



Office of the Information Commissioner
Queensland

Compliance audit – Townsville City Council

Townsville City Council's compliance with the *Right to Information Act 2009* (Qld) and the *Information Privacy Act 2009* (Qld).



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March 2018

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

Dear Mr Russo

I am pleased to present 'Compliance audit – Townsville City Council: Townsville City Council's compliance with 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 compliance with the legislation and guidelines that give effect to the right to information and information privacy and makes recommendations for improving the council's compliance.

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 report details the findings of our audit of Townsville City Council's (TCC) compliance with the *Right to Information Act 2009* (Qld) (RTI Act) and the *Information Privacy Act 2009* (Qld) (IP Act).

The legislation requires government agencies to:

- make the information they hold available to the public as a matter of course, unless there is a good reason not to
- safeguard personal information.

The push model supports accountability and transparency, and builds community trust in government agencies.

Information in a government agency's possession or control is a public resource and a strategic asset. Effective information governance and management facilitates openness and transparency and increases public participation.

In April 2016, TCC asked consultants, Nous Group, to review its management structure and make recommendations to improve the council's operations and financial sustainability, and to reduce red tape. TCC adopted the report in full on 27 September 2016. At the time of our audit, TCC was implementing the consultants' recommendations, including restructuring its information functions and adopting a new model for community engagement.

Conclusions

The council's culture and practices do not reflect the intent of RTI and IP Acts because of significant systems issues, a lack of information governance and a general misunderstanding of the Acts and their aims. TCC cannot demonstrate it adopted the push model as a key component of open and transparent government. This affects the community's confidence in the council, as information is difficult to find and access.

As TCC progresses in its restructure, it has an opportunity to build a culture of openness and transparency by incorporating the principles and objectives of RTI and privacy in its policies, procedures and practices.

Poor recordkeeping practices and a deficient case management tool contribute to technical issues that affect TCC's compliance with prescribed requirements when handling formal applications. Limited staff training on RTI and privacy compound the issues.

The council's policies and procedures about privacy and camera surveillance are not always consistent with the IP Act. This could lead to non-compliant practices, for example when disclosing camera surveillance footage.

It is disappointing that the council did not take the opportunity to rectify some of its practices during the audit process, which we extended to give TCC more time to provide additional evidence and respond to the preliminary audit findings. TCC also did not address our 2015 recommendations from when we examined local governments' website compliance with RTI and IP Act requirements. We note that the council says it

...is confident that appropriate steps are now being taken to address the matters raised and to more fully incorporate the 'push model' and the principles and objectives of RTI and privacy in the council's policies, procedures and practices.

We invited TCC to provide supporting evidence about the actions it is taking. The minimal additional evidence we received is insufficient to determine whether these actions will adequately address the issues we identified.

We expect to conduct a follow up audit within two years to assess how TCC has implemented our recommendations.

Key findings

The community members who responded to our survey said it was difficult to find the information they were looking for on the council's website. Significant, appropriate information such as planning scheme information is missing from TCC's publication scheme. The council does not provide clear pathways to its RTI webpage, which is difficult to locate and access.

The current information asset register does not classify or identify which information holdings are suitable for public release, and it is not available on TCC's website. This means the public does not know what information holdings or datasets the council has and how to access them.

While the council recognises that administrative access arrangements can be efficient, and support openness and transparency, it has not implemented practices to facilitate

administrative release of information consistent with the RTI Act. As a result, TCC cannot be sure it is disclosing the maximum information possible and the community does not know what information is available through such arrangements.

TCC has an Information Management Steering Committee but it is inactive due to the restructure. It is proposing to re-establish the committee to oversee its information management. We are unable at this stage to determine how the new steering committee will include the objectives of the RTI and IP Acts into information management and governance.

The council is also proposing to adopt a new model for community engagement. This is another opportunity to include the objectives of the RTI Act and promote how members of the public or business representatives can get involved in the council's committees and decision-making process.

The established systems and processes for handling applications for information under the RTI and IP Acts are inadequate to support a legislatively compliant application process. Less than half (47%) the files we reviewed have sufficient records of the actions TCC took to process the applications. The other files are missing key records such as evidence of identity or agent authority documents. The case management tools do not cover the end-to-end application process. For example, they do not prompt the decision-maker to confirm an application complies with legislative requirements or to record requests for extension of processing time.

