



STATEMENT OF AFFAIRS 2008

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Structure and functions of the Office of the Information Commissioner

Structure

The Office of Information Commissioner is established by part 5A of the *Freedom of Information Act 1992* (Qld) (FOI Act). Ms Julie Kinross is currently acting in the role of Information Commissioner. The establishment for the Office of the Information Commissioner is 13.8 full time equivalent staff.

The Information Commissioner reports to the Parliamentary Legal, Constitutional and Administrative Review Committee.

Functions

The functions of the Information Commissioner are to investigate and review decisions of agencies and Ministers of the kinds specified in section 101C of the FOI Act. In summary, the Information Commissioner investigates and reviews decisions of government agencies and Ministers, concerning:

- whether an applicant has a legal right under the FOI Act to be given access to documents held by an agency or Minister;
- the fees and charges required to be paid in relation to an application for access;
- the amendment, under Part 4 of the FOI Act, of information relating to the personal affairs of a person recorded in documents held by an agency or Minister; and
- statements of affairs published by agencies, under Part 2 of the FOI Act.

101C Functions of commissioner

- (1) *The functions of the commissioner are to investigate and review decisions of agencies and Ministers of the following kinds—*
- (a) *a decision under section 20 as to whether a person's opinion is correct and a decision under section 20 not to publish statements of affairs or as to whether a statement of affairs complies with part 2;*
 - (b) *a decision under section 29, 29B or 54B refusing to deal with an application;*
 - (c) *a decision refusing to grant access to documents in accordance with an application under section 25;*
 - (d) *a decision giving access to documents subject to the deletion of exempt matter or matter an agency or Minister considers is irrelevant matter;*
 - (e) *a decision giving access to a document of a kind applied for by the applicant but not to all documents of the kind applied for by the applicant;*
 - (f) *a decision giving access to documents in a form different to the form applied for by the applicant, unless access in the form applied for would involve an infringement of the copyright of a person other than the State;*
 - (g) *a decision deferring providing access to documents;*
 - (h) *a decision about whether an application fee is payable;*

- (i) a decision that a processing charge or access charge is payable under a final assessment notice if—
 - (i) the applicant considers that the charge is wrongly assessed; or
 - (ii) the applicant considers that the charge should be waived because the applicant is in financial hardship and an objection notice has been given in which the applicant contended the charge should be waived because the applicant is in financial hardship;
 - (j) a decision, in relation to an objection notice, that—
 - (i) the original charge was wrongly assessed and should be reduced on a proper assessment; or
 - (ii) a contention in the objection notice should be rejected;
 - (k) a decision—
 - (i) to disclose documents contrary to the views of a government, agency or person obtained under section 51; or
 - (ii) to disclose documents if an agency or Minister should have taken, but has not taken, steps to obtain the views of a government, agency or person under section 51;
 - (l) a decision not to amend information in accordance with an application under section 53;
 - (m) a decision mentioned in section 59(6);
 - (n) a decision that this Act, or a part of the Act, does not apply to an entity –
 - (i) because the entity is not an agency for this Act; or
 - (ii) because of section 11 or 12 or another Act;
 - (o) a decision that this Act, or a part of this Act, does not apply to a document because of Section 11, 11A, 11B, 11C or 12 or another Act;
 - (p) a decision that a person is not entitled to access to a document because of section 11E.
- (2) For subsection (1)(i), it does not matter whether the processing charge or access charge has already been paid.
 - (3) The functions of the commissioner also include—
 - (a) investigating and reviewing the grounds for a decision to issue a certificate under section 36, 37, 42 or 42A; and
 - (b) investigating and reviewing whether, in relation to a decision mentioned in subsection (1)(c) or (e), agencies and Ministers have taken reasonable steps to identify and locate documents applied for by applicants; and
 - (c) making declarations under section 96A; and
 - (d) providing information and help to agencies and members of the public on matters relevant to part 5 or 5A of this Act.
 - (4) The commissioner has power to do all things that are necessary or convenient to be done for or in connection with the performance of the commissioner's functions.

In respect of these categories of decisions, the Information Commissioner is empowered to conduct a complete review of the merits of the decision, and a written determination by the Commissioner in effect substitutes for the decision of the agency or Minister which was under review.

The functions of the Commissioner extend to review of decisions deemed to have been made by an agency or Minister when no actual decision has been made within the time prescribed, and to investigate whether an agency or Minister has conducted sufficient searches to locate documents falling within the terms of an access application.

How the Information Commissioner's decision-making functions affect members of the community

Citizens are affected by the everyday decisions and activities of the public service. It is widely accepted that in a democratic society, those decisions are to be made openly, transparently and with accountability to the people through the Parliament. In passing the FOI Act, Parliament decided citizens would have legally enforceable statutory rights of access to documents and the amendment of personal information held by public sector agencies, subject to limitations. These are valuable rights which support open and accountable government, and ensure citizens can find out about documented activities and decisions—what occurred when and the reasons behind decisions. These rights also support improvement in the quality of public services and enable community participation in government processes.

External review is the second tier of review in a three tier review system. FOI applicants aggrieved by a decision of an agency may seek an internal review, undertaken by a more senior staff person within the agency. An applicant aggrieved by an internal review decision may apply for external review by the Information Commissioner. An applicant aggrieved by a decision of the Information Commissioner may seek review by the Supreme Court on a point of law.

The Information Commissioner is not subject to direction by any person about the way in which the commissioner's powers are exercised or the priority to be given to investigations and reviews. This means the Information Commissioner stands between the government and the citizen and can provide citizens with an independent, impartial and unbiased review of FOI decisions made by an agency of Minister.

