

# The right to information



A response to the review of Queensland's Freedom of Information Act



## The right to information – A response to the review of Queensland’s Freedom of Information Act

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## Foreword by the Premier

Openness and accountability are the cornerstones of good government.

That's why one of my first acts as Premier was to commission Dr David Solomon to review Queensland's Freedom of Information laws and report on changes to give the community greater access to information.

Dr Solomon undertook a comprehensive review involving extensive consultation, and delivered his report to the Queensland Government on 10 June, 2008.

At the heart of *The Right to Information* report is the belief that governments should readily make information available to the community.

The Queensland Government agrees.

We recognise the importance of cultural change, as well as structural change. That means that, as we overhaul our approach to information, the over-riding principle will be that the community has a right to information held by the government.

As indicated in this response, the Queensland Government supports in full 116 of the report's recommendations, and either partially or in principle supports another 23 recommendations. Only two recommendations are not supported (see recommendations 45 and 70).

When these reforms take effect, Queensland will be the most open and accountable government in Australia.

*The Right to Information* report and the Queensland Government response provide a firm foundation for our State to take the lead on open and accountable government.

**ANNA BLIGH MP  
PREMIER OF QUEENSLAND**

## Introduction – the imperative for change

The *Freedom of Information Act 1992* (FOI Act) was a key accountability reform introduced in Queensland in the post-Fitzgerald Inquiry period, creating a legislative right of access to government information. The ability to access government information through the FOI Act, coupled with increased distribution of information through the internet and other forms of publication, means that there is now significantly more government information available to the community than there was prior to 1992.

Since the enactment of the FOI Act, however, there have been significant changes in the way government deals with information and the means by which documents are created and published. The FOI Act was passed in a different era, when information was primarily recorded on paper and stored in physical files. Technological advances have meant that the logistics and costs of storing and reproducing information have improved significantly and there has been a consequent massive increase in the volume of information held by government.

There also continues to be many unnecessary hurdles put in the path of information disclosure and there is considerable scope to improve access to government documents and reduce the time, cost and effort involved in accessing government documents.

It was for these reasons that the Queensland Government commissioned an independent and comprehensive review of Queensland's freedom of information legislation in September 2007, chaired by Dr David Solomon AM.

The report by the FOI Independent Review Panel, *The Right to Information*, proposes a complete rethink of the framework for access to information in Queensland. At the core of the report is a clear recommendation that government implement real enhancements to openness and accountability through a comprehensively developed change statement on information policy.

The Queensland Government agrees with the panel's conclusion that there is a need for government to renew its commitment to freedom of information through a new policy and legislative approach to freedom of information.

The government also shares the independent panel's view that freedom of information legislation cannot, of itself, deliver real enhancements to information policy.

Following from this, the government response to the independent review panel's report, *The Right to Information*, is centred on a key recommendation put forward by the panel: that a comprehensive whole-of-government strategic information policy is essential if we are to achieve the best possible outcomes for an open, accountable and participatory government, where recourse to legislative rights becomes a matter of last resort in the context of increased proactively released government information.

The panel makes the important point that government information is a core strategic asset. Open government will deliver more than just the important goal of increased public sector accountability and transparency. A better informed community means that users of government services will be better placed to participate in the design and delivery of those services. Hence, increased openness is also a means by which the value of the information held by government can be unlocked to deliver better public services.

Information policy and legislation reform is an integral part of the government's program of modernisation for the Queensland public service. It will be supported by an organisational and cultural change strategy to foster a public service culture that operates on the premise that increased openness is as much in the interests of a continuously improving public sector as it is in the interests of those to whom government is accountable.



## A whole-of-government strategic information policy framework

The Queensland Government will develop a whole-of-government information policy framework that will set the long term goals and strategic direction for government information policy, while at the same time mapping the immediate priorities for government in seeking to position itself as an innovative and accountable custodian of government information.

Government agencies already vest considerable time and resources in providing information to the community. Some examples of the type of information currently being provided to the public are:

- Queensland Health provides the public with a large amount of online information on health related issues in Queensland, ranging from Indigenous health trends, cancer incidence and mortality rates, to the location of hospital emergency centres.

The community also has online access to public hospital performance reports, staffing profiles, hospital activity and capacity reports and patient satisfaction surveys, to guide their health care decisions. Online information, provided through the Health Statistics Centre which monitors population health status and health service activities, also enables the community to see the background information that is used to guide health service improvements.

- The Department of Infrastructure and Planning is currently running a trial of the *Smart eDA (electronic Development Applications) Program*. This program will transform the paper-based Integrated Development Application Scheme (IDAS) process into an electronic process focused on making preparation of development applications easier and faster by assisting applicants to access council and state agency information relating to their proposed development.

Applicants will also be able to verify which councils and/or state agencies will be involved in the application assessment and lodge their application and pay any associated development assessment fees.

- The Department of Communities recently commenced publishing a quarterly report on progress and future action for the discrete Indigenous communities based on key indicators, such as reported offences against the person, hospital admissions for assault, court appearances for breaches of alcohol restrictions and school attendance.
- The Department of Natural Resources and Water hosts the Information Queensland Program, a further mechanism for making whole-of-government information available in useful form. Services to date include:
  - an interactive map, or atlas, displaying government information and services on a map of the state;
  - a government metadata catalogue to enable both agencies and the public to find information in a quicker and easier way; and
  - data storage at CITEC for agencies to place information online and make it available to both other agencies and the public electronically.
- The Department of Mines and Energy makes a wide variety of information concerning its activities available to the public through its internet site. The Queensland Digital Exploration Reports System (QDEX) provides online access to exploration reports and data produced by the department. The Interactive Resource and Tenure Maps (IRTM) allow users to search online and display geological data with mining and exploration tenure information for the whole of Queensland.

However, the government can take further steps to improve access to information held by government.



As a first step, and consistent with the recommendations contained in the panel's report, the government will develop a whole-of-government strategic information policy framework with the following elements:

- **A move to a 'push' model:** It is fundamental to an open and participatory government that information is provided as a matter of course, unless there are good reasons for not doing so. The policy framework will be based on guiding information policy principles, strategies and standards that position legislative access as the act of 'last resort' in accessing government information.

These information policy principles, strategies and standards will embed a right to information in the administrative practices and organisational culture of the public service, so that providing information to Queenslanders is recognised as a legitimate and core aspect of every public servant's day-to-day work.

- **A clearly articulated governance framework:** The Queensland Government agrees with the panel's recommendation that an integrated and coherent government-wide approach to the challenge of information management is required to provide direction and coordination among those with public administration and information management responsibilities. A critical component of the whole-of-government strategic information policy will be a governance framework, with clearly articulated roles and responsibilities for all relevant agencies, including the Public Service Commission, the Information Commissioner, Queensland State Archives and the Queensland Government Chief Information Office.
- **A comprehensive and integrated information policy:** The policy will govern all aspects of the information life cycle, including planning, creating, collecting, organising, using, disseminating, storing and destroying information. A review of all relevant standards and guidelines will commence immediately, with a view to creating an integrated and well-understood framework for the management of information throughout its life cycle.
- **A clear authorising environment:** The Queensland Government recognises that if real cultural change is to be achieved, and if openness is to become part of the culture of government, it must be championed within government itself. Strong leadership and clearly defined decision-making processes will be essential to creating an appropriate authorising environment to allow this to occur.

- **Appropriate protection for individuals' privacy:** The Queensland Government holds significant amounts of personal information, and it will be critical to ensure that appropriate administrative and legislative safeguards are in place to promote privacy rights and to improve procedures for providing access by people to their personal information.
- **Public interest restrictions on the release of information:** There are instances where the disclosure of information could have a prejudicial effect on essential public interests. Examples include matters such as national security, law enforcement, commercial confidentiality or the full and frank communications needed to allow the government to govern effectively. Where appropriate, the legislation will provide for restrictions on access to these types of information. It will be equally important that decision-making processes for the administrative release of information are sufficiently robust to ensure that information that would otherwise be restricted for public interest reasons is not inadvertently released.
- **Equal access to information:** The policy will also aim to maximise equality of access to information across all sections of the community. Advice on how to apply for information and complaints procedures must be targeted in a way that ensures that it reaches all sections of the community. Administrative release of information should also occur in a way that meets the needs of those who are at a social disadvantage or who cannot, because of their location or personal circumstances, readily access information through electronic means.
- **Comprehensive planning and management of resourcing and operational implications:** There will, as a matter of course, be significant resource implications for the government arising from the change to a push regime. Implementation of the whole-of-government strategic information policy will require careful planning, having regard to what can be achieved with current technology, and what the government can responsibly afford without unduly compromising other service delivery priorities.

Clearly, there is a significant program of work that will need to occur over the coming twelve months in support of a strategic information policy framework, including determining the baseline from which the policy can realistically be implemented and the development of standards and guidelines to provide the framework for the management of information.

## A new legislative architecture

The Queensland Government will implement a new legislative framework for access to information, as recommended by the panel, and agrees that the recommended title, *Right to Information Act*, will make the primary purpose of the new legislation clear.

A key recommendation put forward by the panel is that access to personal information should be through a new privacy regime and that access and amendment rights for personal information should be moved from right to information legislation to privacy legislation. The Government considers that there are clear benefits in enacting privacy legislation and will introduce a Privacy Bill in parallel with the new Right to Information Bill.

Consistent with the panel's recommendations, the Right to Information Bill will clearly state that its object is to provide a right of access to information held by the Government unless, on balance, it is contrary to the public interest to provide that information.

The new legislative architecture for the Right to Information Bill recommended by the independent panel includes core recommendations that the Queensland Government supports. These are:

- A reduced number of 'true' exemptions, including a redrafted Cabinet exemption. As noted by the independent panel, these exemptions are matters where it has been determined, legislatively, that the public interest in applying that particular exemption is so high that no other public interest consideration should be permitted to tip the balance in favour of disclosure; and
- A reframing of the 'public interest test' to provide in legislation:
  - a list of factors that might arise for consideration in the process of deciding whether the disclosure would, on balance, be contrary to the public interest; and
  - a time and harm weighting guide, with a list of harms that are to be given higher weight in assessing the public interest.

### *The Cabinet exemption*

The Queensland Government agrees with the panel's recommendation that the Right to Information Bill include an exemption for

Cabinet documents which, if disclosed, would reveal a consideration or deliberation of Cabinet, or otherwise prejudice Cabinet confidentiality.

The panel's recommendation that the Cabinet exemption have a purposive element will be reflected in the proposed Right to Information Bill by redrafting the exemption. It will provide that Cabinet material will be exempt where the material was created for the purpose of consideration or deliberation by Cabinet.

The exemption for Cabinet documents will include submissions, decisions, briefing notes and all other material that would, if made public, compromise the collective ministerial responsibility of Cabinet.

The exemption will apply for a period of ten years, after which release will be subject to the other provisions of the proposed Right to Information Bill, including the application of the time and harm weighting guide and the public interest test.

The government also considers that there is a compelling public interest in protecting the confidentiality of material prepared in the course of budget deliberations, particularly in terms of options for budget revenue and expenditure measures, and will also include this material in the Cabinet exemption.

In addition, the government proposes to amend the *Public Records Act 2002* to reduce the restricted access period for Cabinet documents from 30 years to 20 years.

The reduced time period for administrative release of Cabinet documents will mean that Queensland will have the most open access scheme for Cabinet documents in comparison with other Australian jurisdictions.

In keeping with the government's commitment to open and participatory government, the Premier and the Cabinet Secretary will regularly determine what information should be released proactively, including summary minutes of the Cabinet meeting and submission/decision summaries, and the time frames for such release.

## ***Application to government commercial entities and activities***

The panel also recommended the removal of specific exclusions relating to “Government Business Enterprises” (primarily Government Owned Corporations – GOCs and Local Government Owned Corporations - LGOCs).

The Queensland Government agrees with the panel’s view that, given that GOCs are emanations of government and that ministers are ultimately accountable for GOCs’ activities, GOCs should not be completely exempt from the application of the proposed Right to Information Bill.

At the same time, however, any decision to remove current exclusions needs to recognise that GOCs are subject to rigorous private sector regulatory requirements and that complying with the legislation could, in some instances, affect their ability to compete against private sector providers who are not covered by the legislation. The government considers that there needs to be a balance between the legitimate public interests of protecting the commercial interests of GOCs and in ensuring transparency of the operations of GOCs.

To achieve this balance, the Right to Information Bill will provide that GOCs will be subject to the Right to Information Bill, unless the government considers that capturing a GOC within the scope of the Right to Information Bill would jeopardise the competitive interests of the GOC. In addition, the community service obligations (CSOs) activities of GOCs will be subject to the proposed Right to Information Bill.

On this basis, the GOCs that will be captured by the Right to Information Bill will include:

- port authorities (Port of Brisbane Corporation, Ports Corporation of Queensland, Gladstone Ports Corporation, Mackay Ports, Port of Townsville and Cairns Ports);
- SunWater;
- Energex;
- Queensland Rail’s passenger services and rail network; and
- Queensland Electricity Transmission Corporation (Powerlink).

However, the Right to Information Bill will exclude GOCs whose competitive interests could be jeopardised if they were captured by the legislation. This is consistent with the approach

in other states and territories, where government business enterprises who operate in competitive environments, such as the national electricity market, are exempt from FOI.

GOCs which will be specifically exempt from the legislation are:

- electricity generation companies (CS Energy, Tarong Energy and Stanwell Corporation);
- the trading activities of Ergon Energy Queensland;
- Queensland Investment Corporation; and
- Queensland Rail’s competitive commercial activities, such as coal, bulk and general freight services.