The lack of performance monitoring means the council is unable to assess its compliance with the prescribed requirements or identify where it could improve its processes. While TCC's organisational structure supports the independence of the decision-maker, it has adopted a delegation model that presents additional risks.

TCC has not provided sufficient RTI and IP training to staff and some procedures are not detailed enough. Recent staff turnover from the council's restructure risks eroding the corporate knowledge, expertise and general awareness of the staff's obligations under the Acts.

The council collects and holds personal information, including camera surveillance footage. It does not adequately identify the types of personal information it holds nor explain why it collects the information and how it will use it. Its Information Privacy policy is not always consistent with the IP Act and could lead to non-compliant practices. For example, the policy does not accurately reflect an individual's right to make a privacy complaint under the Act.

TCC frequently uses a generic collection notice with a non-specific purpose for collecting the personal information. When a collection notice is too broad, it becomes meaningless. Individuals are unable to make an informed decision about providing their personal information.

The council has documented policies and procedures that govern the operation of surveillance cameras, including storing, accessing and releasing footage. It also has a Memorandum of Understanding with the Queensland Police Service for sharing footage for law enforcement purposes.

The policies and procedures about camera surveillance are not always consistent with the IP Act. We identified improvements TCC should make to a number of practices to ensure it complies with the IP Act.

Recommendations

We recommend that Townsville City Council:

Recommendation 1

within 12 months, reviews and updates its RTI policy and RTI webpage so they:

- a) explicitly state the council's commitment to RTI and reflect the community's right of access under the legislation
- b) are consistent with the requirements of the RTI Act and the Ministerial Guidelines.

Recommendation 2

within six months, makes its RTI policy and RTI webpage easy to locate on its website.

Recommendation 3

within six months, actively promotes community participation in its standing and advisory committees.

Recommendation 4

- a) within six months, incorporates the principles and objectives of RTI and privacy in its new model for community engagement
- b) within 12 months, reviews its community engagement strategies, policies and guidelines to support its new approach.

Recommendation 5

- a) within 12 months, re-establishes an information governance body responsible for overseeing the council's information management architecture and accountability framework for proactive disclosure and safeguarding of personal information
- b) within 12 months, establishes new terms of reference for the information governance body and incorporates the objectives and principles of the RTI and IP Acts within its scope and functions.

Recommendation 6

- a) within 12 months, reviews and updates its information management policies, directives standards and plans to reflect current practices and strategies for managing its information assets
- b) within 12 months, develops and implements operational procedures for its information custodians.

Recommendation 7

within six months, implements a quality assurance process of its RTI and IP applications operations to improve compliance, enhance procedures and identify needs for further professional development.

Recommendation 8

within 12 months, develops more robust performance measures aligned to its operational plan.

Recommendation 9

within six months, reviews delegations for powers to deal with RTI and IP access and amendment applications to ensure they are clear, current and consistent with the RTI and IP Acts.

Recommendation 10

- a) within six months, ensures its decision-makers have up-to-date technical skills to deal with formal applications
- b) within 12 months, implements a program of ongoing professional development for decision-makers to maintain their technical and specialist skills
- c) within 12 months, ensures all staff are aware of their RTI and information privacy obligations related to their role, including their responsibility to respond to requests for information from the decision-maker.

Recommendation 11

within 12 months:

- a) promotes its administrative access arrangements on its RTI webpage
- b) identifies the types of information it will make available administratively
- c) implements procedures to guide staff on administrative access arrangements
- d) explains how members of the public can access the information that is available administratively.

Recommendation 12

within 12 months:

- a) updates its information asset register
- b) classifies the information holdings and datasets to determine their suitability for public release
- c) publishes the register on its website.

Recommendation 13

within six months, amends its RTI policy to support proactive disclosure and to promote the routine publication of significant, appropriate and accurate information.

Recommendation 14

within six months, reviews and updates its publication scheme to comply with the RTI Act and Ministerial Guidelines. This includes:

- a) explaining how to access documents in alternative formats
- b) populating information classes with significant and appropriate information
- c) explaining how to complain about the availability of information in the publication scheme.

