PRESENTATION TO THE RECORDS AND INFORMATION MANAGEMENT FORUM
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The link between the fundamental principles at the heart of the Right to Information reforms and robust record keeping and information management practices is a necessary part of making government more open and accountable.

This connection dates back to early 18th century Sweden, when a statute was adopted compelling the publishers of all printed literature to lodge 'legal deposit copies' of everything they produced with government-approved libraries.

While not a freedom of information act in the broad sense, it was a very significant forerunner of later laws and enshrined the notion of retention and indexing of documents and the keeping of accurate record stores.

A little closer to home and much more modern, this sentiment was echoed by Premier Anna Bligh in an address she gave soon after the handing down of the Soloman Report into the reform of FOI. Of the suggested new RTI reforms, she said that the regime "requires a complete rethink about what we store, how we store it and how we manage information".

Thank you for the invitation to speak here today. In my presentation this morning, I will be exploring the ways in which the RTI reforms seek to increase government accountability and what practical lessons we've learned in the nine months since the Act was introduced, before closing with a brief warning about the possible challenges we may face going forward.

SLIDE

The Right to Information reforms heralded a new era in government openness. Although the basic tenets of the FOI Act were admirable in theory, over time those principles of openness, accountability and transparency were eroded by agencies which knew how to make the legislation work in their favour. In one of her first actions after being elected to office, the Premier commissioned an independent and comprehensive review of Queensland's freedom of information legislation. The review panel, chaired by Dr David Solomon, delivered The Right to Information Report in June 2008.

SLIDE

The Solomon Report recommended the Government overhaul its approach to information. It proposed greater proactive and routine release of information, new right to information and information privacy legislation and maximum disclosure of non-personal information.

In its response to the Solomon Report, the Government supported all but two of the Report's 141 recommendations and committed to sweeping reforms to make Queensland the most open and accountable government in Australia.

The RTI Act and the IP Act commenced on 1 July 2009 and apply to all government departments, agencies, statutory authorities and GOCs. Local councils have been bound by the access and amendment provisions of the IP Act since introduction on 1 July 2009 but are not required to comply with the Information Privacy Principles until 1 July 2010. This is in recognition of the fact that local government has never before been bound by any information privacy obligations, whereas government agencies were previously caught by Information Standard 42.

SLIDE

The RTI Act gives individuals a right of access to information in the government's possession or under its control, while the IP Act is specifically concerned with an individual's personal information, including the fair collection and handling of it, as well as providing a right of access to it. Essentially this means that the IP Act provides an individual with a right of access to documents of an agency which contain their personal information, while the RTI Act puts no limitation on the content of documents that may be applied for. It provides a right of access to all documents of an agency or Minister.

SLIDE

In addition to the two new pieces of legislation, the most fundamental change to be introduced by the RTI reforms is the move to a "push model" of information disclosure. Under this model, government is expected to push relevant, useful information out into the public domain rather than holding it back guardedly and only releasing it after its been wrestled from agencies through the RTI or IP Acts.

This premise turns on its head the rationale behind the FOI Act, which was that information would not be released unless it was in the public interest to do so.

Under the RTI and IP Acts, however, there is a legislated pro-disclosure bias which requires agencies to release information, unless it would be contrary to the public interest to do so. This means that agencies are now required to disclose information unless they can show that it would be contrary to the public interest to make that information available.

SLIDE

Under the FOI framework, there was too much dependence on a "pull model" which focussed on the dissemination of information in response to the making of individual requests for access. The FOI Act made provision for the limited publication of information concerning the affairs of agencies, in the form of an annual Statement of Affairs, as well as publication of agencies' policy documents. This fell a long way short of what is needed to engender a more proactive approach to disclosure.

The RTI reforms attempt to shift this approach towards a push model in its disclosure of information.

So, how does it seek to achieve this?