The government will also increase access to information about GOCs by providing that the exclusion will apply to a GOC’s competitive activities, rather than to documents received or brought into existence by a GOC for those activities. Currently sections 11A and 11B of the *Freedom of Information Act 1992* operate as documents-based exclusions, which means that FOI immunity follows these documents regardless of whether they are held by the GOC or by a government agency. By contrast, documents created by or concerning private corporations, which are in the possession or control of an agency, are currently subject to the FOI Act.

The current documents-based exclusion for GOCs will be repealed, and the Right to Information Bill will include an exclusion for the activities of the limited number of GOCs listed above. This means that documents created by or concerning a GOC may be accessed if they are in the possession or control of an agency and are assessed as suitable for release under the public interest test in the proposed Right to Information Bill.

These legislative changes will be supplemented by increased publication of information relating to GOCs as part of the government’s move to a ‘push’ model of information sharing, which will be coordinated through the Office of Government Owned Corporations in Queensland Treasury.

The existing exemption for the Queensland Treasury Corporation (QTC) in respect of its borrowing, liability and asset managed related functions will also continue. QTC performs these functions in highly competitive commercial domestic and international markets in which the participants expect that confidentiality of information will be maintained. Removal of



this exemption could put QTC at a disadvantage in comparison with other states and the Commonwealth, as the only jurisdiction without such an exemption.

The government also believes there is a compelling public interest in retaining the current exemption for matter relating to investment incentive schemes, as disclosure of information relating to contracts entered into under the Queensland Investment Incentive Scheme (QIIS) could significantly undermine the state's ability to compete against other states for contestable projects. As a consequence the state could suffer economic losses from reduced levels of capital investment and job creation. The exemption in section 47A will therefore be retained. However, the exemption will lapse 12 months after the conclusion of a QIIS contract (but not apply for a period longer than eight years after the grant offer is accepted in any event).

### ***Application to non-government entities***

The public has a genuine interest in and the Queensland Government is strongly committed to the accountability and transparency of the thousands of bodies established or funded by the government, or which are contracted to carry out functions on behalf of government.

However, there are good public interest reasons for not capturing these entities within the scope of the proposed Right to Information Bill, for example where the proportion of funding received from the government is low, where the costs of compliance could significantly compromise service delivery (particularly in the case of smaller entities) or where compliance with the Act would place an undue impost on the non-government organisation.

The government agrees with the principle that it is in the public interest for information to be made available to the public for organisations that are funded by government or contracted to provide services on behalf of government. However, non-government organisations that receive funding or support from the Queensland Government already provide large volumes of information to government, which may then be accessed through FOI.

The government considers that the 'public interest' information sought from these bodies is already available from relevant agencies through existing accountability and reporting obligations or, if the information is not readily accessible, could be made available through improved reporting and information publication arrangements.

To ensure that appropriate information is being provided to the government by non-government organisations, Directors-General of all departments will be required to:

- evaluate reporting and accountability arrangements for non-government organisations, and report to the Premier on the information that government collects from these organisations by the end of 2008; and
- identify information provided by funded or contracted organisations that is suitable for proactive release through departmental publication schemes.

The Public Accounts Committee (PAC) is also currently conducting an inquiry into whether the frameworks and systems used by government in delivering and reporting funding to and from non-government organisations are providing sufficient information to stakeholders to make informed decisions. The outcomes of the PAC inquiry, together with the information obtained through departmental reviews, will be used by government to develop a whole-of-government reporting and information publication framework for non-government organisations.

The government also agrees with the independent panel's recommendation that private sector bodies with public functions such as regulatory functions (for example the Bar Association of Queensland), should be subject to the legislation in relation to their performance of those functions.

## **Processing applications**

### **Fees and charges**

The panel recommended a new charging regime for applications, based on the number of pages provided, rather than an estimate of the time taken to conduct searches and process the application.

The Queensland Government supports the intention of the recommendation to implement a more structured approach to charges for access to documents. However, preliminary modelling has indicated that the model proposed, if adopted in its entirety, could lead to increased costs in many instances.

The government will consider options for an appropriate charging regime as part of the drafting process for the proposed Right to Information Bill, to ensure that any changes do not inadvertently result in increased costs for applicants when compared with the current charging regime.

## Time limits for the process

As the panel has stated, in some cases “access delayed is access denied”. This can be particularly true when applicants are not satisfied and seek the review of decisions.

The report recommends a reduction in the maximum period for processing applications to 25 working days, and that a detailed Schedule of Relevant Documents be provided to applicants within 10 working days.

The proposed Right to Information Bill will provide that decisions should be made as soon as practically possible but no later than 25 working days.

Consistent with the process outlined at Appendix 6 of the report, an additional 10 working days will apply where third party consultation is required.

However, there could be significant operational difficulties with preparing a detailed schedule of documents within 10 days, in view of the following considerations:

- documents are often held in regional offices or by field officers with limited availability, which can significantly increase the time frames required for locating documents;
- preparation of detailed schedules would be extremely time-consuming and resource-intensive and difficult to complete within 10 days, particularly as the scope of applications frequently extends to thousands of documents; and
- there is a risk that exempt matter could inadvertently be disclosed to applicants through inclusion in a schedule if sufficient time is not allowed for preparation of the schedule.

In view of the practical considerations involved with these recommendations, the government will examine options for the preparation of a schedule that will not adversely impact on the recommended overall time frames for responding to applications.

## Governance

Implementing the recommendations of the panel will require a fundamental reconsideration of the governance roles for information management within the Queensland Government. These roles and relationships will be addressed as part of the development of the whole-of-government strategic information policy.

A Chief Executive Officer Steering Committee, chaired by the Director-General of the Department of the Premier and Cabinet, has been established to oversee development of the policy over the coming 12 months. Membership of the CEO Steering Committee includes the Under-Treasurer, the Director-General of the Department of Public Works, the Public Service Commission Chief Executive and the Director-General of the Department of Justice and Attorney-General.

The CEO Committee will review current roles and responsibilities of key agencies in light of the Right to Information report recommendations, with a view to implementing governance arrangements that will give best effect to the whole-of-government strategic information policy.

The entities with key roles are likely to be:

- Information Commissioner (IC) – this important role is discussed below;
- Queensland State Archives (QSA) – the QSA has responsibility for records management and archives and related Information Standards;
- Queensland Government Chief Information Office (QGCI) – the QGCI has responsibility for developing whole-of-government information management and information and communication technology business strategies and directions, including the Information Standards.
- Public Service Commission (PSC) – the PSC will drive change to embed a right to information in the administrative practices and organisational culture of the public service; and
- Office of Economic and Statistical Research (OESR) – the OESR maintains the government’s principal statistical data sets through the Data Hub and the Register of Strategic Information.

## Role of the Information Commissioner

The Information Commissioner will be both champion and monitor of the right to access information, and will support both agencies and applicants to proactively provide and seek information. This will occur in many ways, from the provision of guidelines and a telephone help-line, through to public assessment of agency performance in dealing with applications under the proposed Right to Information Bill.

External reviews and applications to have a person declared vexatious will continue to be heard by the Information Commissioner. Appeals on questions of law and declarations that a person is a vexatious applicant will be heard by the new Queensland Civil and Administrative Tribunal, proposed to be operational from late 2009.

## Next steps

As previously indicated, the Queensland Government will develop a new Right to Information Bill and a Privacy Bill, for release as consultation drafts by December 2008. Following input from the consultation process, it is proposed that the Bills be introduced into Parliament in the first half of 2009, with a view to commencement of the new legislation by mid-2009.

In parallel with development of new legislation, the Queensland Government will also develop a whole-of-government strategic information policy framework. It is proposed that an options paper on the key elements of the strategic information policy be released for consultation in early 2009.

## Conclusion

The Independent Panel's Report has set some significant challenges for government. Implementing the recommendations in *The Right to Information Report* will require fundamental changes to government administration and organisational culture. It will also require clear leadership and commitment, and significant investment of time and resources.

The Queensland Government recognises that we are not going to achieve the administrative and cultural change that is required to do this overnight. Nonetheless, the government has expressed its commitment to a new information policy paradigm and new legislation through the Right to Information Bill and a new Privacy Bill.

This response is the first step down that path, and the beginning of a new era of openness, transparency and accountability for the Queensland Government.

A comprehensive and integrated whole-of-government strategic information policy with a 'right to information' access perspective will take time to develop and implement. In the interim, it is important that the change momentum be continued through administrative measures that position legislative access as an avenue of last resort in accessing government information.

To achieve this, the government will act to implement administrative measures with immediate effect, including:

- The Premier and the Director-General of the Department of the Premier and Cabinet will write to all Ministers and Directors-General, respectively, encouraging them to increase the visibility of their agency's information holdings and requesting that they give immediate priority to increased disclosure of government information to the public.
- The Queensland Government agrees with the independent panel's view that a central e-RTI model should be developed where members of the community can lodge an application, make an electronic payment and validate electronic signatures. A project team, led by the Department of Public Works (Queensland Government Chief Information Office) will develop a model and implement a central e-RTI facility for the Queensland Government.
- The Queensland Government will commence regular proactive release of Cabinet information (including summary minutes of the Cabinet meeting).

## Response to specific recommendations

This table provides a line-by-line response to the specific recommendations made by the independent panel.

### The right to information report: Queensland Government response

No.	RECOMMENDATION	RESPONSE
1 (p.34)	As a priority, the Queensland Government should develop a whole-of-government strategic information policy that posits government information as a core strategic asset in the Smart State vision, addressing the lifecycle of government information and interconnecting strategically with other relevant public policies. Freedom of information, privacy, public records, ICT governance and systems would constitute some of the elements of this overarching information policy, and would benefit from policy consistencies and cross-leveraging results.	<p><b>Supported</b></p> <p>The Queensland Government will develop a comprehensive whole-of-government information policy framework that will set the long term goals and strategic direction for government information policy, while at the same time mapping the government’s immediate priorities for information management.</p> <p>In recognition of the critical importance of the policy in driving change across the sector, a CEO Steering Committee, chaired by the Director-General of the Department of the Premier and Cabinet, has been established to oversee development of the policy. Membership of the CEO Steering Committee includes the Under-Treasurer, the Director-General of Public Works, the Public Service Commission Chief Executive and the Director-General of the Department of Justice and Attorney-General.</p> <p>The government considers that it will be essential to review current roles and responsibilities of the Information Commissioner, Queensland Government Chief Information Officer and State Archivist in light of the report’s recommendations, and in articulating the governance arrangements that will give effect to the whole-of-government strategic information policy.</p> <p>In addition, the Public Service Commission will play a key role in promoting the organisational and cultural change required to drive implementation of the policy.</p>
2 (p.34)	Pending completion of the whole-of-government strategic information policy (Rec. 1) the Queensland Government should in the interim recast FOI’s place in the government information experience as the Act of last resort moving the existing ‘pull’ model to a ‘push’ model where government routinely and proactively releases government information without the need to make an FOI request.	<p><b>Supported</b></p> <p>The government agrees that, while a comprehensive and integrated whole-of-government strategic information policy with a ‘push’ focus will take time to develop, it is important that the change momentum be continued through immediate administrative measures that position FOI as a measure of last resort in accessing government information.</p> <p>In support of this recommendation, the Premier and the Director-General of the Department of the Premier and Cabinet will write to all ministers and directors-general, respectively, encouraging them to increase the visibility of their agency’s information holdings and requesting that they give immediate priority to increased disclosure of government information to the public.</p>

## The right to information report: Queensland Government response

No.	RECOMMENDATION	RESPONSE
3 (p.34)	<p>The following elements should form part of the more highly evolved ‘push’ model in Queensland and should be provided for in the freedom of information legislation, and supported by guidelines, sufficient legal protections, and the active monitoring efforts and collaborative approach of the Information Commissioner in a revamped role (more in chapter 20):</p> <ul style="list-style-type: none"> <li>• publication schemes and proactive decision-making processes that routinely release as much information as practicable (including documents themselves or public editions thereof) at large, or to specific interest sectors, as enabled by a range of ever-improving ICT features;</li> <li>• disclosure logs that provide online access to information already released under freedom of information (subject to lawful exceptions) no sooner than 24 hours after release to the requester (with supplementary contextual information providing greater balance or depth to the issue(s) that the government considers necessary);</li> <li>• greater administrative release through the exercise of executive discretion in good faith and in the appropriate circumstances (with sufficient legal protection) rather than the current tendency to refer all requests for documents to be managed through the longer and more expensive FOI processing model; and</li> <li>• administrative access schemes for appropriate information sets only.</li> </ul> <p>Specifically the freedom of information legislation would impose a mandatory obligation for agencies and public authorities to develop and implement a publication scheme taking into account the public interest in access to the information it holds.</p> <p>The publication schemes must be approved by the Information Commissioner in a similar model to that operating in the United Kingdom which recognises flexibility and capacity building imperatives in the system and includes development of model publication schemes by the Information Commissioner for different classes of public body such as for local government, the health sector and education. Published information should be made available electronically wherever possible.</p>	<p><b>Supported</b></p> <p>The government is committed to moving to a ‘push’ model, based on a greater proactive release of information, through publication schemes, disclosure logs and increased administrative release and access schemes.</p> <p>The information access features recommended by the panel are technology dependent or enabled, and will require analysis and redesign of underlying business processes. A review of current legal protections, information standards and policies will also be required to ensure that both legal and corporate risks are managed.</p> <p>The Queensland Government Chief Information Office (QGCIO) and the Queensland Government Chief Technology Office (QGCTO) will provide the Government with a report on:</p> <ul style="list-style-type: none"> <li>• the whole-of-government ICT implications of the information access features proposed in this recommendation (including current network capacity, information hosting and storage capacity; and timing, costs and other potential ICT enabled options) to allow greater information access; and</li> <li>• changes required to policies, guidelines and Information Standards, and tools that can be used (for example, the Government Information Licensing Framework) to expedite and enable access by the public to government information.</li> </ul> <p>Ultimately the ‘push’ model will require:</p> <ul style="list-style-type: none"> <li>• an authorising environment and accountability framework for government information management that recognises the rights of Queenslanders to access government information;</li> <li>• a revised whole-of-government set of objectives, guidelines and standards for information access and information management; and</li> <li>• a revised whole-of-government information and technology architecture that enables effective access by the public to government information.</li> </ul>