The decision-making functions of the Information Commissioner are set out in Part 5 and Part 5A of the FOI Act.

The decision-making function of the Information Commissioner most commonly utilised concerns citizens' legal right under the FOI Act to access documents of an agency or Minister. Any person can apply to a government agency or Minister for access to any document of the agency or Minister, provided the agency is not excluded

from the application of the FOI Act, either generally, or in respect of the class of documents to which an applicant seeks access.

Decisions of this nature may affect not only the access applicant, but also persons or corporations named or referred to in documents that are subject to review. A person affected by a decision subject to review may apply to the Information Commissioner to participate in the review (section 78 (2)).

The Information Commissioner may also be called on to make decisions as to whether information relating to a person's personal affairs should be amended under Part 4 of the FOI Act.

In the course of an external review, members of the community may also be affected by the exercise of the procedural powers of the Information Commissioner. Section 101C of the FOI Act provides that the Information Commissioner has power to do all things that are necessary or convenient to be done for, or in connection with, the performance of the Information Commissioner's functions.

Specific powers conferred on the Information Commissioner under Part 5 of the FOI Act include:

- power to determine the procedure to be followed on a review under Part 5 of the FOI Act (section 72(1));
- power to give directions to participants in a review as to the procedure to be followed on a review under Part 5 of the FOI Act (section 72(2));
- power to extend the time limit for lodging an application for review (section 73(1));
- power to make preliminary inquiries of an applicant, or a respondent agency or Minister, in order to determine whether the Commissioner has power or jurisdiction to review the matter to which the application relates, or whether the Commissioner may decide not to review the matter under section 77 of the FOI Act (section 75);

- power to require the production of a document or matter for inspection for the purpose of enabling the Commissioner to determine whether the document or matter is exempt, or is a document of an agency or is an official document of a Minister (section 76);
- power to decide not to review, or not to review further, a decision in respect of which the Commissioner is satisfied that the application for review is frivolous, vexatious, misconceived or lacking in substance (section 77);
- power to permit certain third parties to be participants in the review process (section 78);
- power to grant an extension of time to an agency or Minister to deal with an application under the FOI Act, and to grant such an application subject to conditions such as reduction or waiver of charges (section 79);
- power to try to effect a settlement between the participants, or suspend a review to allow the participants to negotiate a settlement (section 80);
- power to require an agency or Minister to provide an additional statement of reasons for a decision under review, where the initial statement of reasons is considered to be inadequate (section 82);
- power, for the purposes of a review, to obtain information from such persons, and make such inquiries, as the Commissioner considers appropriate (section 83(2));
- power to permit a participant to be represented by another person when appearing before the Commissioner (section 83(4));
- power to give to persons written notices requiring the giving of information in writing, or the production of documents to the Commissioner, or requiring a person to attend before the Commissioner and answer questions relevant to a review (section 85);

- power to examine witnesses on oath or affirmation (section 86); and
- power to refer a question of law arising on a review under Part 5 of the FOI Act to the Supreme Court for decision (section 97).

Section 88 of the FOI Act provides that, in the conduct of a review, the Commissioner, in addition to any other power, has power to:

- review any decision that has been made by an agency or Minister in relation to the application concerned;
- decide any matter in relation to the application that could, under the FOI Act, have been decided by an agency or Minister; and
- require the agency or Minister concerned to conduct further searches for a document.

Section 88(4) provides that any decision of the Information Commissioner has the same effect as a decision of the agency or Minister. This power is limited by section 88(3) which provides that, if it is established that a document is an exempt document, the Commissioner does not have power to direct that access to the document is to be granted.

Arrangements for public participation in exercise of functions

The Information Commissioner's external review role is a quasi-judicial function which by its nature limits participation by the public.

In each specific external review the agency that made the decision under review and the applicant for external review will be parties to the review and therefore participate in the external review.

Other parties that may be required or invited to participate in an external review include:

- the original applicant for access to the document (where the person seeking external review is objecting to the release of documents to the original applicant)

- a person to whom disclosure of the documents in issue may reasonably be expected to be of a substantial concern—for example, a person named in a document in a way that would disclose sensitive information about their personal affairs or commercial affairs
- a person who can provide further information about documents or events relevant to issues in the review.

A person affected by the decision subject to review may apply to the Commissioner to participate in the review, and the Commissioner may allow such person to participate in such a way as the Commissioner directs (section 78).

Surveys of applicants are conducted at the conclusion of an external review to enable applicants to assist the Office of the Information Commissioner to continuously improve performance.

Documents held by the Office of the Information Commissioner

By virtue of section 12 of the FOI Act, the provisions of the FOI Act relating to access to documents, and amendment of personal affairs information, do not apply to the Information Commissioner. Section 93 of the FOI Act requires the Information Commissioner and staff not to disclose any information they obtain in the course of the performance of functions under the FOI Act, other than for the purposes of the FOI Act or a proceeding arising under the FOI Act.

Documents of the Office of the Information Commissioner that are available to members of the public are:

- blank application forms for lodging an application for external review under section 73 of the FOI Act
- brochure titled 'Information for External Review Applicants'
- 'FOI Concepts' information sheets about the FOI Act and issues that may arise in review proceedings

- decisions and summaries of decisions that are published by the Information Commissioner
- the Strategic Plan for the Office of the Information Commissioner
- the Annual Report of the Office of the Information Commissioner
- this Statement of Affairs.

All the above documents are available on the Office of the Information Commissioner website at www.oic.qld.gov.au.

Access arrangements

All publicly available documents of the Office of the Information Commissioner may be accessed from the Office website www.oic.qld.gov.au. Citizens unable to access the Office website may telephone or visit the Office to obtain copies of available documents.

Points of Contact

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