SLIDE

There are four main ways in which the RTI Act encourages the move towards a push model. These are:

1. Publication Schemes

   From 1 July last year, all government agencies (including local councils) were required to produce a Publication Scheme setting out the classes of information they make publicly available. For those of you familiar with the FOI regime, the Publication Scheme is intended to replace the Statement of Affairs and is designed to facilitate easy access to the information that an agency publishes.

This new requirement for agencies to have a Publication Scheme is modelled on the UK regime, where Publication Schemes have been in place for a number of years. I worked in the UK, for Transport for London (the body responsible for London's transport system) on a project to develop and implement its Publication Scheme. This experience showed me, first hand, how important the records and information management practices of agencies are, as we had to identify and classify every piece of publicly available information held by the agency and its subsidiaries. In an organisation of 28,000 employees who have to ensure that 27 million journeys are made smoothly every day, there was an enormous amount of information

that needed to be located, reviewed, classified, indexed and made available through the Publication Scheme.

If you haven't yet been involved in compiling or maintaining your agency's Publication Scheme, I suggest that you may wish to look at it from a knowledge management point of view. As the record keepers and information managers, you are best placed to know what information you hold and where it is available. This knowledge is also integral to the functioning of the access provisions in the Right to Information Act, and the access and amendment provisions in the Information Privacy Act.

2. The second way the RTI Act promotes more proactive disclosure of information is through Disclosure Logs.

A disclosure log is a list of documents, published on an agency's website, detailing information released following a decision about an application for access under the RTI Act. It applies to information that does not contain the personal information of the applicant that has been released to an applicant in response to an RTI request. Again, all agencies were required to have a disclosure log available on their website from 1 July 2009.

Disclosure logs llow for the publication of information to a wider public audience after it has been accessed under the RTI Act and are an important strategy for proactively disclosing information.

Disclosure logs provide instant access to information for people who are interested in the same or similar information as a previous applicant and would otherwise have had to undertake a formal legislative process to access it. They are also an important accountability mechanism for government, as the publication of disclosed information allows citizens to see what information, and how much, is being released by agencies and gives them an opportunity to form their own analysis and views of the content.

3. The third element of a push model is greater administrative release.
   Administrative release refers to the disclosure of information in response to a request but outside the legislative framework. In other words, simply giving people the information they are after rather than requiring them to go through the longer and more expensive RTI processing model. This form of information disclosure, while actively supporting the push model, should be managed at an agency level with appropriate policies and procedures in place. This will ensure that staff are comfortable with the nature and type of information that can be administratively released - and this is usually straight-forward, easily locatable, generic-type information that the agency is happy just to give out.

4. The final element in support of the push model is administrative access schemes for appropriate information sets. This refers to an agency providing an individual with access to personal information about them in relation to a specific data set, in response to a request from that person. For example, since 1992 Queensland Health has had in place an administrative access policy which provides a framework to support the right of patients to see what information is held about them by a health facility. Qld Police Service has a similar framework in place to provide administrative access to court briefs, police certificates and criminal history records, so if an individual would like access to any of this information about themselves, they can do so without having recourse to the often lengthy and costly RTI process.

So all these measures help support the push model of information disclosure. But what about those requests for information which cannot be handled administratively and must be processed under the RTI or IP Acts?

To this end, I will now give you a brief overview of the major changes brought about by these two pieces of legislation, and how they will impact on your roles and your agencies in a practical sense.

SLIDE

1. The time for processing applications is now 25 business days.

   The importance of having structured, accessible and maintained records management systems is imperative for meeting this timeframe, as an agency has 25 business days from

the day it receives a valid application under the RTI or IP Acts to make a decision on that application. If an agency's records are not in order, a large chunk of this time could well be taken up with trying to locate the relevant documents.

This is reinforced by the requirement in the new legislation that the application fee of $38 must be refunded by the agency if it does not meet this deadline. There is facility in the RTI Act to extend this timeframe with the agreement of the applicant but if the agency doesn't ask for an extension in time, they must return the application fee.