## The right to information report: Queensland Government response

No.	RECOMMENDATION	RESPONSE
4 (p.35)	<p>The Public Records <i>Information Standards</i> (currently Nos. 31, 40, 41) should be accorded a significantly greater profile and priority in government requiring an increased monitoring and compliance effort, through-</p> <ul style="list-style-type: none"> <li>• development of whole-of-government strategic information policy (Rec. 1) supported in governance terms by the collaborative efforts of the Information Commissioner, the Queensland State Archivist, and the Chief Information Officer, overseen by the Strategic Information and ICT CEO Committee, and reporting to the Parliamentary Legal, Constitutional and Administrative Review Committee through the Information Commissioner;</li> <li>• sector-wide mandatory audit to assess the current standard of records management;</li> <li>• deliver targeted capacity building strategies (informed by audit results) such as training and ICT solutions to compliance and systems issues; and</li> <li>• periodic audits on an ongoing basis to monitor and support continuous improvements in compliance, development of standards and guidelines, and responses to emerging ICT challenges.</li> </ul>	<p><b>Supported</b></p> <p>The government agrees that the Public Records Information Standards should be accorded a higher profile.</p> <p>The Director-General of the Department of the Premier and Cabinet will write to all Directors-General requesting that they commence immediate implementation of measures to assess the current standard of records management within their agencies and to address any deficiencies in their agencies' records management processes and practices in line with the Public Records Information Standards.</p> <p>Agencies will also need to collect baseline recordkeeping data required by the Queensland State Archives (QSA) to assess the performance of recordkeeping and to advise on appropriate capacity-building strategies. The QSA will, in parallel, develop and implement a training and awareness campaign for Public Records Information Standards. Records management performance across agencies will be monitored through a program of rolling assessments, to be undertaken by the QSA commencing from July 2009.</p>
5 (p.36)	<p><i>Ex ante</i> decision-making rules, legal protections and support mechanisms should be introduced as a strategy in routine and proactive disclosure where documents that can be released without difficulty and those that might need specific consideration are identified at the outset. As a first stage, select pilot programs would assist preparations to transition the wider public sector to a consistent, well-planned <i>ex ante</i> decision-making standard that integrates well with eDRMS versions across the sector and is supported in its wider roll-out by user-friendly, agency specific guidelines.</p>	<p><b>Supported</b></p> <p>To give effect to this recommendation, the government will develop an <i>ex ante</i> decision making standard as part of the development of the whole-of-government information policy. This work, led by the QGCIO, will establish decision-making rules for the release of information. In addition, possible pilot programs will be identified for the implementation of the standard as part of a staged roll out.</p> <p>Adoption of Electronic Document and Records Management System (eDRMS) across Queensland government agencies is not currently widespread. While the government supports agencies moving to an eDRMS, there are significant costs, change management and training issues associated with eDRMS implementation.</p> <p>As a first step, the QGCIO will report to the government providing a detailed assessment of:</p> <ul style="list-style-type: none"> <li>• the current status of agency eDRMS adoption across the Queensland Government (including committed costs, current plans, timelines and budget allocations for upgrades or implementation to full eDRMS functionality); and</li> <li>• timelines and projected costs (both capital and operational) for all agencies across the Queensland Government adopting full individual eDRMS functionality.</li> </ul>

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No.	RECOMMENDATION	RESPONSE
6 (p.36)	Proactive publication of EDRMS metadata (such as document title, subject, author, date of creation) with search capability should be pursued, at least in select pilot form pending ICT capability and governance. The recommended model would be similar to the United Kingdom's 'inforoute' and Information Asset Register and would deliver a single point of access to the publication of metadata listing unpublished information resources of government. An information portal capability for opening documents tagged ( <i>ex ante</i> ) 'yes' for release should also be pursued.	<p><b>Supported</b></p> <p>As noted in recommendation 5, this recommendation is dependent upon the establishment of a working eDRMS environment and the development of <i>ex ante</i> decision making rules, legal protections and support mechanisms to ensure appropriate release of the unpublished information resources of government.</p> <p>The ability to conduct effective electronic searches for records relevant to a request is dependent upon a reliable eDRMS that provides assurance of the integrity and identification of all existing versions of all records.</p> <p>Currently the application of recordkeeping metadata and resource discovery metadata across government requires significant improvement.</p> <p>By July 2009, the QGCIO, with support from the Information Commissioner and the QGCTO, will report to the government on options and recommended search capability opportunities using metadata.</p> <p>Many of the information assets available from the UK's 'inforoute' and Information Asset Register are already made available to the Queensland public through cross-government initiatives, such as the <i>Queensland Government Intellectual Property Register</i>, and <i>Smart Service Queensland initiatives</i>, such as <i>Information Queensland</i>.</p> <p>The QGCIO, with support from the QGCTO, will report to the government on the costs, benefits and options for establishing an information portal capability for opening documents tagged 'yes' for release.</p>
7 (p.36)	<p>Other ICT-enabled strategies for further consideration in publication schemes include:</p> <ul style="list-style-type: none"> <li>• Topic-specific mailing lists or discussion groups/forums to which the public could subscribe at no cost.</li> <li>• Websites dedicated to specific topics/developments and not merely to the department or agency as a whole (eg. &lt;GoldCoastMotorway.qld.gov.au&gt;, &lt;fluoridation.qld.gov.au&gt;, &lt;conservation.qld.gov.au&gt;). The public could subscribe for email notifications of additions or changes.</li> <li>• Blogs with 'Really Simple Syndication' feeds that would allow interested parties to subscribe to releases on a particular topic.</li> </ul>	<p><b>Supported</b></p> <p>The government will consider these strategies as part of the development of the whole-of-government policy framework.</p> <p>The QGCIO will work with Smart Service Queensland (SSQ) and QGCTO to develop standards or guidelines which standardise how agency web content is established, published and managed from a 'right to information' access perspective.</p>
8 (p.36)	The governance arrangements supporting a new strategic information policy framework should include the Information Commissioner collaborating with the Chief Information Officer and the Queensland State Archivist overseen by the relevant CEO steering committee.	<p><b>Supported</b></p> <p>The government agrees that a critical component of the whole-of-government strategic information policy must be a governance framework with clearly articulated roles and responsibilities for all relevant agencies, including the Information Commissioner, QSA and the QGCIO.</p>
9 (p.36)	The Information Commissioner, in collaboration with the Chief Information Officer and the Queensland State Archivist, should consider whether the UK's 'Click-Use' licence initiative with the developments on the GILF and IS 33 and advise on Crown copyright reuse.	<p><b>Supported</b></p> <p>The QGCIO, in collaboration with the Information Commissioner, the Office of Economic and Statistical Research and the Department of Tourism, Regional Development and Industry, will prepare a report for government on the reuse of public sector information, including consideration of the UK's 'Click Use' licence and the Queensland Government Licensing Framework.</p>

## The right to information report: Queensland Government response

No.	RECOMMENDATION	RESPONSE
10 (p.37)	The Information Commissioner should take a leadership role in the change management involved in implementing a new information policy adopting a 'push' model. The Information Commissioner should also guide consistency in implementation, and be alert and responsive to the support needs of smaller public authorities and local government.	<p><b>Supported</b></p> <p>The government agrees that the Information Commissioner will play a critical role in the change management required to implement the whole-of-government strategic information policy.</p> <p>In the first instance, this change management process will be driven by the CEO Steering Committee. A key task of the committee will be to develop a governance framework with clearly defined responsibilities for the Queensland Government's information policy.</p>
11 (p.47)	Access and amendment rights for personal information should be moved from freedom of information to a privacy regime, preferably to a separate Privacy Act.	<p><b>Supported</b></p> <p>The government will develop a separate Privacy Bill that will deal with access and amendment rights for personal information.</p>
12 (p.47)	There should be a Privacy Commissioner appointed to oversee the system providing for access and amendment of personal information.	<p><b>Supported</b></p> <p>A Privacy Commissioner will be appointed.</p>
13 (p.53)	In FOI and privacy legislation the term 'personal information' should replace the term 'personal affairs'.	<p><b>Supported</b></p> <p>The term 'personal information', instead of 'personal affairs' will be used in the proposed Right to Information Bill and the Privacy Bill.</p>
14 (p.54)	If a new privacy regime is adopted, attention should be given to amending the Public Service Regulations 2007 to reflect its standards and practices unless those standards and practices were able to be sufficiently detailed in the Privacy Act.	<p><b>Supported</b></p> <p>In implementing the proposed privacy legislation, the government will make any necessary amendments to the Public Service Regulation 2008 to ensure consistency with provisions regarding access to public service employee records.</p>
15 (p.58)	Where an agency receives personal information from a third party in confidence, the agency in considering the public interest and an applicant's right of access, should provide the applicant with a summary of the information (unless information cannot be 'de-identified') and/or provide the information through an independent intermediary.	<p><b>Supported</b></p> <p>The government agrees that, in most cases, an applicant should be able to access a summary of personal information provided in confidence by a third person.</p> <p>The government will examine options for the way in which information should be provided to applicants that will minimise the risk of identification of the third party.</p> <p>Consistent with the recommendation, information will not be disclosed where it cannot be de-identified or where the information may only have been possessed by a small number of people and disclosure of even a de-identified summary could lead to the third party's identification.</p>
16 (p.61)	The contents of Information Standard 38 should be widely publicised by agencies and regularly brought to the attention of employees using government-supplied equipment such as computers, and facilities such as email and internet.	<p><b>Supported</b></p> <p>The Director-General, Department of the Premier and Cabinet will write to all Directors-General requesting that they take steps to ensure that the contents of Information Standard 38 are understood by and complied with by public service employees.</p> <p>The QGCIO will continue to publicise Information Standard 38 and to promote its adoption throughout the sector.</p>



## The right to information report: Queensland Government response

No.	RECOMMENDATION	RESPONSE
17 (p.76)	<p>The Act should contain a section under the heading “Reasons for enactment of Act” stating —</p> <p>Parliament recognises that in a free and democratic society</p> <p>(i) there should be open discussion of public affairs;</p> <p>(j) information held by government is a public resource;</p> <p>(k) the community should be kept informed of government’s operations, including, in particular, the rules and practices followed by government in its dealings with members of the community;</p> <p>(l) openness in government enhances the accountability of government;</p> <p>(m) openness in government can increase the participation of citizens in democratic processes leading to better informed decision-making;</p> <p>(n) freedom of information legislation can contribute to a healthier representative, democratic government and enhance its practice;</p> <p>(o) freedom of information legislation can improve public administration, and the quality of government decision-making; and</p> <p>(p) freedom of information legislation is only one of a number of measures that should be adopted by government to increase the flow of information that the government controls to citizens.</p>	<p><b>Supported</b></p> <p>The advice of the Queensland Parliamentary Counsel will be sought as to the appropriate form of drafting for the proposed provision.</p>
18 (p.77)	<p>The Objects section of the Act should say —</p> <p>(3) The object of this Act is to provide the right of access to information held by the government unless, on balance, it is contrary to the public interest to provide that information.</p> <p>(4) The Act should be applied and interpreted to further the object stated in (1).</p>	<p><b>Supported</b></p> <p>The advice of the Queensland Parliamentary Counsel will be sought on the appropriate form of drafting for the proposed provision.</p>
19 (p.77)	<p>The Act should contain a Preamble stating —</p> <p>This Act replaces the <i>Freedom of Information Act 1992</i>. It emphasises and promotes the right to information and involves a new commitment to providing information. It brings a different approach to FOI, one based on a principled approach to determining what information should be made available and when.</p>	<p><b>Supported</b></p> <p>The advice of the Queensland Parliamentary Counsel will be sought on the appropriate form of drafting for the proposed provision.</p>

## The right to information report: Queensland Government response

No.	RECOMMENDATION	RESPONSE
20 (p.89)	All bodies that are established or funded by the government or are carrying out functions on behalf of government, should be covered by FOI, unless it is in the public interest that they should not be covered.	<p><b>Supported in principle</b></p> <p>The government is committed to ensuring appropriate levels of accountability for government bodies established by the government and funded with public monies, including Government Business Enterprises.</p> <p>The government will need to consider the overall public interest in extending the legislation to non-government organisations, particularly where the proportion of government funding received is low or the costs of compliance outweigh the advantages of participation or significantly compromise service delivery (particularly in the case of smaller entities).</p> <p>Consideration will be given to the public interest in applying the legislation to bodies established or funded by government or carrying out functions on behalf of government and whether the information provided by these bodies is already available through existing accountability and reporting obligations.</p>