Recommendation 15

within six months, reviews and updates its disclosure log to give better access to information.

This includes:

- a) publishing a statement about blank pages
- b) including contact details for the business area responsible for handling requests
- c) identifying only those applications where it has released information under the RTI Act
- d) publishing the disclosure log by financial or calendar year and, where practical, with hyperlinks to the documents.

Recommendation 16

immediately removes personal information from its disclosure log.

Recommendation 17

- a) within 12 months, embeds robust record keeping practices
- b) within six months, implements a more effective and efficient case management system, including a comprehensive suite of template notice documents to support legislatively compliant application handling.

Recommendation 18

negotiates with the applicant a suitable access type if it is necessary to provide information in an alternative access type.

Recommendation 19

within six months updates its Information Privacy Policy and supporting resources so they:

- a) are consistent with the privacy principles and obligations of the IP Act
- b) list the type of personal information the council holds and the purpose for which it uses this personal information
- c) direct individuals to detailed information about accessing or amending their personal information
- d) explain privacy complaints, including how a person can complain to the OIC
- e) include contact details for the person or business unit where persons can direct their privacy enquiries.

Recommendation 20

within 12 months, amends its webpages and forms so their collection notices are consistent with the IP Act and the IPPs.

Recommendation 21

within six months, updates its 'Management, Operation and Use of Closed Circuit Televisions Policy' and associated procedures to ensure they:

- a) are consistent with the obligations of the IP Act
- b) clearly outline the responsibilities of business units or persons involved in operating the camera surveillance network, and accessing or approving the release of footage
- c) cover body worn cameras
- d) include a separate, robust procedure for extracting footage for the council's own use.

Recommendation 22

regularly reviews and updates the CCTV Camera Justification document on its website with the current number of cameras in use and the locations in which they operate.

Recommendation 23

within six months, updates the *Memorandum of Understanding: Commitment to a Safe Community* to avoid a practice that exposes the agency to a potential breach of privacy.

Recommendation 24

within three months, adopts the standardised QPS request form included in our camera surveillance and privacy guideline.¹

¹ Camera Surveillance and Privacy guideline available at <https://www.oic.qld.gov.au/guidelines/for-government/guidelines-privacy-principles/privacy-compliance/camera-surveillance-and-privacy>.

2 Introduction

Background

Townsville City Council (TCC) has a population of about 190,000 people. It delivers a range of services, and builds and maintains community infrastructure including roads, drainage, sporting venues and other recreational facilities. As Australia's largest tropical city, the local government area of Townsville spans 3,736km².²

Significant industries operating in the region include construction, defence force services, mining, tourism, health and education.

In delivering its services, TCC processes thousands of information requests each year, for personal and non-personal information. It reported receiving 44 formal applications under the *Right to Information Act 2009* (Qld) (RTI Act) and 6 applications under the *Information Privacy Act 2009* (Qld) (IP Act) in 2015/16.³ In 2016/17, it assisted the Queensland Police Service with 392 requests for camera footage.⁴

We received two applications for external review of the council's decisions in 2014-15 and one in 2015-16.

Objective

The objective of our audit was to:

- establish whether TCC is complying with the prescribed requirements of the RTI Act and IP Act
- identify areas of good practice
- make recommendations about any improvement opportunities identified.

We conducted this audit under section 131 of the RTI Act, chapter 3 of the IP Act, and section 135 of the IP Act. We undertook the fieldwork from February to November 2017.

Appendix 3 outlines our methodology.

² *City of Townsville Annual Report 2016/17.*

³ 2015-16 is the most recent year for whole of government reporting data.

⁴ *City of Townsville Annual Report 2016/17.*

3 Culture of openness

Key findings

Townsville City Council:

- has a culture and practices that do not reflect the intent of the RTI Act
- advised it is transitioning to a new community engagement model that supports the objectives of the RTI Act
- enables participation and dialogue with the community through its committees, but needs to actively promote community and business representatives involvement
- is seen by stakeholders to deal with requests for information professionally, but could improve the proactive release of information.

Introduction

To achieve the intent of the *Right to Information Act 2009* (Qld) (RTI Act), an agency must embrace openness and transparency, which are fundamental to good government.⁵

The Act gives a right of access to government-held information unless, on balance, releasing the information would be contrary to the public interest. It also promotes the proactive release of information to build community trust and participation in government.