2. The charging regime remains largely unchanged, with agencies able to impose processing charges at the rate of $5.80 for each 15 minutes spent processing the application, for time over 5 hours. There are also access charges payable at 20 cents per page for access in hard copy format.

In addition, agencies are now able to pass on to the applicant the actual costs incurred in engaging another entity to search for and retrieve the document, so if your records are stored in offsite storage facilities and you need to engage the contractor to find the documents being requested, you can include that amount in the charges you impose on the applicant.

Similarly, another new activity which you can legitimately charge for is the cost of relocating a document in order for access to it to be granted. For example, if you have to pay a courier to transport a document from Townsville to Brisbane in order for it to be provided to an applicant, you can pass that cost on to the applicant.

However, before you start seeing dollar signs about the additional charging benefits under the new legislation, you should be aware that both Acts make it very clear that if a document is not found in the place where your agency's relevant filing system says it should be located, you must disregard any extra time spent searching for the document, above and beyond the time it should have taken to find the document if it was in the correct place. Also, if your relevant filing system should have, but does not, indicate the place where the document is located, your agency cannot charge the applicant for any time additional to the time it should have taken to find it. In this way, agencies are forced

to take responsibility for keeping their records and filing systems up-to-date, accurate and with the ability to be accessed and searched quickly.

SLIDE

3. The grounds for refusing access to information are changed. There are 12 classes of information considered to be 'exempt' and these largely mirror the exemptions in the FOI Act but they are absolute, so there is no need to consider the public interest when applying them. The exempt matter ranges from Cabinet information, information subject to legal professional privilege and law enforcement or public safety information.

For all other information which is not caught by one of the exemptions, agencies must decide to give access to the documents unless disclosure would be contrary to the public interest. As "the public interest" is an inherently difficult and amorphous concept, the RTI Act sets out a list of factors to assist decision makers in this task.

In the end, it comes down to decision makers balancing these competing public interest factors and making a decision as to whether the information in question will be disclosed.

SLIDE

In another change from the old FOI days, an agency must give access where the factors favouring disclosure outweigh, or have equal weight, with the factors favouring non-disclosure. It is only when the factors favouring nondisclosure clearly outweigh those favouring disclosure that the agency can refuse access to the information.

SLIDE

Moving on, I thought it might be interesting to briefly touch on our experience of the implementation of the legislation and what lessons you can take away from this.

Part of my role as manager of Information and Assistance at the OIC is to administer a telephone and email enquiries service whereby agency staff or members of the public can call and ask any RTI or IP-related questions they may have. As you can see from the statistics on this slide, that service has proven to be very popular and we are averaging around 12 calls per day. The rate of RTI enquiries has remained fairly constant, and still exceeds IP-related calls, but we have seen a steady increase in privacy questions this year. This is due, in part, to the requirement that councils must comply with the Information Privacy Principles on 1 July this year – and the resulting panic this instills in them.

On 1 December 2009, the OIC's power to hear privacy complaints also came into force and this has also resulted in an increase in calls of this nature, as more people are becoming aware of their privacy rights. You will also see that there is a considerable number of calls which fall into the category of "other". Some of our more challenging enquiries are actually not related to RTI or IP at all; for example, we received a call one day from a man in a fairly agitated state as he'd come home to find an intruder in his house and he wanted to know how to perform a citizen's arrest. After some creative Googling, we managed to find some information about what you need to do to effect a citizen's arrest so we duly passed this information on to the very grateful customer – with the helpful advice that he might also like to consider calling the police.

From the nature of the calls we're receiving, we've also noticed an increase in public understanding and awareness of the new legislation, with greater requests for copies of the approved access application form and more detailed questions about individuals rights to access government information. In line with this, as agency's receive more applications, so too does their experience and knowledge of how to process those applications grow. We are getting more interesting and challenging questions from decision makers as they grapple with some of the bigger processing issues, particularly around the fairly technical provisions relating to fees and charges.