## The right to information report: Queensland Government response

No.	RECOMMENDATION	RESPONSE
21 (p.89)	Sections 11A and 11B and Schedule 2 should be repealed.	<p><b>Supported in part</b></p> <p>The Right to Information Bill will provide that GOCs will be subject to the legislation, unless the government considers that capturing a GOC would jeopardise the competitive interests of the GOC. In addition, the community service obligations (CSOs) activities of GOCs will be subject to the Right to Information Bill.</p> <p>On this basis, the GOCs that will be captured by the Right to Information Bill will include:</p> <ul style="list-style-type: none"> <li>• port authorities (Port of Brisbane Corporation, Ports Corporation of Queensland, Gladstone Ports Corporation, Mackay Ports, Port of Townsville and Cairns Ports);</li> <li>• SunWater;</li> <li>• Energex;</li> <li>• Queensland Rail's passenger services and rail network; and</li> <li>• Queensland Electricity Transmission Corporation (Powerlink).</li> </ul> <p>However, the Right to Information Bill will exclude GOCs whose competitive interests could be jeopardised if they were captured by the legislation. This is consistent with the approach in other states and territories, where Government Business Enterprises who operate in competitive environments such as the national electricity market are exempt from FOI.</p> <p>GOCs which will be specifically excluded from the legislation are:</p> <ul style="list-style-type: none"> <li>• electricity generation companies (CS Energy, Tarong Energy and Stanwell Corporation);</li> <li>• the trading activities of Ergon Energy Queensland;</li> <li>• Queensland Investment Corporation; and</li> <li>• Queensland Rail's competitive commercial activities, such as coal, bulk and general freight services.</li> </ul> <p>The government will also increase access to information about GOCs by providing that the exclusion will apply to all GOC's competitive activities, rather than to documents received or brought into existence by an excluded GOC. Currently, sections 11A and 11B of the <i>Freedom of Information Act 1992</i> operate as documents-based exclusions, which means that FOI immunity follows these documents regardless of whether they are held by the GOC or by a government agency. By contrast, documents created by or concerning private corporations which are in the possession or control of an agency are currently subject to the FOI Act.</p> <p>The current documents-based exclusion will be repealed, and the Right to Information Bill will include an exclusion that is expressed as applying to a GOC's activities. This means that documents created by or concerning a GOC may be accessed if they are in the possession or control of an agency and are assessed as suitable for release under the public interest test in the proposed Right to Information Bill.</p> <p>Queensland Treasury, through the Office of Government Owned Corporations, will also develop a framework for the increased publication of information relating to GOCs.</p>

## The right to information report: Queensland Government response

No.	RECOMMENDATION	RESPONSE
22 (p.89)	In section 11(1) subsections (m), (n), (r), (s) and (t) should be repealed.	<p><b>Supported in part</b></p> <p>The exclusion for these entities will be repealed. Their commercial interests will be protected by inclusion of a ‘harm’ in the time and harm weighting guide of ‘possible prejudice to the competitive commercial activities of a Government Business Enterprise’.</p> <p>However, the existing exclusion for Queensland Treasury Corporation (QTC) in respect of its borrowing, liability and asset managed related functions will be retained. QTC performs these functions on a daily basis in highly competitive commercial domestic and international markets in which the participants expect that confidentiality of information will be maintained.</p>
23 (p.89)	As recommended in chapter 9, the harm factors included in the public interest test should include a reference to a possible prejudice to the competitive commercial activities of a Government Business Enterprise that could result from the release of information	<p><b>Supported</b></p> <p>The government agrees that there is a clear need to preserve the confidentiality of competitive commercial activities of Government Business Enterprises, in particular GOCs, to ensure that commercial-in-confidence information is appropriately protected under the proposed Right to Information Bill.</p>
24 (p.90)	The definition of “public authority” in s. 9 of the Act should be extended to include bodies established for a public purpose under an enactment of Queensland, the Commonwealth or another State or Territory.	<p><b>Supported</b></p> <p>The government supports this recommendation which is intended to ensure that Government bodies incorporated under the <i>Corporations Act 2001</i> (Cth) (such as company GOCs) are included in the operation of the proposed Right to Information Bill.</p> <p>The impact of changes to the definition of a “public authority” on other legislation, such as the <i>Public Records Act 2002</i>, will be considered.</p> <p>The advice of the Queensland Parliamentary Counsel will be sought as to the appropriate form of drafting for the proposed provision.</p>



## The right to information report: Queensland Government response

No.	RECOMMENDATION	RESPONSE
25 (p.96)	The FOI legislation should include a part dealing with access to the documents of organisations that are not agencies.	<p><b>Supported in principle</b></p> <p>The government does not intend to deem the documents of non-government organisations as being documents of an agency. However, the government agrees with the principle that it is in the public interest for information to be made available to the public for entities that are funded by government or contracted to provide services on behalf of government.</p> <p>Organisations that receive government funding are currently subject to strict accountability measures in acquittal of the funding they receive from government. Any documentation provided to the government as part of this process would currently be captured by the <i>Freedom of Information Act 1992</i> as a document of an agency.</p> <p>In addition, to ensure that appropriate information is being provided to government, all Directors-General will be required to:</p> <ul style="list-style-type: none"> <li>• evaluate reporting and accountability arrangements for non-government organisations, and report to the Premier on the information that government collects from these organisations by the end of 2008; and</li> <li>• identify information provided by funded or contracted organisations that is suitable for proactive release through departmental publication schemes.</li> </ul> <p>The Public Accounts Committee (PAC) is currently conducting an inquiry into whether the frameworks and systems used by government in delivering and reporting funding to and from non-government organisations are providing sufficient information to stakeholders to make informed decisions.</p> <p>The outcomes of the PAC inquiry, together with the information obtained through departmental reviews, will be used to develop a whole-of-government reporting and information publication framework for non-government organisations.</p>
26 (p.97)	Where a private organisation contracts to perform functions that were once performed by government and/or are considered generally to be the responsibility of government to deliver to the public, FOI should be extended to cover the documents of that organisation in relation to any such function. Those documents that relate directly to the performance of their contractual obligations would be deemed by the FOI legislation to be the documents of the relevant agency, for the purposes of FOI.	<p><b>Supported in principle</b> (see also response to recommendation 25)</p> <p>The government agrees that documents held by an agency in relation to the delivery of contracted functions should be subject to the proposed Right to Information Bill, but does not intend to deem the documents of non-government organisations as being documents of an agency.</p> <p>The government will evaluate contractual arrangements with relevant non-government organisations to determine whether sufficient access to documents can be, or already is, provided for under existing contractual requirements.</p> <p>Documents provided to the government in support of the performance of the contracted function will be subject to the proposed Right to Information Bill as a document of an agency.</p>

## The right to information report: Queensland Government response

No.	RECOMMENDATION	RESPONSE
27 (p.99)	The Part of the FOI legislation dealing with access to the documents of organisations that are not agencies, should include a section relating to organisations that receive funding assistance, including in-kind support, from government. The FOI law should contain a provision deeming that documents in a recipient's possession that relate directly to the performance by the function subsidised by the government be documents in the possession of the agency, and hence subject to FOI.	<p><b>Supported in principle</b> (see also response to recommendation 25)</p> <p>The government agrees that documents held by an agency in relation to government funding should be subject to the proposed Right to Information Bill, but does not intend to deem the documents of non-government organisations as being documents of an agency.</p> <p>The government will evaluate funding arrangements with relevant non-government organisations to determine whether sufficient access to documents can be, or already is, provided for under existing funding requirements.</p> <p>Documents provided to the government in support of the acquittal of funding will be subject to the proposed Right to Information Bill as a document of an agency.</p>
28 (p.100)	Private bodies with public regulatory functions that would otherwise be required to be exercised by government should be subject to FOI in relation to their performance of those functions.	<p><b>Supported</b></p> <p>The proposed Right to Information Bill will apply to private bodies that carry out public regulatory functions, to the extent of those functions.</p>
29 (p.104)	The sub-sections (x) and (y) of s. 11(1) should be repealed.	<p><b>Supported in part</b></p> <p>The exclusion for the grammar schools in section 11(1)(x) of the <i>Freedom of Information Act 1992</i> will be retained, as it would place the Queensland grammar schools at a commercial disadvantage in comparison to other independent schools who would not be subject to the legislation. Consistent with the government's response to recommendation 25, the government will ensure that, where it is in the public interest for information about the grammar schools to be made publicly available (e.g. reporting on acquittal funding provided by government), this information will be collected by the government and would be captured under the proposed Right to Information Bill as a document of an agency.</p> <p>Section 11(1)(y), which currently provides an exclusion for specific information held by education agencies, will be repealed.</p>
30 (p.104)	That sections 11CA, 11D and 11E and Schedule 3 be repealed.	<p><b>Supported in part</b></p> <p>The exclusion in section 11CA will be retained in view of the goal of the Root Cause Analysis process to identify problems and take corrective action without attributing blame and given that information obtained through this process is protected from disclosure under the <i>Health Services Act 1991</i> and the <i>Ambulance Service Act 1991</i>.</p> <p>Section 11D provides for exclusions to the operation of the Freedom of Information Act 1992 that are contained in other Acts to be listed in Schedule 3. These, and similar provisions in other Queensland legislation will be reviewed on a case-by-case basis to determine whether there is a compelling public interest that warrants the continuation of individual exclusions.</p> <p>Any continuing exclusions will be consolidated and listed in the proposed Right to Information Bill, rather than in individual legislation.</p> <p>The exclusion in section 11E (prisoner risk assessments) will be repealed and included as a 'harm' to be considered as part of the public interest test.</p>

## The right to information report: Queensland Government response

No.	RECOMMENDATION	RESPONSE
31 (p.105)	That personal information in the form of a risk assessment document relating to an offender should be able to be provided to a lawyer, acting as the offender's agent, rather than to the offender. A provision to this effect should be included in the proposed Privacy Act.	<p><b>Supported</b></p> <p>As a general principle, offenders should have a right to seek access to information which is considered as part of decision-making about the conditions of their incarceration and progression through the corrections system.</p> <p>The government will consider the best means to achieve this in legislation, taking into account the need to de-identify any personal information, protect the safety of authors of risk assessment reports and maintain the good order of correctional facilities.</p>
32 (p.121)	Cabinet decisions, Cabinet submissions and Cabinet Briefing Notes, whether final or in draft form, and all other matter that would, if made public, compromise the collective ministerial responsibility of Cabinet under the Constitution, should be exempt documents. Those exempt Cabinet documents would include minutes or notes of Cabinet decisions and discussions, briefs for ministers attending Cabinet meetings, the Cabinet agenda and pre-Cabinet consultations between officials and ministers and among ministers. This exemption applies only to documents brought into existence for the purpose of submission to Cabinet. Cabinet includes Cabinet committees.	<p><b>Supported</b></p> <p>The proposed Right to Information Bill will include a Cabinet exemption for material created for the purpose of consideration or deliberation of Cabinet. The Cabinet exemption will only apply to submissions, decisions and briefing notes and all other matter that would, if made public, compromise the collective ministerial responsibility of Cabinet.</p> <p>The government will also take further steps, beyond that recommended in the report, by providing that the Cabinet exemption will lapse after a period of ten years. After that time, release of Cabinet material will be subject to the provisions of the proposed Right to Information Bill and the public interest test (including a 'harm' where matter would disclose the deliberative processes involved in the functions of government).</p> <p>In addition, the <i>Public Records Act 2002</i> will be amended to reduce the restricted access period for Cabinet documents from 30 years to 20 years.</p>
33 (p.121)	Factual/statistical material that is extracted from a report and detailed within a Cabinet submission should be covered by the exemption, because to release it could indicate the nature of the submission, and hence compromise collective ministerial responsibility. The cover sheet and body of a Cabinet Submission is not to be interrogated in deciding application of the exemption (disclosure would compromise collective responsibility of Cabinet). However, any attachments including whole reports of factual/statistical material attached or annexed to Cabinet submissions, would not normally be covered by the exemption unless disclosure would compromise collective responsibility of Cabinet requiring proof that that any such attachment was prepared for the purpose of submission to Cabinet.	<p><b>Supported</b></p> <p>Factual or statistical material detailed within a Cabinet submission will be subject to the proposed Right to Information Bill and will be exempt where disclosure of the material would involve disclosure of any deliberation or consideration of Cabinet. As indicated in the response to recommendation 32, the exemption will apply for a period of ten years, after which release will be subject to the proposed Right to Information Bill and the public interest test.</p>
34 (p.122)	The Premier, as Chair of Cabinet, in consultation with the Cabinet secretariat, or their delegates, should decide weekly after Cabinet meetings, what Cabinet material should be released proactively. They should also release an edited version of the Cabinet agenda and a summary of those Cabinet decisions that it was no longer necessary to treat as confidential.	<p><b>Supported</b></p> <p>The government will commence proactive release of Cabinet information on a regular basis.</p>
35 (p.123)	An exemption for Executive Council documents be retained.	<p><b>Supported</b></p> <p>Each agency preparing documents for the consideration of the Executive Council will now be required to advise whether a summary of the information is suitable for release and, if not, the reasons why release is not appropriate.</p> <p>In most cases, decisions are gazetted.</p>

