



Office of the Information Commissioner Queensland

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Level 7
133 Mary Street
Brisbane Q 4000

PO Box 10143
Adelaide Street
Brisbane Q 4000

Phone (07) 3234 7373
www.oic.qld.gov.au

ABN: 70 810 284 665

Committee Secretary
Economics and Governance Committee
Parliament House
George Street
BRISBANE QLD 4000

By email: egc@parliament.qld.gov.au

Brisbane Olympic and Paralympic Games Arrangements Bill 2021

The Queensland Office of the Information Commissioner (**OIC**) welcomes the opportunity to provide a submission on the Brisbane Olympic and Paralympic Games Arrangements Bill 2021 (**the Bill**).

About the OIC

The statutory functions of the Information Commissioner under the *Right to Information Act 2009* (Qld) (**RTI Act**) include commenting on issues relating to the administration of right to information in the public sector environment. OIC's role includes assisting in achieving the goal of open and transparent government by promoting better and easier access to public sector information and improving the follow of information to the community.

Queensland's RTI Act recognises that government-held information is a public resource and that openness in government enhances accountability. The RTI Act represents a clear move from a 'pull' model to a 'push model', emphasising proactive and routine release of information and maximum disclosure of information unless to do so would be contrary to the public interest. The RTI Act states that a formal application for government-held information under the RTI or IP Act should only be made as a last resort.

Amendment of RTI Act – Clause 65 of the Bill

OIC notes that Clause 65 of the Bill amends Schedule 1 of the RTI Act to exclude the following documents from the operation of the RTI Act:

A document—

- (a) that is created, or received, by the Brisbane Organising Committee for the 2032 Olympic and Paralympic Games in carrying out its functions under the *Brisbane Olympic and Paralympic Games Arrangements Act 2021*; and
- (b) to the extent it comprises information not already in the public domain that was communicated in confidence by or for the Australian Olympic Committee or the International Olympic Committee.

The Explanatory notes state that:¹

¹ Explanatory notes at page 9.

The Office of the Information Commissioner is an independent statutory authority.

The statutory functions of the OIC under the Information Privacy Act 2009 (Qld) (IP Act) include commenting on the administration of privacy in the Queensland public sector environment.

This submission does not represent the views or opinions of the Queensland Government.

This clause is justified given the sensitive nature of some of the documents that will be developed in connection with the performance of the Corporation's functions, such as commercial-in-confidence information in relation to the Corporation's local marketing program. A similar provision was included in the Sydney Organising Committee for the Olympic Games Act 1993 (NSW) (SOCOG Act), which constituted the Sydney Organising Committee for the Olympic Games to stage and deliver the Sydney 2000 Games.

Schedule 3 of the RTI Act sets out the type of information which Parliament has considered to be 'exempt information' because its disclosure would, on balance, be contrary to the public interest. For example, Schedule 3, section 8 of the RTI Act provides that information will be exempt from release if its disclosure would found an action for breach of confidence.²

Where exemptions do not apply, a decision maker considers public interest factors favouring disclosure and non-disclosure and subsequently balances such interests. The identified concerns regarding disclosure of sensitive information, as outlined in the Explanatory notes, is relevant to some factors favouring nondisclosure in the public interest in Schedule 4, Part 3 and Part 4 of the RTI Act.

The former Attorney-General tabled the *Report on the Review of the Right to Information Act 2009 and the Information Privacy Act 2009 (Review Report)* in Parliament in October 2017 following a comprehensive review, including public consultation. This Review Report recommended there be no further exemptions or exclusions and, in fact, recommended the removal of an existing exemption (Recommendation 6).³ The Review Report concluded that 'the RTI Act already contains sufficient exemptions and exclusions and the flexible public interest balancing test allows for adequate protection of information where required. To add 'tailored' exemptions or exclusions directed at certain documents or agency functions may suggest that the RTI Act does not adequately protect other types of information'.⁴

In June 2008 the report on the wide-ranging review of the FOI Act by an independent panel chaired by Dr David Solomon AM was delivered (**the Solomon Report**). The Solomon report recommended an overhaul of Queensland's FOI laws including very limited exclusions and fewer legislated exemptions under the new Right to Information Act. In the Solomon Report, the Panel specifically argue against including exclusions to allay concerns about disclosure where exemptions or the public interest test can easily protect sensitive information.⁵

Exclusions are used sparingly in the RTI Act given the impact of such a provision and as stated in the Review Report, the RTI Act has a sufficient legislative framework to protect sensitive documents, including commercial-in-confidence information. The

² An action for breach of confidence can be an action for an equitable breach of confidence or a breach of a contractual obligation of confidence.

³ The only changes to exemption provisions were an amendment to an exemption provision to increase disclosure, and removal of the investment incentive scheme exemption.

⁴ Report on the Review of the *Right to Information Act 2009 and Information Privacy Act 2009*, October 2017, p20 viewed at

http://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/2017/5517T2_014.pdf.

⁵ FOI Independent Review Panel, *The Right to Information: Reviewing Queensland's Freedom of Information Act*, June 2008, (The Solomon Report), at pages 100-104. Available at http://www.rti.qld.gov.au/data/assets/pdf_file/0019/107632/solomon-report.pdf.

proposed amendments are inconsistent with the comprehensive Review Report tabled by the Attorney-General in October 2017 and the Solomon Report.

It is also noted that a comparison is made to a similar provision included in the *Sydney Organising Committee for the Olympic Games Act 1993* (NSW) (SOCOG Act). The SOCOG Act was introduced almost 30 years ago. This Bill must reflect and be consistent with contemporary Queensland RTI laws, which as set out above, represented significant reform of information access in 2009. Community expectations are high, with 86% of Queenslanders surveyed indicating in 2021 that the right to access information was important.

A right to information law that strikes an appropriate balance between the right of access and limiting that right of access on public interest grounds is critical to both a robust, accountable government and an informed community. This is clearly reflected in the reservations made about the scope of exclusions and exemptions by the above reviews.

It is critical that individual legislative proposals are considered in the context of the broader policy and departures from such are clearly justified. In this case the Explanatory notes do not provide a compelling case to justify an exclusion from the operation of the RTI Act contrary to recent policy expressed by the Attorney-General's Review Report.

OIC remains available to provide any assistance to the Committee with regards to its Inquiry.

Your sincerely



Rachael Rangihaeata
Information Commissioner