SLIDE

Corresponding to the increasing experience with accessing information under the RTI and IP Acts, we've seen greater awareness of agency's record-keeping practices. This is particularly relevant where individuals have received information in response to a request for access, as agencies are required to list the documents they found in response to the request, along with details of where in the agency records searches were conducted and how many relevant files were located. This gives people a good insight into your agency's recordkeeping practices.

As I mentioned earlier, all local councils will be required to comply with the Information Privacy Principles from 1 July this year. This has resulted in a marked increase in requests for training from councils, in both RTI and IP, as they become aware of the work they need to do to become compliant by that date. In the past six months, OIC has delivered tailored training all over the State from Roma to Cairns and we have a number of other regional training sessions organised over the coming months. Thanks to QSA, we will also be delivering a presentation to recordkeepers in Mackay later this year.

SLIDE

So, what does all this mean for you, as records and information management specialists? Put simply, agencies need to have robust, effective, efficient records management processes in place, now more than ever, as the timelines for providing information to applicants is shorter, there is a much stronger push towards making information available wherever possible and there is no leniency in the legislation for agencies whose record keeping practices are below par. This will necessarily mean that every officer in the agency will have to play a greater role in keeping and maintaining accurate records.

Another impact of the RTI reforms is that improved access to government information will also focus agencies' attention on the quality and integrity of the information that is both published and retained as permanent records. This is the ideal time to improve your agency's record keeping practices, as public scrutiny of government information is only going to increase as the legislation gets bedded down and more people become aware of their rights to access it.

Just before I conclude, I'd like to touch upon some learnings from other jurisdictions where the long-term records management effects of information access regimes have shown some concerning trends.

SLIDE

To end off where we began, the long-term impact on the historical record in the world's longest FOI regime – Sweden – is one case in point. The Swedes take great pride in having the oldest FOI regime in the world.

But as FOI has evolved over the past 250 years, so too has a culture of information evasion. There is a considerable body of evidence to suggest that instead of increasing access, FOI has actually compromised public scrutiny of government policy and the integrity of Sweden's public archives.

This is due to the fact that 250 years of FOI in Sweden has resulted in the development of an oral culture of decision making that leaves no permanent trace in the official records. Decisions and discussions about them are largely done behind closed doors and in conversations between government officials. Documents that do exist tend to be formal and prepared with FOI in mind and many files are stripped back to the bare minimum, with no draft copies or document trails which could be used to record the decision-making process. This

results in a community which is ill-informed and a government which is devoid of historical records.

The former head of the Swedish National Audit Office has dubbed this the "empty archive" syndrome due to the fact that many of the kinds of the records that we would expect to see simply do not exist in Sweden, either because they were not generated in the first place or because they are not retained. I think it's indicative of the culture permeating Sweden's government in relation to its information stores and public access to them that, after a quarter of a millennium of FOI in Sweden, minutes are not taken at Cabinet meetings.

When the "empty archive" syndrome is perpetuated from the top levels of government down, it's a particularly concerning trend from both an information access and record-keeping perspective. While I'm not predicting that Queensland's RTI regime is going to head the same way, I think its important to be aware of these trends so we can be vigilant and proactive in ensuring that the oral culture of decision-making doesn't take root here. Luckily, the RTI and IP Acts contain several mechanisms which will safeguard against it, primarily the wide-ranging performance monitoring, auditing and reporting functions of the Office of the Information Commissioner.

SLIDE

In conclusion then, its important to remember that the role played by record keepers and information management specialists is integral to the success of the RTI reforms. By making sure your agency's electronic and hard copy records are maintained in a structured filing system which facilitates easy and rapid identification and access, you will be helping to fulfil your agency's obligations under the legislation and promoting the government's ambition of having the most open and accountable government in Australia.

Thank you.