Agency leaders are responsible for establishing a culture consistent with RTI and privacy legislation. The culture should support the principles of proactive disclosure. To assess an agency's culture of openness, we seek evidence that its community engagement is two-way:

- it is listening to the community about their information needs
- it is responding by providing information the community wants.

In April 2016, Townsville City Council (TCC) asked consultants, Nous Group, to review its management structure and make recommendations to improve operations and financial sustainability, and to reduce red tape. The council adopted the report in full on 27 September 2016 and has centralised its community engagement function.

⁵ *The Right to Information: Reviewing Queensland's Freedom of Information Act, The report by the FOI Independent Review Panel*, June 2008, http://www.rti.qld.gov.au/_data/assets/pdf_file/0019/107632/solomon-report.pdf

Conclusion

While stakeholders commented positively about their relationship with TCC, members of the community were less positive about their experience in accessing council information. This is consistent with the council's lack of clear commitment to openness and transparency through right to access government information. The council's RTI webpage is difficult to locate and it does not reflect the intent of the Act.

The council's standing and advisory committees' structures enable public participation in council decision-making and allow for two-way dialogue with the community and other stakeholders. However, TCC does not actively promote how members of the public or business representatives can get involved in the committees' deliberations.

The restructure and adoption of a new model for public participation is an opportunity for TCC to explicitly commit to openness and transparency and incorporate the principles and objectives of RTI and information privacy when engaging with the community and stakeholders.

Results

Commitment to right to information

As an indication of an agency's leadership and culture, we expect to see a clear statement of commitment to right of access to information. We also assess whether the agency has a RTI webpage that is easy to locate and contains useful, detailed information about RTI.

The council's RTI webpage contains a statement about a person's right of access to information:

Under the Right to Information Act 2009 any person has the right of access to most documents held by us. Documents held by us include paper files, microfiche, print-outs, computer records, files, visual material, and audio recordings.

The statement does not clearly reflect the primary object of the legislation that gives a right of access to government information unless, on balance, it is contrary to the public interest. It does not align with the push model and the free flow of information to the community. Other agencies have expressed strong, clear and concise commitments in different ways. For example, 'City of Gold Coast is making it easier for you to access information managed by

us.’, coupled with a clear statement to open the RTI and Information Provision Policy, ‘*Council aims to maximise the amount of corporate information that is publicly available.*’

Agencies can emphasise and promote RTI by having an RTI webpage readily identifiable and accessible from their website’s homepage. TCC does not provide clear pathways to its RTI webpage. It is difficult to identify and navigate to and from the website’s main menu. The community members who responded to our survey support this. Almost no respondent recalled seeing any information about RTI on the council’s website.

We raised this matter with TCC in May 2015 as part of our desktop review of Queensland local governments’ website compliance with RTI and privacy. We recommended the council improve access to its RTI webpage. While TCC advised that it would endeavour to make the RTI webpage more accessible, this has not occurred.

A more visible RTI webpage would promote the openness and transparency objectives of the Acts. It could also manage the expectations of persons seeking access to agency information under the legislative process and direct persons to alternative forms of access, such as administrative access arrangements.

TCC includes useful information on its RTI webpage, but there are discrepancies with the Act. This includes:

- not clearly distinguishing the different application requirements between applications under the RTI Act and applications under the IP Act
- providing incorrect information about a person’s right of review under the Acts.

The council’s RTI policy is not available on its website. The policy has a number of inconsistencies with the Act. For example, it does not reflect the 2012 legislative amendments to disclosure log requirements. The policy also does not clearly outline options for a person’s right of review under the Acts, adding to confusion caused by information about review rights on the RTI webpage.

Recommendation 1

We recommend that TCC:

within 12 months, reviews and updates its RTI policy and RTI webpage so they:

- a) explicitly state the council's commitment to RTI and reflect the community's right of access under the legislation
- b) are consistent with the requirements of the RTI Act and the Ministerial Guidelines

Recommendation 2

We recommend that within six months, TCC makes its RTI policy and RTI webpage easy to locate on its website.