## The right to information report: Queensland Government response

No.	RECOMMENDATION	RESPONSE
36 (p.128)	<p>To preserve and promote individual ministerial responsibility</p> <ul style="list-style-type: none"> <li>• incoming ministerial briefing books (“red/blue books”) for when a minister is appointed to the portfolio;</li> <li>• annual parliamentary estimates briefs for when the Minister must account to Parliament for the ministerial portfolio’s past and planned expenditure of parliamentary appropriations; and</li> <li>• parliamentary question time briefs (“PPQs”) for when the minister must account to Parliament in question time;</li> </ul> <p>(and any drafts or topic lists of those documents) should be exempt from disclosure under FOI.</p>	<p><b>Supported in part</b></p> <p>Parliamentary estimates briefs and question time briefs will not be included in the new exemption, as these are otherwise protected by parliamentary privilege under section 50(c) of the <i>Freedom of Information Act 1992</i>. The Government supports the Panel’s recommendation that the section 50 exemption be retained (see recommendation 39).</p> <p>An exemption will be included in the proposed Right to Information Bill for incoming ministerial briefs. Consistent with the application of the Cabinet exemption, the specific ministerial documents exemption will lapse after a period of ten years.</p>
37 (p.129)	<p>To maintain the constitutional convention that protects the confidentiality of communications by or with the Sovereign or her representative, documents that are communications between the Sovereign and the Governor, and between the Sovereign and the Premier, and between the Governor, representing the Sovereign, and the Premier, and documents recording any such communications, should be exempt from FOI.</p>	<p><b>Supported</b></p> <p>The constitutional convention of confidentiality of communications between the Sovereign and the Sovereign’s representative (in that capacity) and the Premier will be maintained, and documents recording any such communications will be exempt under the proposed Right to Information Bill.</p>
38 (p.130)	<p>Section 28 should be amended to clarify its meaning by adding two words, “grant or” so that it reads, “An agency or Minister may grant or refuse access to exempt matter or exempt documents.”</p>	<p><b>Supported</b></p> <p>The proposed Right to Information Bill will provide that documents that could be considered exempt may still be released.</p> <p>The proposed Right to Information Bill will not mandate that access to exempt documents or matter should be refused.</p> <p>The advice of the Queensland Parliamentary Counsel will be sought as to the appropriate form of drafting for the proposed provision.</p>
39 (p.137)	<p>The exemptions contained in sections 42, 42A, 43, 46 (1)(a) and 50 continue to apply, with no public interest test. The exemption in s. 47A should be removed from the Act.</p>	<p><b>Supported in part</b></p> <p>The exemptions in sections 42, 42A, 43, 46(1) (a) and 50 will be retained with no public interest test in the proposed Right to Information Bill.</p> <p>However, the removal of the section 47A exemption for the Queensland Investment Incentive Scheme documents is not supported. Given the compelling public interest in protecting the competitive interests of the State, the exemption in section 47A will be retained and the current eight-year administrative release process will continue to apply.</p> <p>However, the exemption will lapse 12 months after the conclusion of the investment incentive scheme agreement or after eight years (whichever is the earlier date). Given that the majority of agreements are between five and eight years in duration, this will mean that information will be able to be accessed at an earlier date than is currently the case.</p>
40 (p.137)	<p>Section 42 should be amended to include an exemption for matter that consists of information obtained or created by the State Intelligence Group, the State Security Operations Group or Crime Stoppers.</p>	<p><b>Supported</b></p> <p>The continued provision of information from interstate intelligence services is essential to law enforcement. Similarly, information received from private citizens through the Crime Stoppers hotline provides valuable law enforcement assistance.</p>



## The right to information report: Queensland Government response

No.	RECOMMENDATION	RESPONSE
41 (p.149)	Only one form of public interest test should be used in the legislation. It should be in the following form – “Access is to be provided to matter unless its disclosure, on balance, would be contrary to the public interest.”	<b>Supported</b>  The advice of the Queensland Parliamentary Counsel will be sought on the appropriate form of drafting for the proposed provision.
42 (p.155)	The legislation should contain a non-exhaustive list of the factors that should be considered by decision-makers when applying the public interest test, and factors that should not be considered. The factors should be those listed above, in this chapter of the report. The legislation should make it clear that these are not the only factors that may be considered in a particular case.	<b>Supported</b>  The advice of the Queensland Parliamentary Counsel will be sought on the appropriate form of drafting for the proposed provision.
43 (p.155)	The Information Commissioner should make publicly available, on the website and elsewhere, guidelines on the application of the public interest test, including examples of the way it should be and has been applied.	<b>Supported</b>  The Information Commissioner will publish guidelines to assist in a consistent and balanced application of the public interest test.
44 (p.155)	Section 6 of the present Act (amended as proposed by the Panel in chapter 4) should be placed at the beginning of the Part of the Act that lists the factors to be taken into account in assessing the public interest. A similar provision should be included in the Privacy Act.	<b>Supported</b>  The advice of the Queensland Parliamentary Counsel will be sought on the appropriate form of drafting for the proposed provision.
45 (p.157)	Sections 39(2) and 48 and Schedule 1 should be repealed.	<b>Not supported</b>  Schedule 1 provides a very limited list of secrecy provisions in other legislation relating to the protection of the rights or safety of citizens. These matters require an absolute guarantee of confidentiality to ensure upfront public confidence and participation in certain processes of government. For example, Schedule 1 protects the confidentiality of the witness protection program, adoption information, child protection notifications and personal taxation information. The government considers there is a compelling public interest in protecting this information from public disclosure in all circumstances.  In addition, the exemption for audit information provided by section 39(2) is considered necessary to protect the confidentiality of information obtained during the course of audits and to maintain the integrity of the Queensland Audit Office’s audit process, which is comparable to exemptions provided in other jurisdictions.
46 (p.160)	The disclosure harms concerned with the present “exempt/public interest” categories in the Act, namely sections 38, 39, 40, 41, 42AA, 44, 46(1)(b), 47, 48 and 49, together with section 45, to which at present a public interest test applies in part only, be moved to the Time and Harm Weighting Guide in the new Act. The harm is no longer an “exemption” subject to a public interest test, but a “harm factor” accorded its due weight within a public interest test. Consideration of the harm those provisions were designed to counter is preserved but reframed with the benefit of legislative guidance as to relative weightings in the public interest.	<b>Supported</b>  The government supports the intent of this recommendation to provide legislative guidance on the relative weight of particular factors which may balance against disclosure of information.  The proposed Right to Information Bill will include a time and harm weighting guide which will detail the list of harms that are to be given higher weight in assessing the public interest.  The advice of the Queensland Parliamentary Counsel will be sought on the appropriate form of drafting for the proposed provision.
47 (p.166)	The Time and Harm Weighting Guide detailed above should be a schedule to the Act.	<b>Supported</b>  A time and harm weighting guide will be included in the proposed Right to Information Bill.  The advice of the Queensland Parliamentary Counsel will be sought on the appropriate form of drafting for the proposed provision.

## The right to information report: Queensland Government response

No.	RECOMMENDATION	RESPONSE
48 (p.166)	An agency or affected third party may apply to the Information Commissioner to extend the time specified in the schedule for any particular document, on public interest grounds.	<p><b>Supported</b></p> <p>The protection for affected agencies or third parties to apply for an extension of time on public interest grounds is warranted.</p>
49 (p.169)	The provisions allowing the Attorney-General to issue conclusive certificates under the FOI Act should be removed from the Act.	<p><b>Supported</b></p> <p>The power to issue conclusive certificates will not be included in the proposed Right to Information Bill.</p>
50 (p.176)	The maximum period for supplying documents in response to an application for access should be reduced from 45 calendar days to 25 working days. The legislation should be amended to require agencies to supply documents as soon as possible, but no later than 25 working days.	<p><b>Supported</b></p> <p>The proposed Right to Information Bill will provide that decisions should be made as soon as practically possible but no later than 25 working days. However, the Bill will also provide that agencies may seek agreement from applicants for extensions of time in certain circumstances, for example, where large volumes of documents are requested or documents are held in regional offices or by field officers. Consistent with the process outlined at Appendix 6 of the Report, an additional 10 working days will apply where third party consultation is required.</p>
51 (p.176)	When acknowledging receipt of an FOI request, a Schedule of Relevant Documents, including an indication of those documents that are considered to be ephemeral, should be provided.	<p><b>Supported</b></p> <p>The proposed Right to Information Bill will make provision for the preparation of a schedule of documents.</p> <p>Although not specified in the recommendation, the report states that the schedule should be prepared within 10 days of receipt of the request and that the schedule will include the title, author and a description of each document, as well as information in relation to whether it is considered to be ephemeral.</p> <p>The government considers that flexibility is required as it will not always be practicable to supply a detailed schedule of documents within 10 working days, for example, where large volumes of documents are requested or documents are held in regional offices or by field officers.</p> <p>The government will examine options for the preparation of a schedule that will not adversely impact on the recommended overall timeframes for responding to applications (25 days, or 35 days where consultation is required).</p>
52 (p.178)	The Information Commissioner should issue guidelines to agencies to assist consistency in the production and management of Schedules of Relevant Documents (e.g. Schedule format).	<p><b>Supported</b></p> <p>The Information Commissioner will issue guidelines to assist in the production and management of schedules.</p>
53 (p.179)	The Information Commissioner should have the power to consider and report on complaints about the way an agency deals with applications for access, including the timeliness of its process. The Information Commissioner should have the power to conduct own-motion inquiries in relation to such issues.	<p><b>Supported in principle</b></p> <p>The government will give consideration to appropriate complaint avenues in drafting the proposed Right to Information Bill, including the respective roles of the Information Commissioner and the Ombudsman in dealing with complaints about the way agencies deal with applications for access.</p>
54 (p.180)	The Information Commissioner should conduct audits of agency performance of FOI and produce annual report cards on agencies for examination by the parliamentary committee.	<p><b>Supported</b></p> <p>Consultation will occur with the Legal, Constitutional and Administrative Review Committee on the appropriate format for agency report cards.</p>

## The right to information report: Queensland Government response

No.	RECOMMENDATION	RESPONSE
55 (p.181)	The Information Commissioner should investigate options for the provision of FOI services to smaller agencies that are unable to develop the necessary expertise to deal adequately with FOI requests.	<p><b>Supported</b></p> <p>The government will consider what legislative change is necessary to enable this to occur in relation to both delegations powers and agency restrictions on providing information to other agencies.</p>
56 (p.181)	The Information Commissioner should encourage larger agencies to increase the number of officers authorised and qualified to handle FOI matters.	<p><b>Supported</b></p> <p>Chief executive officers are responsible for determining the appropriate number of officers required to handle FOI matters in agencies.</p> <p>However, in the annual report cards on agency performance, the Information Commissioner will consider agencies' resourcing levels and, where appropriate, encourage agencies to increase the number of authorised and qualified officers.</p>
57 (p.181)	The Information Commissioner should ensure that all agencies and their FOI sections are made aware of the latest technological advances applicable to FOI, and of the way agencies in Queensland are applying them	<p><b>Supported</b></p> <p>The government will review the respective roles of the Information Commissioner, the QGCIO and QGCTO in implementing this recommendation.</p>
58 (p.182)	FOI should be considered as part of the mainstream function of government agencies and superior performance by officers should merit official recognition.	<p><b>Supported</b></p> <p>Chief executive officers will be encouraged to nominate teams for consideration for the Premier's Awards for Excellence in Public Sector Management.</p> <p>These awards recognise and reward outstanding achievements of work units and teams who strive for excellence, best practice management and improvements in services and public sector management.</p>
59 (p.182)	Where an agency fails to meet deadlines specified in the Act for the provision of information to requesters, the requester is entitled to a refund of the FOI application fee.	<p><b>Supported</b></p> <p>Application fees will be refunded where an agency fails to meet the deadlines for providing information specified in the proposed Right to Information Bill unless the applicant has agreed to an extension of time (see recommendation 50).</p>
60 (p.183)	Section 27B should be redrafted to provide that an agency or minister may keep working on a request beyond the time when there is a deemed refusal, so long as they have asked the applicant for an extension of time in writing and the applicant has not refused that request, and not taken advantage of the deemed refusal to apply for external review. If a request for an extension of time is granted, the applicant is bound by the new time limit. The agency or minister must stop processing the request if they are informed the applicant has sought external review or the applicant has refused the request for an extension.	<p><b>Supported</b></p> <p>The advice of the Queensland Parliamentary Counsel will be sought on the appropriate form of drafting for the proposed provision.</p>
61 (p.198)	The requirement for an application fee should be maintained for requests that do not seek personal information. It should be held at the present level and increased in line with cost of living increases.	<p><b>Supported</b></p> <p>Application fees will be retained for requests for non-personal information.</p>

