



Office of the Information Commissioner
Queensland

Follow-up of review recommendations

Department of Education and Training

Review of agency adoption of recommendations made under the *Right to Information Act 2009* (Qld) and the *Information Privacy Act 2009* (Qld)

OIC thanks the Department of Education and Training staff for their cooperation throughout the review process and for the courtesy displayed towards the officers undertaking the assessment. In undertaking this follow-up review, OIC recognises the commitment of the business units and their desire for continuous improvement in right to information and information privacy.



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April 2016

Mr Mark Furner MP
Chair
Legal Affairs and Community Safety Committee
Parliament House
George Street
Brisbane QLD 4000

Dear Mr Furner

I am pleased to present 'Follow-up of review recommendations (Department of Education and Training): Review of agency adoption of recommendations made under the Right to Information Act 2009 (Qld) and the Information Privacy Act 2009 (Qld)'. This report is prepared under section 131 of the *Right to Information Act 2009 (Qld)*.

The report reviews the extent to which agencies reviewed by the Office of the Information Commissioner have responded to review recommendations.

In accordance with subsection 184(5) of the *Right to Information Act 2009 (Qld)* and subsection 193(5) of the *Information Privacy Act 2009 (Qld)*, I request that you arrange for the report to be tabled in the Legislative Assembly.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Rachael Rangihaeata'.

Rachael Rangihaeata
Information Commissioner

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1 Summary

This is a report on the implementation of recommendations of an Office of the Information Commissioner (**OIC**) report, tabled in Parliament during 2013/2014, about the outcomes of a review of agency performance under the *Right to Information Act 2009* (Qld) (**RTI Act**) and the *Information Privacy Act 2009* (Qld) (**IP Act**):

- **Report to Parliament No. 4 of 2013/14 – Compliance Review – Department of Education, Training and Employment:** Review of Department of Education, Training and Employment compliance with the Right to Information Act 2009 (Qld) and the Information Privacy Act 2009 (Qld).

The review analysed:

- the extent to which the Department of Education and Training¹ had a culture of openness and engaged with the community
- leadership within the agency to champion proactive release of information and good information governance
- accountability and measurement of performance
- strategies adopted to maximise disclosure; and
- compliance with specific legislative requirements.

This report examines the extent of implementation of the report recommendations.

1.1 Conclusions

The Department of Education and Training has implemented the 19 recommendations from the 2013/14 review report.

1.2 Reference to agency comments

In accordance with the Office of the Information Commissioner's *Charter, Policy and Procedures Manual* for the conduct of reviews, the Department of Education and Training was asked to provide information as to their views on this report on the progress of the implementation of the recommendations. Their response is provided in Appendix A of this report.

¹ The name of the department changed from the Department of Education, Training and Employment to the Department of Education and Training as a result of a machinery-of-government change following Governor in Council's *Administrative Arrangements Order (No. 1) 2015* of 16 February 2015, viewed at <https://www.qld.gov.au/about/how-government-works/government-responsibilities/> on 11 December 2015.

2 Report

Key findings

Nineteen recommendations (100%) have been fully implemented.

The Department of Education and Training (DET) has:

- established policies and procedures for governance, management and monitoring of right to information and information privacy in DET
- implemented strategies encouraging local, two-way resolution of requests for information, particularly through schools
- updated the website to improve legislative compliance and better promote right to information and information privacy, including provision of statistical information
- improved general procedures around application handling, including allocation, reporting and management of formal legislative applications for information; and
- implemented ongoing strategies for inclusion of the privacy principles in new and revised policies, procedures and forms.

2.1 Background

DET is responsible for the provision of education and training services for the people of Queensland, aligned to the state's employment, skills and economic priorities.

The 2013/14 review report concluded that DET published a wealth of significant information as a matter of course. The report found that DET needed to continue to identify and publish further information that was significant, relevant and appropriate. DET was advised to continue to review school performance information to ensure it was published in a more detailed, accessible and useable format for the community.

The report stated that active engagement at the strategic level by the Information Steering Committee would support a culture of open access across DET.

The report stated that DET needed to better promote the use of administrative access to the community, including the media. Local business units, including schools, should be encouraged to release information administratively where appropriate.

DET needed to take steps to support the independence of decision-makers, including developing policies and procedures for reporting to Ministers and senior executives on formal access applications.

The review also set out issues and opportunities for improvement. The 2013/14 review report made 19 recommendations, which DET accepted.