Community participation in decision-making

TCC has six standing committees and six advisory committees that create an avenue for public participation in council decision-making. The committees perform the investigative and detailed work within their areas of responsibility and report their findings to the council. This allows councillors to make informed decisions.

Councillors make up the membership of the standing committees. The committees invite business representatives or members from the community to address the committee in person or to submit an agenda item. The meetings of the standing committees are open to the public, unless the committees discuss confidential items.

Individuals have to read the terms of reference for each standing committee to find how they can participate in the council's decision-making process. Although the terms of reference are accessible from the webpage, they are not as effective in promoting public participation as publishing the relevant information on the webpage or advertising through social media.

Councillors, members of the community, local community groups and organisations make up the membership of the advisory committees, depending on the committee's area of responsibility. For example, the purpose and objectives of the Inclusive Community Advisory

Committee is to promote collaboration, partnerships and create a voice for the community on current and emerging social and community planning needs.⁶

The webpages for two advisory committees state that their meetings are open to the public. The terms of reference for another advisory committee say its meetings are also open to the public. There is no information on whether a member of the community can attend meetings of the other three advisory committees.

Recommendation 3

We recommend that within six months, TCC actively promotes community participation in its standing and advisory committees.

Approach to community engagement

When reviewing community engagement, we expect to see:

- communications strategies and frameworks that support the public and other stakeholders in communicating their information needs to the agency
- strategies and frameworks for communicating the agency's decisions to the community
- community engagement policies, procedures and practices, which include how the agency engages with the community when developing policies affecting external operations and how the agency considers community comments.

Before the council's restructure, individual business units identified and carried out their own community engagement activities. TCC had developed policies and guidelines to support its community engagement process. The Community Engagement Policy (March 2016) makes positive statements about two-way dialogue with the community in council decision-making.

Following the 2016 review, TCC has centralised its community engagement function. This will help build council expertise in how it engages with the community and its stakeholders. The council also advised that it intends to adopt a new model for engaging with the community. The International Association for Public Participation model recognises the need for different levels of public participation dependent on the level of impact to the community and supports the RTI objectives.

⁶ *Inclusive Community Advisory Committee (ICAC) Terms of Reference – 2016-2020.*

As we have not received evidence on how the council proposes to implement the new model and any supporting policies and guidelines, it is not possible to assess how these changes will affect the council's engagement with the community.

Recommendation 4

We recommend that TCC:

- a) within six months, incorporates the principles and objectives of RTI and privacy in its new model for community engagement
- b) within 12 months, reviews its community engagement strategies, policies and guidelines to support its new approach

Community perceptions

The RTI Act states:

- The community should be kept informed of government's operations.
- Openness in government increases the participation of the community in democratic processes leading to better informed decision-making.
- Government should adopt measures to increase the flow of information to the community.

We surveyed members of the public about TCC's openness and access to the information it holds. The following findings represent the answers of 32 respondents who partially or fully completed our survey.

One of the main strategies an agency can use to enhance proactive disclosure is to have clear pathways to access information. Half the respondents commented that they found some or all the information they were looking for on the council's website. Other respondents commented that the information they expected to find on the council's website was not available or that the information provided was limited.

Half the respondents had trouble in navigating the website. They reported:

- The website menu was too sensitive.
- The general layout and design of the website made it difficult to find information.

Figure 1 shows the responses on how easy it is to use the council's website when searching for information.

Figure 1
Ease of navigation - TCC website

	Per cent	Number
Very difficult or difficult	52%	12
Not particularly difficult or easy	30%	7
Easy or very easy	17%	4
Total		23