## The right to information report: Queensland Government response

No.	RECOMMENDATION	RESPONSE
62 (p.198)	<p>There should be no charges for searching for, or retrieval of, documents, or for decision-making by FOI officers. There should be a charge based on the number of full pages (that is, pages where no information has been blacked out) provided to an applicant. The charge should be set out in the regulations, based on the recommendations of the Information Commissioner. Initially, the charge should be</p> <p>1–10 folios Free</p> <p>11–20 folios \$20 for 20 folios (i.e. \$2 a page for each page in this bracket)</p> <p>21–50 folios \$20 plus \$2.25 a page for each page in this bracket.</p> <p>51–100 folios \$87.50 plus \$2.50 a page for each page in this bracket.</p> <p>101–500 folios \$212.50 plus \$2.75 a page for the each page in this bracket.</p> <p>501–1000 folios \$1312.50 plus \$3 a page for the each page in this bracket.</p> <p>1000 folios (and more) \$2812.50 plus \$5 a page.</p>	<p><b>Supported in principle</b></p> <p>While the intention of the recommendation to implement a more structured approach to charges for access to documents is supported, the government is concerned that the model proposed could lead to unintended increased costs in many instances.</p> <p>Consequently, the government will consider options for an appropriate charging regime that does not lead to significantly increased costs for applicants.</p>
63 (p.199)	<p>The charge should be levied at the time the documents are ready for delivery. They should be made available as soon as the charge is paid.</p>	<p><b>Supported</b></p> <p>Documents to which access has been granted will be copied, transferred to disk or made available for inspection upon payment of the prescribed charges.</p> <p>This will address circumstances where a decision has been made and documents copied or transferred to disc, but the applicant has chosen not to collect the documents.</p>
64 (p.199)	<p>The charge for photocopying should be retained. No charge should be made when information is provided on a computer disc, or by email.</p>	<p><b>Supported</b></p> <p>The charge for photocopying will be retained, with no charge for providing paper-sourced information in an electronic format. Consideration will be given to charges for provision of non-paper-sourced data in accordance with recommendation 85.</p>
65 (p.199)	<p>No changes should be made to the present provisions for the waiver or reduction of fees, other than to provide that an agency/minister should have power to waive charges or additional charges where the cost of levying and/or paying the amount would exceed the amount being claimed.</p>	<p><b>Supported</b></p>
66 (p.199)	<p>An amendment along the lines of the provision in the Irish legislation should be introduced to try to limit any abuse of the waiver for concession card holders (commonly referred to as “rent a pensioner”).</p>	<p><b>Supported</b></p> <p>The advice of the Queensland Parliamentary Counsel will be sought on the appropriate form of drafting for the proposed provision.</p>
67 (p.199)	<p>The Information Commissioner, rather than individual agencies, should determine whether a non-profit organisation qualifies for a waiver because of financial hardship. A determination by the Information Commissioner should be recognised by all agencies, and should remain current for the year in which it was assessed, unless there is a change in the relevant circumstances of the organisation.</p>	<p><b>Supported</b></p>
68 (p.199)	<p>There should be no public interest exemption from fees or charges introduced.</p>	<p><b>Supported</b></p>

## The right to information report: Queensland Government response

No.	RECOMMENDATION	RESPONSE
69 (p.200)	The Information Commissioner should make available a space for requesters to access information made available by agencies where agencies are unable to provide access, or where it would be more convenient for the requester to view the information in the office of the Information Commissioner than in the office of the agency. The Information Commissioner should also make available computer access for requesters in the office.	<p><b>Supported in principle</b></p> <p>The Information Commissioner will have limited capacity to provide facilities for access to information. It is anticipated that agencies will be better placed to provide facilities and computer access.</p> <p>However, facilities and computer access could be made available by the Information Commissioner for requesters to view information only where an agency is unable to provide accommodation for access and alternative access cannot be arranged.</p>
70 (p.200)	The Information Commissioner should provide these facilities at no charge, for the first four hours, and \$20 for the next four hours. The charge should then be \$50 a day, but the facility must be pre-booked by the requester.	<p><b>Not supported</b></p> <p>The use of such facilities should be provided free of charge to facilitate access to information.</p> <p>The Information Commissioner will have limited capacity to provide access to facilities in most instances. It is anticipated that agencies will be better placed to provide facilities and computer access, given that the information may be personal or confidential or may be considerable.</p>
71 (p.200)	The PAN/FAN system of assessing charges for accessing documents should be abandoned.	<p><b>Supported</b></p> <p>The PAN and FAN system of assessing charges for documents will not be included in the proposed Right to Information Bill.</p> <p>However, the government considers that it is necessary to provide a mechanism for requesters to advise decision-makers about the scope of requests. The implementation of such a mechanism will be examined in conjunction with recommendation 51.</p>
72 (p.207)	The Information Commissioner must determine any application made by an agency to have a person declared vexatious under s. 96A.	<p><b>Supported</b></p> <p>The right of every person to seek access to information must be counterbalanced against the right of agencies to seek independent adjudication of situations where a requester's demands are vexatious and unreasonable.</p>
73 (p.208)	<p>Section 96A(4) should be amended to include the following additional grounds for declaring a person vexatious –</p> <ul style="list-style-type: none"> <li>• the application clearly does not have any serious purpose or value;</li> <li>• it is designed to cause disruption or annoyance; or</li> <li>• it can otherwise fairly be characterised as obsessive or manifestly unreasonable.</li> </ul>	<p><b>Supported</b></p> <p>The proposed Right to Information Bill will include these additional grounds for declaring a person vexatious.</p>
74 (p.208)	Section 96A should be amended to include a provision entitling a person declared vexatious under the section to appeal to the proposed Queensland Civil and Administrative Tribunal.	<p><b>Supported</b></p>
75 (p.208)	The Information Commissioner should develop detailed guidelines, based on the provisions in the Act, to assist agencies in deciding whether to apply for a declaration under s. 96A.	<p><b>Supported</b></p> <p>The Information Commissioner will issue guidelines to assist agencies in determining whether or not to make an application that a requester be declared vexatious.</p> <p>The Information Commissioner is the most appropriate body to provide such adjudication.</p>

## The right to information report: Queensland Government response

No.	RECOMMENDATION	RESPONSE
76 (p.208)	The Information Commissioner should develop a training program for agencies, based on those developed by the NSW Ombudsman, to help agencies engage productively with requesters, and share practical strategies for dealing with unreasonable requester conduct.	<p><b>Supported</b></p> <p>A training package will be developed to coincide with the commencement of the legislation.</p>
77 (p.208)	Section 29B should be amended so that if a document is substantially the same as a document that has been the subject of an earlier application by the applicant to the same agency or minister, where the only difference is the recording of the applicant's previous application, the request can be refused.	<p><b>Supported</b></p> <p>The proposed Right to Information Bill will include a provision which allows the refusal of an application where the only difference between the information currently requested and that requested previously is the recording of the requester's application.</p>
78 (p.221)	The Queensland State Archivist should review the existing Information Standards and best practice guidelines to ensure a plain English, comprehensive and detailed, self-contained, Queensland promulgation of the public records requirements and expectations in handling, keeping and destroying drafts and emails. Where practicable and appropriate, procedural and technical guidance is to be included in illustrating expectations arising in typical examples. This review should include consultation (perhaps via focus groups) with representatives from the following stakeholders: FOI practitioners, records administrators, and a sufficient slice of agency functions such as policy officers, program administrators, field workers. (The Archivist's information policy partners, the Information Commissioner and the Chief Information Officer, should also be consulted.)	<p><b>Supported</b></p> <p>The QSA will review each of the Information Standards for which it is responsible, and will publish the dates and proposed scope of these reviews.</p> <p>Responsibility for reviewing all other Information Standards to ensure clarity and alignment with the new 'right to information' model will remain with the QGCIO.</p>
79 (p. 221)	The Queensland State Archivist (and the Information Commissioner) should actively promote the public records requirements widely and frequently, including training and information programs. The State Archivist should monitor compliance, and difficulties in compliance, to continuously improve awareness and capability and together with the Information Commissioner's support and feedback, maintain the relevant standards and guidelines under regular review. As appropriate, the Chief Information Office should assist in assuring sector-wide systems' capability in handling retention and disposal of drafts and emails in accordance with required standards. It would be important to emphasise also the sanctions consequent upon wrongful destruction of documents, supported by referral points and working assumptions to guide the decision-making that is made in practice everyday by public servants in what documents to keep.	<p><b>Supported</b></p> <p>The QGCIO, the Information Commissioner and the QSA will drive initiatives to ensure awareness of and compliance with requirements for the handling of public records.</p>
80 (p.221)	Where the decision-maker clearly regards certain documents as merely ephemeral in nature, the decision-maker can annotate the panel's recommended (chapter 13) Schedule of Relevant Documents accordingly enabling the requester to confirm to which documents access is sought, and liability to costs is made.	<p><b>Supported</b></p> <p>Decision-makers will be able to annotate the schedule accordingly.</p>

## The right to information report: Queensland Government response

No.	RECOMMENDATION	RESPONSE
81 (p.222)	<p>The existing scope of legal entitlement to raw data and metadata be maintained, subject to –</p> <p>(5) excluding entitlement to metadata where the only difference to the same metadata requested by the same person previously has been occasioned by the recording of the requester’s own activity;</p> <p>(6) excluding metadata from the definition of document of an agency unless and until the requester specifically requests same in writing;</p> <p>(7) reinforcing in FOI training and awareness the <i>existing</i> entitlement to raw data and metadata and the mandatory obligation on agencies to interrogate databases within the scope of an FOI application so as to create documents for production, where the means for doing so are “usually available” to the agency; and</p> <p>(8) expecting agencies as part of the government’s broader information policy planning and delivery to plan its systems and make reasonable efforts to maintain its records in reproducible forms or formats.</p>	<p><b>Supported</b></p> <p>The Government agrees with the recommended limitations on the legal entitlement to metadata.</p> <p>The existing scope of legal entitlement to metadata, raw data and the obligation on agencies to interrogate databases will be maintained in the proposed Right to Information Bill.</p> <p>The entitlement to metadata, raw data and interrogation of databases will be included in training provided by the Information Commissioner.</p> <p>Ensuring agencies make reasonable efforts to maintain records in reproducible forms or formats is consistent with the existing requirements under section 14 of the <i>Public Records Act 2002</i>.</p>
82 (p.222)	<p>The Information Commissioner, in concert with the Chief Information Officer and the Queensland State Archivist as appropriate, should promote and support planning and capability around these initiatives, including for example the provision of electronic access at dedicated reading room facilities enabling the requester itself to interrogate and manage the production of data.</p>	<p><b>Supported</b></p> <p>The Government will review the current roles and responsibilities of the Information Commissioner, the QGCIO and the State Archivist in relation to promoting and supporting these initiatives.</p>
83 (p.222)	<p>Electronic lodgement of FOI applications, electronic payment and access methods for freedom of information as a matter of course should be introduced in a consistent and coordinated way for all agencies and public authorities without delay.</p>	<p><b>Supported</b></p> <p>Queensland’s <i>Electronic Transactions Act 2001</i> provides for electronic applications and a number of agencies currently accept FOI applications electronically.</p> <p>The Government agrees that a central e-RTI model should be developed where members of the community can lodge an application, make an electronic payment and validate electronic signatures. A project team, led by the QGCIO will develop a model and implement a central e-RTI facility for the Queensland Government.</p>
84 (p.222)	<p>The Information Commissioner should support a more responsive, consistent and enhanced client service in the FOI experience for users, including by –</p> <ul style="list-style-type: none"> <li>• developing guidelines for agencies similar to the advice given to federal agencies by the Commonwealth Ombudsman in his 2006 report; and</li> <li>• considering beneficial initiatives harvested from the United Kingdom model which provides Codes of Practice and formal <i>Guidances</i> issued for Procedural, Technical, Sector Specific, and Exemptions.</li> </ul>	<p><b>Supported</b></p> <p>The Information Commissioner will publish guidelines to increase awareness and understanding, and promote consistency across agencies, with reference to the United Kingdom model.</p>
85 (p.227)	<p>The Information Commissioner should develop guidelines and recommend to the minister proposals for charges that should be levied for providing data other than from paper-sourced documents. The minister may include these in the charges regulation made under the Act.</p>	<p><b>Supported</b></p> <p>The Information Commissioner will publish guidelines and, if appropriate, make recommendations for charges for the provision of non-paper-sourced data.</p>

## The right to information report: Queensland Government response

No.	RECOMMENDATION	RESPONSE
86 (p.227)	The Information Commissioner should provide detailed guidance for agencies on what they should include in a notice to an applicant who is denied access to a document, in whole or in part, where the agency has relied on public interest considerations, including the way the agency needs to comply with s. 27B of the <i>Acts Interpretation Act 1954</i> .	<b>Supported</b>  The Information Commissioner will publish guidelines for agencies on preparing statements of reasons for decisions not to disclose documents on public interest grounds.
87 (p.227)	The Information Commissioner should draw up guidelines to assist agencies to develop the disclosure logs proposed in recommendation 3.	<b>Supported</b>  The Information Commissioner will publish guidelines to assist agencies to develop disclosure logs.  Additional legislative protections may need to be created to ensure lawful disclosure.
88 (p.227)	An agency should include on its disclosure log a reference to any s. 31A document it has processed. The agency may provide access to the document to anyone (including the original requester) who applies for it, provided they pay the access charge that the original requester had not paid plus any photocopying charge. However, the agency could put the document on its website for anyone to access.	<b>Supported</b>  This will be addressed in the guidelines developed by the Information Commissioner.
89 (p.239)	Internal review should be retained, but it should be optional.	<b>Supported</b>  The proposed Right to Information Bill will retain internal review as an option. Agencies will be required to make internal review available to applicants who wish to use it.
90 (p.239)	An applicant should not be required to pay a fee for internal review.	<b>Supported</b>  The right of a requester to seek internal review of a decision is fundamental. The proposed Right to Information Bill will provide that internal reviews should be conducted free of charge.
91 (p.239)	Internal review decisions should be made as soon as possible by agencies. If a decision is not made within 20 working days the agency shall be taken to have affirmed the original decision.	<b>Supported</b>  The proposed Right to Information Bill will provide that internal review decisions should be made as soon as possible, but within 20 working days.  The Right to Information Bill will deem that the original decision is affirmed if a decision is not made within the timeframe.
92 (p.240)	The Information Commissioner should monitor the time taken by agencies in making decisions on internal review.	<b>Supported</b>
93 (p.240)	The statement to the applicant conveying reasons for decision should include information about who would conduct any internal review, specifying either the names of those authorised to conduct the review or the level of the agency at which the review would be conducted. Agency websites should list the names of people currently responsible for processing FOI applications and internal review.	<b>Supported in principle</b>  The government supports the provision of information about the designations of officers who could conduct the internal review. However, it may not be possible to provide the names of officers who may conduct the internal review. This will particularly affect agencies in periods of low staffing levels and smaller agencies where resource sharing may be required.  In the interest of transparency and openness, the government supports the publication on agency websites of the designations of officers authorised to make decisions and conduct internal reviews.  Further, delegated decision makers and internal reviewers will be required to contact applicants to advise of their name and further contact details within a reasonable time of receiving an application.