2.2 Implementation status

DET has implemented all of the 19 recommendations in the original review report.

Ultimately, not only have the recommendations been implemented as described, but DET has made further significant substantive improvements to the management of right to information and privacy. This took longer than expected. DET requested two extensions of time for implementation, with the second extension of time necessary after OIC responded to a progress report raising concerns about an apparent misunderstanding regarding a number of the report's recommendations and DET's legislative obligations. A copy of this letter is provided in Appendix B.

After a meeting between OIC and DET in October 2015, DET acknowledged that there had been misunderstandings regarding the recommendations, and sought further time to implement the recommendations as originally agreed. OIC agreed to these extensions of time to support DET in achieving the best possible outcomes in improvements to right to information and privacy practices, and this has been the final result. In particular, DET has achieved good practice in the implementation of Recommendation 5, regarding the development and implementation of performance measures and a system of performance monitoring.

2.3 Progress update

This section discusses the work completed and its impacts on the agency's operations and outcomes. It also identifies where further improvements can be made.

2.3.1. Work completed

Department of Education and Training has:

- implemented a strategy to increase open discussion between DET and community organisations, particularly between school principals and their local communities
- amended the role of the Innovation and Information Steering Committee² to incorporate formal plans, strategies and reports for leading and monitoring

² A new committee adopting relevant roles and responsibilities from the former Information Steering Committee.

governance, use and management of information, with explicit reference to right to information and information privacy as part of information management

- improved staff training in right to information and privacy
- updated the departmental and schools websites to improve legislative compliance and the promotion of the right to information
- encouraged administrative release of information through website updates and a program of staff awareness
- amended procedures for allocating applications made under the legislation, for briefing executive management about applications and making records of actions taken when handling applications; and
- updated forms to include appropriate collection notices and established a system for ongoing review and updating of collection notices on forms.

2.3.2. Work still to be done

Although all the recommendations have been implemented, ensuring right to information and protecting personal information will require ongoing attention.

For example, DET has designed a template report to be used for reporting to the Innovation and Information Steering Committee about agency performance with respect to right to information and information privacy. This form will be used to report to the next meeting of the Innovation and Information Steering Committee, and after its first practical use might be amended or adapted to ensure its utility.

Reviewing policies, procedures and forms for appropriate adoption of the privacy principles is an ongoing process that DET has incorporated into its process for checking new or revised policies, procedures and forms.

OIC considers these to be ordinary day to day activities that ensure right to information and information privacy are being actively addressed.

Appendix A – Comments Received

In accordance with the Office of the Information Commissioner's *Charter, Policy and Procedures Manual* for the conduct of reviews, the Department of Education and Training was asked to provide information as to their views on the progress of the implementation of the recommendations. Their comments are attached.

24 MAR 2016



Office of the
Director-General

Department of
Education and Training

Ms Rachael Rangihaeata
Information Commissioner
Office of the Information Commissioner
PO Box 10143
Adelaide Street
BRISBANE QLD 4000

Dear Ms Rangihaeata

I refer to your letter dated 15 March 2016 advising of the outcomes of the Office of the Information Commissioner's follow-up review into the Department of Education and Training's implementation of the recommendations from the *Report to Parliament No. 4 of 2013/14 Compliance Review — Department of Education, Training and Employment compliance with the Right to Information Act 2009 (Qld) and the Information Privacy Act 2009 (Qld)*. A report has been prepared outlining the results of the follow-up review.

I appreciate the opportunity to formally respond to the Report, prior to it being tabled in Parliament. It is pleasing to note that with the support of your office, the Department has implemented all of the recommendations from the review and that the Department's right to information and information privacy practices are now of a high standard.

The Department remains committed to meeting the right to information and information privacy requirements and will continue to work with your Office to improve our processes and practices.

On behalf of the Department, I would like to acknowledge the ongoing assistance and expertise provided by Ms Karen McLeod.

Should your officers require any further information, I invite them to contact Ms Caroline Hannigan by email at caroline.hannigan@dete.qld.gov.au or by telephone on 3513 6914.

Yours sincerely

A handwritten signature in black ink, appearing to read "J. Waterson".

