.

Mr KRAUSE: For example, I made an RTI application recently to an agency seeking a report and correspondence between that agency and a local government. The cost estimate came back at $1,753 for 380-odd pages. People know what we get paid, but that seems like a reasonably high amount. Other people in the community would perhaps think that as well. In relation to deemed refusals, 22 per cent of those were deemed refusals because they were not meeting time frames. Have you given any consideration—and anyone can answer this—as to whether that is merely a resourcing issue or is it a cultural issue which may be fixed by perhaps changing the focus to a deemed acceptance provision in the legislation?

Ms Winson: That is a good question. It is probably a question for the department of justice and the policy personnel. I think there are complexities around the assumption that it is deemed to be accepted because the legislation is premised on and I think the best value of the legislation is the public interest test, which allows a sophisticated and careful assessment of those things that should be publicly released and those things that should be protected.

In the vast majority of cases where we have affirmed decisions of agencies to not release certain material, invariably one of the key factors that plays into that is about whether it is contrary to the public interest to release information, and in behind that sits often what we describe as intermingled private information of third parties. That is probably why—I would not say it is definitely the case: I have not done the analysis—agencies that feature highly in, for example, the Attorney-General's report as having the majority of applications are by their nature agencies that hold information that is not necessarily as easily reduced to access schemes—for example, hospital and health services. Because of the personal nature of information, there is a limit to what they can do without it being such that it

can be released or third-party information gets intermingled. The Queensland Police Service is another one. If they are doing an investigation into a homicide, for example, invariably there will be a whole bunch of information about other parties that is not necessarily releasable for good reason. It is a bit difficult to form a particular view on that, but I do think that those are the sorts of things that would come to the fore in my mind when you ask that question.

Mr KRAUSE: I am conscious of the time. In relation to the vexatious applicant that was declared, is the declaration a public document?

Ms Rangihaeata: Yes, it is.

Mr KRAUSE: Was the person or persons identified in that document or was the identity redacted?

Ms Rangihaeata: The identity was redacted, yes.

Mr KRAUSE: All the details surrounding it were there?

Ms Rangihaeata: The reasons for the decision are published.

Mr KRAUSE: That is very good. There was a statement made earlier about the release of cabinet documents. I think the Information Commissioner said words to the effect of sending a signal from the top to all agencies about more proactive release. Could you add anything more to that? You also said that, unlike agencies, you have to follow the law. There is no discretion on the part of you making decisions. Would you just expand on that please?

Ms Rangihaeata: In relation to formal access applications, when agencies are making those decisions, they also have discretion to release despite the exemptions. In some cases they can do that. We do not have the discretion on an external review. That is where the discretion point comes in.

Mr KRAUSE: That feeds back to your earlier comment about culture and how it may be affected by signals from the top of the tree. I do not have any other questions. I do not know whether the member for Currumbin does, but I think we are probably out of time anyway.

ACTING CHAIR: We are indeed. That concludes this briefing. Thank you to everyone who has participated today. We have a question on notice about the RTI protocols from the departments. Could we have responses back by 5 pm on 28 July 2023, as it is a large one to do, so that can be included in our deliberations? We will be in contact about that. Thank you to our Hansard reporters. Thank you to our secretariat. A transcript of these proceedings will be available on the committee's webpage in due course. I declare this public briefing closed.

The committee adjourned at 10.36 am.