## The right to information report: Queensland Government response

No.	RECOMMENDATION	RESPONSE
94 (p.241)	Applications for internal and external review should be able to be made by email, as well as in writing.	<p><b>Supported</b></p> <p>The QGCIO and QGCTO will investigate and report back to Government about ways to support electronic applications for internal and external review (see recommendation 83).</p>
95 (p.247)	External review should be carried out by the Office of the Information Commissioner. The review process should begin with mediation by the Office of the Information Commissioner.	<p><b>Supported</b></p> <p>The Office of the Information Commissioner will be responsible for carrying out external review.</p> <p>Ideally, the process of external review should begin with mediation. However, mediation may not be appropriate in every circumstance (for example, where one party is not willing to take part in mediation or where there appears to be no prospect of compromise).</p> <p>The proposed Right to Information Bill will require the Information Commissioner to identify opportunities and processes for early resolution, including mediation, as part of the application assessment process.</p>
96 (p.248)	<p>The proposed Queensland Civil and Administrative Tribunal should be given jurisdiction to –</p> <p>(5) Hear and determine questions of law referred to it by the Information Commissioner at the request of a participant in a review, or on the commissioner’s own initiative;</p> <p>(6) Hear and determine an appeal from a decision of the Information Commissioner, but only on a question of law;</p> <p>(7) Hear and determine an appeal from a decision by the Information Commissioner declaring a person a vexatious applicant</p>	<p><b>Supported</b></p>
97 (p.248)	The Information Commissioner would be bound by decisions of the tribunal and follow the interpretation of the law adopted by the tribunal.	<p><b>Supported</b></p>
98 (p.249)	An applicant should not be required to pay a fee for external review.	<p><b>Supported</b></p> <p>A requester has a fundamental right to seek external review of a decision. These reviews will be conducted free of charge.</p>

## The right to information report: Queensland Government response

No.	RECOMMENDATION	RESPONSE
99 (p.253)	<p>The following time limits and procedures should apply to external review conducted by the Office of the Information Commissioner:</p> <p>(7) Mediation should be completed within 20 working days of an application being made. The mediator should obtain the approval of the parties to a report explaining the extent to which they had reached agreement, and/or the differences that remained between them.</p> <p>(8) The parties should make submissions concerning any remaining issues that are in dispute within 10 working days.</p> <p>(9) The parties should have a further 10 working days to respond to those other submissions.</p> <p>(10) The Office of the Information Commissioner should make a determination within 40 working days of the conclusion of mediation.</p> <p>(11) If no determination has been made in the specified period, the parties must be notified of the reasons for any delay.</p> <p>(12) The Information Commissioner should be able to use enhanced powers of entry and search if it is considered necessary to resolve the dispute. These powers should be based on those in the Northern Territory.</p>	<p><b>Supported in principle</b></p> <p>The government agrees that applicants are entitled to expect that cases will be progressed within a reasonable timeframe.</p> <p>The Information Commissioner will develop guidelines about the external review process which set out steps to be taken in, and appropriate timeframes for the completion of, external reviews.</p> <p>Appropriate powers of search will be provided in the proposed Right to Information Bill.</p>
100 (p.254)	<p>Sections 81, 85 and 88(2) be amended to clarify the obligation on parties to a review to assist the Information Commissioner; to extend the onus on an agency/ minister to cover proceedings under s. 96A; to clarify the powers of the Commissioner to order specific searches for documents; and to allow the Information Commissioner to order that documents be provided in a specified form.</p>	<p><b>Supported</b></p> <p>The proposed Right to Information Bill will make it clear that all parties to a review are required to assist the Information Commissioner. This will assist the Information Commissioner to particularise the issues, direct specific actions and make useful decisions.</p> <p>It will also be made clear that an agency or minister seeking a declaration that an applicant is vexatious bears the onus of proof in such application.</p>
101 (p.256)	<p>The Information Commissioner should publish detailed guidelines explaining the way external reviews are conducted.</p>	<p><b>Supported</b></p> <p>The Information Commissioner will publish detailed guidelines about the conduct of external reviews.</p>
102 (p.257)	<p>Section 89 of the Act should be amended to require the Information Commissioner to publish decisions and reasons for decisions in all matters. However the Information Commissioner is not obliged to publish those parts of the decisions and reasons that contain exempt material, or where the reasons would reveal that material, or where the Information Commissioner considers material should be treated as confidential.</p>	<p><b>Supported</b></p> <p>The proposed Right to Information Bill will include a requirement that the Information Commissioner must publish decisions and reasons for decisions in all matters, except in relation to exempt or confidential material.</p>

## The right to information report: Queensland Government response

No.	RECOMMENDATION	RESPONSE
103 (p.270)	<p>The following functions should be conferred on the Information Commissioner –</p> <p>(5) Monitoring and reporting, including the determination of what statistical material should be provided by agencies for an annual report, similar to that currently required under s. 108, ensuring the accuracy of the information, collating, analysing and publishing that information; conducting audits of agencies and publishing the results; identifying and commenting on legislative and administrative changes that would improve FOI; monitoring the way ‘public interest’ issues are determined by agencies and under review, consulting experts on its application and keeping agencies informed; and monitoring agencies’ information schemes and proactive disclosure activities outside FOI.</p> <p>(6) Advice and awareness, including providing a central reference point on FOI for agencies and people; promote community awareness and understanding of FOI; provide guidance on the interpretation and administration of the Act; provide education and training for agencies and community groups; provide information and assistance to people and agencies at any time during the processing of FOI claims; and develop and publish guidelines covering proactive disclosure and information schemes.</p> <p>(7) Investigative and complaints handling, including complaints about FOI processes and other matters that would, in relation to government administration generally, fall within the jurisdiction of the Ombudsman; and the power to conduct ‘own motion’ investigations.</p> <p>(8) Commission outside research and obtain advice on the design of surveys to monitor whether the legislation and its administration are achieving its stated objectives.</p>	<p><b>Supported in principle</b></p> <p>The government will review the respective roles of the Information Commissioner and other relevant agencies in implementing this recommendation. Some adjustments to the proposed functions of the Information Commissioner may be required following this review.</p>
104 (p.274)	<p>The Office of the Information Commissioner be headed by a statutory officer, the Information Commissioner.</p>	<p><b>Supported</b></p> <p>The proposed Right to Information Bill will maintain the current practice whereby the Information Commissioner is established as an independent statutory officer, directly responsible to the parliament.</p>
105 (p.274)	<p>Two Deputy Information Commissioners, also statutory officers, be appointed. One would be designated as FOI Commissioner, the other as Privacy Commissioner</p>	<p><b>Supported</b></p> <p>The proposed Right to Information Bill and proposed Privacy Bill will provide for the establishment of two Deputy Information Commissioner positions for access to information and privacy respectively.</p> <p>Further consideration will be given to the nature of the appointments and to administrative arrangements within the office in establishing these positions to ensure that reporting relationships and delegation of functions are managed appropriately.</p>

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No.	RECOMMENDATION	RESPONSE
106 (p.276)	<p>In making appointments to each of the three statutory offices the following procedure should apply.</p> <p>The position should be widely advertised, and the minister should consult the Parliamentary Committee about:</p> <p>(iii) the process of selection for appointment; and</p> <p>(iv) the appointment of the person.</p> <p>The Information Commissioner and the Deputy or Deputies should be appointed for a term of seven or five years, with the option of the term being extended for a further period, but none should hold an office for a total period of more than 10 years.</p>	<p><b>Supported</b></p> <p>Consultation with the multi-party Legal, Constitutional and Administrative Review Committee will ensure transparency and independence in the appointment processes for the Information Commissioner and Deputy Information Commissioners.</p> <p>A maximum term of appointment of five years would provide consistency with other comparable statutory appointments and a maximum cumulative term of office of 10 years would further protect the independence of the offices.</p>
107 (p.278)	<p>The Parliamentary Committee's functions should be broadened to include:</p> <ul style="list-style-type: none"> <li>• a role in the appointment of the two Deputy Information Commissioners;</li> <li>• the power to consult with the Information Commissioner on the data collection and reporting requirements of agencies required by s. 108; and</li> <li>• the power to receive and examine reports by the Information Commissioner on the operation of the Act, and to make recommendations on such changes as it sees fit.</li> </ul>	<p><b>Supported</b></p> <p>The functions of the Legal, Constitutional and Administrative Review Committee should reflect any changes to the responsibilities of the Office of the Information Commissioner.</p> <p>The broadened functions will be reflected in legislation in the context of the existing statutory functions of the Committee under the <i>Freedom of Information Act 1992</i> and the <i>Parliament of Queensland Act 2001</i>.</p>
108 (p.284)	<p>The requirement in s. 18 for agencies to publish a Statement of Affairs should be replaced by the adoption of a publication scheme, modelled on that operating in the United Kingdom.</p>	<p><b>Supported</b></p> <p>A publication scheme will improve public accessibility and enable people to more accurately understand what types of documents government holds.</p>
109 (p.284)	<p>The Information Commissioner should develop model publication schemes for different classes of agencies, such as for local government, the health sector and education, on which agencies can base their own schemes</p>	<p><b>Supported in principle</b></p> <p>The government will consider this recommendation as part of the implementation process for the whole-of-government strategic information policy. This process will be led by the Department of the Premier and Cabinet, in partnership with the Information Commissioner and other relevant agencies.</p>
110 (p.284)	<p>The Information Commissioner should be responsible for the approval of any agency scheme.</p>	<p><b>Supported in principle</b></p> <p>The government will consider this recommendation as part of the implementation process for the whole-of-government strategic information policy. This process will be led by the Department of the Premier and Cabinet, in partnership with the Information Commissioner and other relevant agencies.</p>
111 (p.284)	<p>The Information Commissioner should be responsible for auditing and reporting on the performance of agencies in conforming with the requirements of their publication scheme.</p>	<p><b>Supported in principle</b></p> <p>The government will consider this recommendation as part of the implementation process for the whole-of-government strategic information policy. This process will be led by the Department of the Premier and Cabinet, in partnership with the Information Commissioner and other relevant agencies.</p>

## The right to information report: Queensland Government response

No.	RECOMMENDATION	RESPONSE
112 (p.284)	The Information Commissioner should consult with the Parliamentary Committee when preparing the model publication schemes and should report to the Parliamentary Committee on the implementation by agencies of their publication schemes.	<p><b>Supported in principle</b></p> <p>The government will consider this recommendation as part of the implementation process for the whole-of-government strategic information policy. This process will be led by the Department of the Premier and Cabinet, in partnership with the Information Commissioner and other relevant agencies.</p> <p>Consultation will be undertaken with the Legal, Constitutional and Administrative Review Committee as appropriate.</p>
113 (p.290)	<p>The Act should include a provision in the same terms as the first three subsections of s. 108 of the Act:</p> <p>(1) The Minister administering this Act shall, as soon as practicable after the end of each financial year, prepare a report on the operation of this Act during that year and cause a copy of the report to be tabled in the Legislative Assembly.</p> <p>(2) The report is to include details of the difficulties (if any) encountered during the year by agencies and Ministers in the administration of this Act.</p> <p>(3) Each responsible Minister must, in relation to the agencies within the Minister's portfolio and in relation to the Minister's official documents, comply with any prescribed requirements concerning that information and the keeping of records for the purposes of this section.</p>	<p><b>Supported</b></p> <p>The proposed Right to Information Bill and regulation will provide for an annual report to Parliament on the operation of the new legislation. The Bill will also clearly articulate any necessary data collection and record keeping requirements for agencies.</p>
114 (p.291)	The Act should include a provision allowing for the making of regulations setting out the data that agencies should provide each year for inclusion in the annual report by the Minister on the operation of the Act.	<p><b>Supported</b></p> <p>The proposed Right to Information Bill will contain a regulation making power that allows the prescription of minimum data collection and reporting requirements.</p>
115 (p.291)	<p>The Information Commissioner should consult with experts in statistical analysis and policy research to advise on the data that agencies should be required to report for inclusion in an annual report on FOI to be prepared by the Minister.</p> <p>The Information Commissioner, after consulting with agencies and the Parliamentary Committee, should prepare a recommendation for the Minister concerning the data that agencies should provide.</p> <p>The Information Commissioner should be responsible for having the data provided by agencies audited, and should consult with agencies concerning any deficiencies in the provision of information that are detected.</p> <p>The Information Commissioner should be responsible for having the data analysed and for preparing a report to the Parliamentary Committee and the Minister.</p>	<p><b>Supported in principle</b></p> <p>The government will consider this recommendation as part of the implementation process for the whole-of-government strategic information policy. This process will be led by the Department of the Premier and Cabinet, in partnership with the Information Commissioner and other relevant agencies.</p>
116 (p.293)	Section 33 of the Act should be amended to allow a Chief Executive Officer of an agency to negotiate and sign a formal Memorandum of Understanding with the CEO of another agency or agencies in a different portfolio agency, to delegate the power to deal with an FOI application to that other agency. This delegation power would include the power to deal with applications concerning personal information.	<p><b>Supported</b></p> <p>Efficiencies can be gained through the sharing of resources across agencies in times of peak demand or resource shortfalls.</p> <p>The government will examine the most appropriate way of achieving the intention of this recommendation.</p>