DR JIM WATTERSON
Director-General
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Appendix B – OIC Response to DET’s Initial Progress Report



Office of the Information Commissioner
Queensland

25 September 2015

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**Subject: RIGHT TO INFORMATION & INFORMATION PRIVACY –
FOLLOW-UP IMPLEMENTATION OF REVIEW RECOMMENDATIONS**

Dear Dr Watterston

Thank you for the progress report received in July 2015 regarding the Department of Education and Training (DET)'s progress in implementing the recommendations contained in the report *Compliance Review – Department of Education, Training and Employment: Review of Department of Education, Training and Employment compliance with the Right to Information Act 2009 (Qld) and the Information Privacy Act 2009 (Qld)*.

I am concerned that, notwithstanding the six month extension granted and OIC's offers of assistance, DET's response suggests that there is significant misunderstanding regarding a number of the report's recommendations and DET's legislative obligations. I would therefore like to meet with you to discuss the report and to offer you the opportunity to reconsider further action required by DET and promptly provide a further progress report before I report to Parliament on DET's progress in implementing the recommendations of the review report.

A preliminary assessment of DET's progress report and scan of publically available information indicates DET has met 6 out of 19 recommendations, with 5 considered to be in progress, 2 with limited progress, 3 unmet and 3 unknown on current information. DET's progress report presently does not address the recommendations in a number of instances. Examples are provided below.

Recommendations Two and Five – information management, right to information and information privacy leadership within DET

Within the next 12 months, include activities in the Information Steering Committee (ISC) plans, so that the ISC is actively monitoring and overseeing the proactive release of information in accordance with the RTI and IP Acts, and the Queensland Government Enterprise Architecture (QGEA 2.0) guidelines.

Commencing within six months, develop and incorporate key performance targets into the Information Steering Committee's work plan to measure effectiveness and efficiency in right to information and information privacy processes at the strategic levels, with measurement of performance.

DET's progress report advised that the functions of the former Information Steering Committee (ISC) have been transferred to the Open Data Initiative, to which these recommendations now apply, and a new Information and Innovation Steering Committee (IISC), which oversees investment in innovation, information management and information and communication technologies. DET did not advise how the recommendations would be addressed.

Open Data is one aspect of Right to Information, which covers a broader field of information to be released and published.

The responsibilities described for the new IISC are a closer match to the responsibilities OIC originally envisaged. For example, the two recommendations would be implemented if planning, implementing and evaluation of right to information and information privacy initiatives were included in the IISC's program of information management and innovation.

Recommendation Four – complaints procedure

Within six months, implement a complaints procedure which sets out how to make a complaint when information included in the publication scheme is not available.

DET's progress report response did not address the Ministerial Guideline requirement to include on the webpage "information about how to make a complaint when information included in the publication scheme is not available". OIC's recommendation merely reflected this obligation as an area of improvement for the website. DET's progress report stated that this recommendation was addressed through a link from the Right to Information webpage to the Open Data Portal Request Form, and advice that this form could be used to request publishable information held by the Department. It appears DET has misunderstood its RTI obligations in this regard, as the publication scheme extends to a far broader scope of information than datasets.

DET's Right to Information webpage links to a webpage titled Feedback and Complaints. The recommendation could be very simply implemented, for example, by adding the bolded text to the existing words on that webpage as below:

*There is a complaint management process in place in each group to respond to complaints appropriately, **including complaints when information in the publication scheme is not available.***

Recommendation Sixteen – role clarity required to avoid conflict of interest

Within three months, ensure procedures for allocating work relating to RTI and IP Act applications explicitly take into account the need for a clear separation of roles between providing legal advice or assistance to the department, and having responsibility for quality of decision-making and the management of decision-makers.

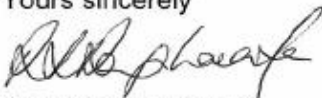
DET's progress report stated that this recommendation had been addressed by a procedure involving:

- direct supervision by the Executive Director, Legal and Administrative Law Branch (ED LALB) of decisions about applications for information made under the legislation; and
- direct liaison by the ED LALB with Departmental areas seeking legal advice and advice as to how to raise objections with decision-makers under the ED LALB's direct supervision regarding the release of information.

One person should not undertake dual roles that might involve conflicting responsibilities. It would appear that the proposed arrangement would in fact entrench the situation which gave rise to the concerns identified during the review of application files. The OIC recommendation requires a clear separation of these responsibilities.

I look forward to hearing from you regarding a convenient time for us to meet.

Yours sincerely



Rachael Rangihaeata
Information Commissioner