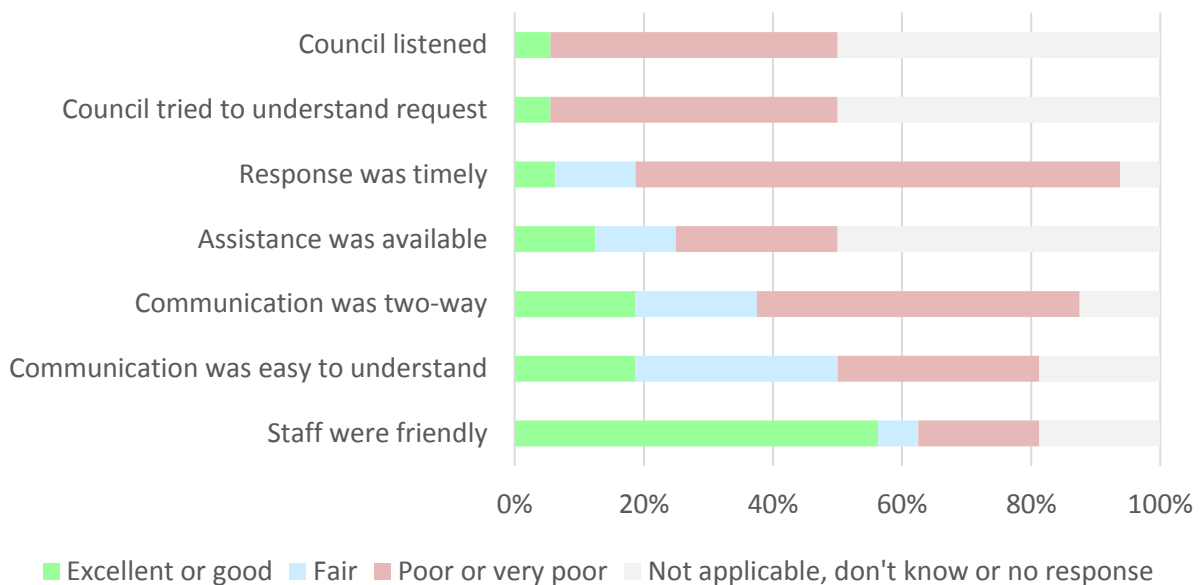
Source: Office of the Information Commissioner

Almost no respondent recalled seeing information about RTI on TCC’s website. This is consistent with our findings that it is difficult to find details about a person’s right to access council information.

When seeking information from TCC, respondents considered that the staff were friendly and communicated in a way that was easy to understand. However, some respondents thought that the communication was not two-way; the council did not always listen, try to understand their request, nor respond in a timely manner. Figure 2 outlines the respondents’ perceptions of the service.