## The right to information report: Queensland Government response

No.	RECOMMENDATION	RESPONSE
117 (p.294)	<p>(1) The definition section of the Act (currently, s. 7) should be amended to include a definition of “official document of a Parliamentary Secretary or official document of the Parliamentary Secretary”.</p> <p>(2) The right of access section of the Act (currently, s. 21) should be amended to include a reference to “official documents of a Parliamentary Secretary”.</p> <p>(3) The section providing for persons who are to make decisions for agencies and Ministers (currently s. 33) should be amended to give a Parliamentary Secretary the same delegation power as is given to a Minister.</p>	<p><b>Supported</b></p> <p>The proposed Right to Information Bill will provide, subject to any relevant exemptions and the public interest test, a legal right to access the official documents of a Parliamentary Secretary.</p>
118 (p.295)	<p>The Act should be amended to provide legal protection similar to that currently provided under ss. 102, 103 and 104, for information provided to an applicant under administrative release, where the officer has the delegated authority of a Director-General or a Minister and acts in good faith and not recklessly in releasing the information.</p>	<p><b>Supported</b></p> <p>The government will examine options for the most appropriate way of legislating to provide legal protections to officers and the terms and extent of the protections.</p>
119 (p.296)	<p>The Information Commissioner should provide agencies with guidance on the development by agencies of administrative access schemes, and also on the circumstances generally when administrative release might be provided, on what can be released, and when it is more appropriate that the FOI system be used.</p>	<p><b>Supported</b></p> <p>The Information Commissioner will publish guidelines on the development and implementation of administrative access schemes by agencies by July 2009.</p>
120 (p.296)	<p>The Information Commissioner should advise agencies of the statistics that should be provided on administrative release and should include these in the annual report on FOI.</p>	<p><b>Supported</b></p> <p>The Information Commissioner will advise agencies of the data on administrative release to be collected. This information will be included in the annual report on FOI.</p>
121 (p.296)	<p>The training provided by the Office of the Information Commissioner to FOI officers should include training on administrative release.</p>	<p><b>Supported</b></p> <p>The Office of the Information Commissioner will provide training on administrative release in conjunction with its other training programs.</p>
122 (p.297)	<p>Section 105 should be amended to require applicants for personal information to produce at the time they make their application satisfactory evidence of their identity or to produce evidence that they are the applicant’s agent.</p>	<p><b>Supported</b></p> <p>Applicants for access to personal information should be required to provide proof of identity at the time of application.</p> <p>The government will examine the security and privacy safeguards that would be necessary to effect this, particularly in relation to electronic applications.</p>
123 (p.297)	<p>(1) The proposed new Privacy Act should contain a provision allowing an agency to respond to a request for personal information by neither confirming nor denying that the information exists.</p> <p>(2) In an application for personal information of another person under the FOI Act, an agency may respond by neither confirming nor denying the existence of that type of document as a document of the agency or Minister.</p>	<p><b>Supported</b></p> <p>In both the access and privacy regimes, it is appropriate that an agency be able to neither confirm nor deny the existence of information, where a denial of access to the information would otherwise inadvertently disclose the personal information of another party.</p>

## The right to information report: Queensland Government response

No.	RECOMMENDATION	RESPONSE
124 (p.312)	<p>The Premier and the Director-General of the Department of the Premier and Cabinet should publicly, as well as by formal memorandum,</p> <p>(d) endorse the principles of the FOI legislation;</p> <p>(e) express their desire that agencies should administer its provisions to achieve its Objects; and</p> <p>(f) direct agencies to maximise the amount of information that is given to those who request it. They should also affirm the desirability of agencies adopting 'push' models to disseminate information held by agencies.</p>	<p><b>Supported</b></p> <p>The government is committed to implementing a regime premised on a right to information and to the cultural change necessary to create an authorising environment within the public service.</p> <p>The Premier and the Director-General of the Department of the Premier and Cabinet will write to all Ministers and Directors-General affirming the Right to Information principles and requesting that agencies immediately begin identifying information for proactive release in accordance with the 'push' model.</p> <p>This message will be widely communicated throughout the public sector and the broader community as part of the government's implementation of the report's recommendations.</p>
125 (p.312)	<p>At the beginning of each new Parliament, the Parliamentary Committee should prepare a statement to be considered by the Parliament renewing its commitment to the principles of the legislation.</p>	<p><b>Supported</b></p> <p>The Premier has written to the Legal, Constitutional and Administrative Review Committee requesting that the committee consider implementing this recommendation, given that ongoing commitment to this recommendation would be a matter for the committees established by successive Parliaments.</p> <p>The current committee has advised of its support for the Right to Information reforms, including the implications for the committee's role and functions.</p>
126 (p.312)	<p>CEOs should ensure that officers assigned to make decisions on FOI applications have the seniority and experience appropriate for the task.</p>	<p><b>Supported</b></p> <p>Officers responsible for decision-making should be accorded an appropriate degree of authority within their agencies.</p> <p>Further, positions at senior levels will assist in attracting and retaining skilled decision makers.</p>
127 (p.312)	<p>CEOs should foster agency cultures consistent with the objects of the FOI legislation and ensure that staff induction programs and other appropriate agency-wide staff opportunities include FOI and commitment to its principles.</p>	<p><b>Supported</b></p> <p>Chief executive officers will take a leadership role in fostering the cultural change required within the public service to successfully implement the objects of the proposed Right to Information Bill.</p> <p>The Director-General of the Department of the Premier and Cabinet will write to all Directors-General to reinforce the Right to Information principles and the importance of cultural change.</p>
128 (p.313)	<p>The Information Commissioner should explore the possibility of implementing an accreditation system for FOI officers who have satisfactorily completed training programs.</p>	<p><b>Supported</b></p> <p>As part of a strengthened leadership role, the Information Commissioner will oversee the development of an accreditation program for FOI officers to coincide with the commencement of the proposed Right to Information Bill.</p>

## The right to information report: Queensland Government response

No.	RECOMMENDATION	RESPONSE
129 (p.313)	Agencies should publish on their websites the names of officers who have been delegated power to make FOI decisions.	<p><b>Supported in principle</b></p> <p>In the interests of transparency and openness, the position titles, contact telephone numbers and designations of officers authorised to make decisions and conduct internal reviews will be published on agency websites. However, it may not always be possible to include the actual names of these officers.</p> <p>Further, delegated decision makers and internal reviewers will be required to contact applicants to advise of their name and further contact details within a reasonable time of receiving an application.</p>
130 (p.313)	The Information Commissioner should promote greater awareness of FOI in the community, and within government.	<p><b>Supported</b></p> <p>As champion of the right to information, the Information Commissioner will promote greater awareness of the right to information across government and the community.</p> <p>Other key agencies and bodies will also be responsible for promoting increased awareness of the right to information.</p>
131 (p.313)	The Information Commissioner should develop a set of <u>purposeful</u> performance standards and measures, for use in the annual report cards on the FOI activities of agencies. These should be consistent with the broader <u>strategic</u> information policy imperatives.	<p><b>Supported</b></p> <p>To ensure consistency, performance standards and measures will be established following the development of the strategic information policy to ensure consistency.</p> <p>Development of the standards and measures will consider the outcomes of a review of performance reporting currently being undertaken by the Canadian Information Commissioner.</p>
132	It should be an offence for an officer to direct an FOI decision-maker to make a decision that the decision-maker believes is not the decision required to be made under the Act, or to direct an officer to act contrary to the requirements of the Act. If a CEO believes a decision-maker is going to make the wrong decision, the CEO should revoke the delegation to the decision-maker and the CEO should make the decision.	<p><b>Supported</b></p> <p>Decision makers should be able to make decisions, without interference, in accordance with legislative provisions and any relevant case law.</p> <p>Provision will be made in the proposed Right to Information Bill for this offence.</p> <p>The ability of chief executive officers to revoke a delegation to a decision-maker or to resume responsibility for making a particular decision will be reiterated. Such action is appropriate if the chief executive officer believes the decision maker is going to make a decision that is not in accordance with legislation or case law.</p>
133 (p.313)	The FOI Act should contain a reference to the provision in the Public Records Act that makes it an offence to destroy public records other than in accordance with the provisions of the <i>Public Records Act</i> .	<p><b>Supported</b></p> <p>The proposed Right to Information Bill will include a reference to the provisions regarding destruction of public records in the <i>Public Records Act 2002</i>.</p>
134 (p.313)	<p>When a decision-maker decides that a requested document is a document of the kind described in s. 22, the applicant should be immediately informed of where it is available and how it can be accessed.</p> <p>If the decision-maker has ready access to the document it should be provided to the applicant.</p>	<p><b>Supported</b></p> <p>Wherever possible, agencies should support members of the public to obtain quick and easy access to information.</p> <p>Where an agency can readily and practicably do so, the agency should provide an applicant with the information requested, or direct the applicant to the information.</p> <p>The government will consider issues arising from providing access to information that is otherwise commercially available from another agency or organisation.</p>



## The right to information report: Queensland Government response

No.	RECOMMENDATION	RESPONSE
135 (p.313)	The Information Commissioner should provide a help-line service for FOI officers.	<p><b>Supported</b></p> <p>The Information Commissioner will have a key role in directing officers to relevant guidelines, decisions or case law, particularly in the case of smaller agencies and organisations.</p> <p>In order to avoid any potential conflicts of interest, the review and complaints functions of the Information Commissioner could be quarantined from the help-line functions.</p>
136 (p.317)	Agencies should publish on their websites documents that have been provided under FOI where the agency considers that the document would be of interest to the public, or where the agency receives a second request for the same document(s). This material should not be published until at least 24 hours after it has been provided to the applicant under FOI.	<p><b>Supported</b></p> <p>This recommendation will be addressed in conjunction with recommendations 3 and 87 in relation to disclosure logs.</p>
137 (p.318)	<p>Section 96 should be amended to provide that –</p> <p>(3) the Information Commissioner should have power to investigate complaints about an officer breaching their duty or engaging in misconduct at any stage of the processing of an application for access, and not just if a review is initiated and completed.</p> <p>(4) The Information Commissioner should be able to refer any evidence of breach of duty by an officer or of misconduct, or any allegation of breach of duty by an officer or of misconduct, to the Crime and Misconduct Commission, or to a Minister or to the CEO of an agency.</p>	<p><b>Supported in principle</b></p> <p>It is critical that complaints about breaches of duty and misconduct be investigated thoroughly. However, the Office of the Information Commissioner is not considered the appropriate body to undertake these investigations, and such complaints should be dealt with in accordance with usual misconduct processes.</p> <p>The proposed Right to Information Bill will therefore provide that:</p> <ul style="list-style-type: none"> <li>• the Information Commissioner may refer evidence of misconduct or breach of duty by an officer to the attention of agencies or Ministers, at any stage of an application; and</li> <li>• the Information Commissioner has a duty to refer any evidence of official misconduct to the Crime and Misconduct Commission. Any necessary consequential amendments will be made to the <i>Crime and Misconduct Act 2001</i>.</li> </ul>
138 (p.326)	The Queensland <i>Freedom of Information Act 1992</i> should be replaced by a new Act, the <i>Right to Information Act</i> .	<p><b>Supported</b></p> <p>New legislation is essential to herald the new regime for access to information. The suggested title, <i>Right to Information Act</i>, will make the primary purpose of the new legislation clear.</p>
139 (p.326)	Sections 36 and 37 of the <i>Freedom of Information Act 1992</i> should continue to apply to matter created before the enactment of the <i>Right to Information Act</i> .	<p><b>Supported</b></p> <p>The government is committed to moving towards a ‘push’ model of proactive disclosure of information, including release of Cabinet material. However, the government also acknowledges that it is appropriate that sections 36 and 37 of the <i>Freedom of Information Act 1992</i> should continue to apply to Cabinet material created before the enactment of the proposed Right to Information Bill.</p>
140 (p.326)	A strategic review of the Office of Information Commissioner should be conducted four years after the commencement of the new Act in time for the new Information Commissioner to respond prior to expiry of that officer’s term, in tandem with an operational review of implementation of the new Act across the sector. Both reviews should be subject to Parliamentary Committee oversight. Subsequently strategic reviews should take place every five years.	<p><b>Supported</b></p> <p>The government will conduct the first strategic and operational reviews four years after the new Act’s commencement to ensure the participation and response of the incumbent Information Commissioner. The reviews will be overseen by the Legal, Constitutional and Administrative Review Committee.</p> <p>Subsequent strategic five-yearly reviews are consistent with current practice.</p>

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No.	RECOMMENDATION	RESPONSE
141 (p.326)	The Premier should retain responsibility for the development of the new Act and for its initial implementation.	<p><b>Supported</b></p> <p>The Premier will lead the development of the legislation and the whole-of-government strategic information policy.</p> <p>It will be essential to review current roles and responsibilities of the Information Commissioner, the QGCIO and the QSA in light of the report recommendations, and in articulating the governance arrangements that will give effect to the whole-of-government strategic information policy.</p> <p>In addition, the Public Service Commission will play a key role in driving the organisational and cultural changes required for the implementation of the policy.</p>