Figure 2
Perceptions of service quality

Survey respondents' perceptions of Council's service quality

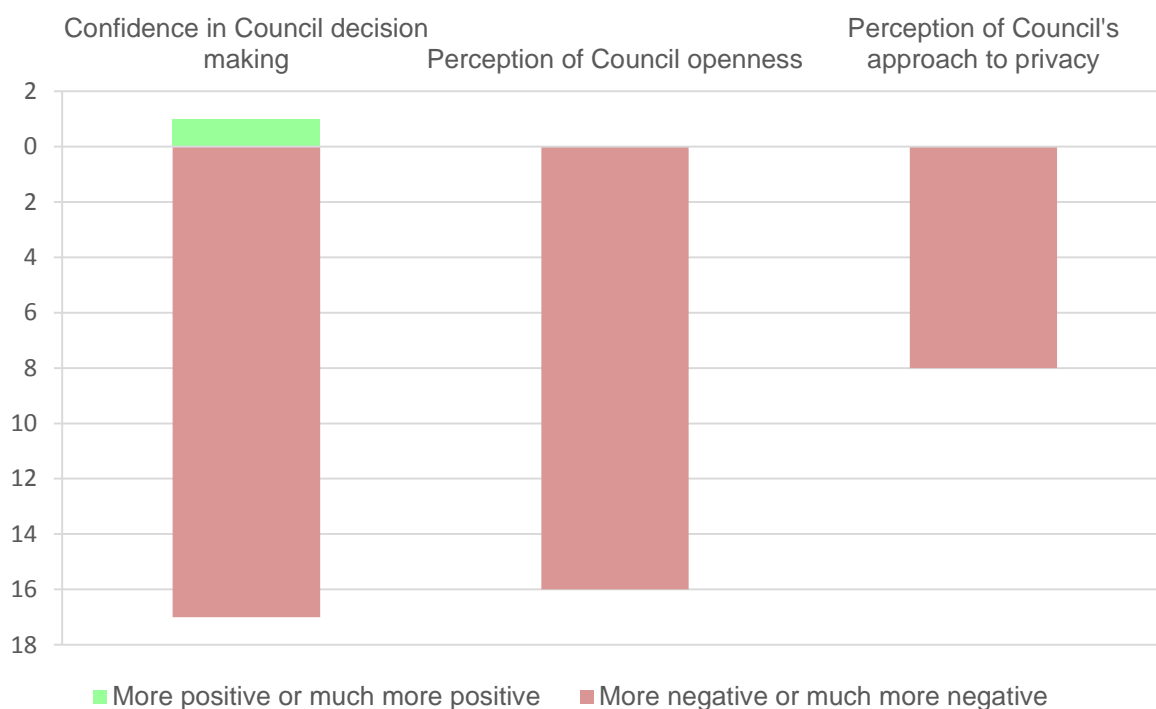


Source: Office of the Information Commissioner

Respondents commented that, when requesting information, TCC did not encourage them to obtain it in the least formal way. They also said that the council did not explain why it could not provide the information requested.

When we asked respondents to reflect on their experience in seeking council information, 20 people answered. The majority said their perception of TCC became more negative as a result of their interaction with TCC. Figure 3 shows the number of respondents who reported change in their confidence and perception of the council’s decision-making process, openness and approach to privacy. Zero means there is no change in perception, positive change is above the zero line and negative change below.

Figure 3
Change in respondents' perceptions after asking for information



Source: Office of the Information Commissioner

Stakeholder comments

We selected 62 stakeholders from the following sectors:

- economic and industry
- education
- media
- research and the environment
- social and community interest groups.

We received 18 responses, but five respondents had no comment. The following findings represent the responses of 13 stakeholders.

Overall, stakeholders said they valued TCC's information and the existing relationships. They identified some issues about accessing information and made suggestions to enhance the relationship with the council.

Stakeholders expressed strong interest in the following types of information:

- statistics and data – for example, infrastructure, environmental services, land ownership and use, city planning, service costs per suburb
- maps and models – for example, storm tide and flood models, rates and zoning maps, models prepared by the council engineers
- economic, business and investment information and reports
- historical information – for example, property documentation, development approvals and plans, planning scheme mapping pre 1990
- community information – for example, grant rounds, grant recipients, organisations and entities, emergency assistance requests, community requests
- studies – for example, recycled water studies and business cases, traffic studies
- contract negotiation status updates
- data on local hot spots and complaints related to hot spots.

They commonly sought information to undertake, improve or support service delivery, plan and identify possible opportunities and inform and promote grant submissions.

Three stakeholders were not sure or were unaware of whether the council holds additional information that would be beneficial to them. One stakeholder said that it is a challenge to identify what information the council holds that may be of interest to them and their clients.

Stakeholders commented on current information sharing arrangements. Generally, they responded favourably about access to TCC's information. Most respondents considered the council as willing to share information and that staff are helpful and efficient and deal with requests in a professional manner. Two stakeholders said that the council explained its reasons on the occasions when it would not provide the information requested.

The respondents also commented on the process of seeking information. Most stakeholders said they know whom to contact for information at the council or are in regular direct contact with a relevant staff member. However, some stakeholders expressed difficulties in requesting information from TCC. One stakeholder responded that given the many recent staff changes at council they no longer knew whom to contact but usually managed by asking others.

Another stakeholder commented that having to go through the general enquiry number rather than contacting the staff member directly was frustrating and time consuming.

Stakeholders are divided on whether TCC provides information in a timely manner. Five said it was timely, two said mostly timely, and one thought the timeliness was average when compared with other councils and one stakeholder thought it was slow.

Most respondents described the TCC positively and suggested improvements for council, including:

- release information proactively and consistently on the council website
- share more information with relevant entities with common objectives, while managing privacy obligations
- notify entities when new information becomes available
- explore solutions to technical difficulties in providing information
- implement an online portal for selected information such as the latest modelling
- ensure subscribers are not arbitrarily removed from contact lists.

4 Leadership and governance

Key findings

Townsville City Council:

- is proposing to re-establish its information management steering committee to oversee its information management capability and capacity
- has limited measures for monitoring the performance and compliance of its RTI and IP operations
- has an organisational structure that supports the independence of the decision-maker
- has adopted a delegation model that presents additional risks
- does not ensure its staff are aware of their RTI and IP obligations.

Introduction

The preamble to the *Right to Information Act 2009* (Qld) (RTI Act) recognises that information in a government agency's possession or control is a public resource. Effective information governance and management facilitates openness and transparency and increases public participation.

Agencies should manage information as a strategic asset to achieve the objectives of the RTI Act and the *Information Privacy Act 2009* (Qld) (IP Act). Their leaders need to establish a structured approach to information governance with clear roles and responsibilities.

To meet their legislative obligations and support independent decision-making, agencies also need to have adequate systems to monitor:

- the performance of their RTI and privacy operations
- their openness and responsiveness to the community
- their compliance with legislation.

When assessing leadership and governance, we consider whether the organisational structure, position descriptions and delegations of authority support the independence of the decision-makers.

Conclusion

Information management and governance at TCC are undergoing significant changes following the restructure. The council proposes to re-instate its information management steering committee, inactive since August 2016. It is too early to tell whether the committee will effectively establish and oversee an authorising and accountability framework to manage information as a strategic asset and support proactive disclosure.

TCC does not monitor the performance of its RTI and IP operations. The lack of a quality assurance process means the council is unable to assess its compliance with the prescribed requirements or identify where it could improve its processes.

The council's organisational structure supports the independence of its RTI and IP decision-maker. However, TCC has adopted an unusual delegation model framed around the areas of responsibility of various roles. This model presents additional, significant risks. A failure to have sound and accurate delegations in place can have serious and far-reaching consequences, including making unauthorised and invalid decisions.

The RTI and IP Acts apply to all staff and we expect agencies to make their staff aware of their responsibilities. TCC has not ensured its RTI and privacy decision-makers have up-to-date technical skills. Its induction material does not sufficiently explain staff members' obligations in responding to requests for information from the decision-maker.

Results

Information management governance framework

In April 2016, TCC asked consultants, Nous Group, to review its management structure and make recommendations to improve operations and financial sustainability. The council adopted the report in full on 27 September 2016 and is restructuring its functions and workforce.

The report recommended the council establish the role of Chief Information Officer (CIO) with responsibility for knowledge management. The council appointed a CIO in the first quarter of 2017. The key functions of the CIO are:

- ICT service strategy and design
- ICT operations
- business intelligence
- records.

A common approach to information governance is to make a steering committee responsible for the strategic direction for information and its management. This includes oversight of the information management architecture, principles and policies.

TCC has an Information Management Steering Committee but it is inactive due to the council's restructure. The committee last met in August 2016. Under its terms of reference, the former committee reported to the Executive Management Team. Its focus was to oversee the planning and investment of ICT to support the council's strategic goals. The terms of reference did not specifically identify RTI and IP within the committee's scope.

The Queensland Government Enterprise Architecture guideline on implementing information governance helps agencies establish a framework to support open, accountable and participatory government. While the guideline is not mandatory, it outlines what good practice looks like. As a reflection of an agency's culture of openness, we examine whether it has appropriately assigned responsibility for overseeing an authorising and accountability framework for proactive disclosure of information. This may include endorsing:

- policies, procedures and guidelines for the proactive release of information
- roles and responsibilities for authorising release of information
- tools and systems supporting proactive release.

The council advised it intends to establish a steering committee at the general manager level to drive governance and ICT. The council has not confirmed whether it plans to review the terms of reference when re-establishing the committee. This means we are unable to determine how this steering committee will include the objectives of the RTI and IP Acts into information management and governance.

Recommendation 5

We recommend that TCC:

- a) within 12 months, re-establishes an information governance body responsible for overseeing the council's information management architecture and accountability framework for proactive disclosure and safeguarding of personal information.
- b) within 12 months, establishes new terms of reference for the information governance body and incorporates the objectives and principles of the RTI and IP Acts within its scope and functions.

The council has developed policies, standards, directives and plans to guide staff and information custodians in managing information assets. The documents contain elements of proactive disclosure principles and routine release of information. For example, the 'Information Custodianship Procedure' says a responsibility of the custodian is to work with the RTI officer to ensure council makes information assets available, in line with the relevant corporate policies and standards. The custodian must also ensure that the policies and standards are consistent with the RTI and IP Acts. However, the procedure is high level and does not detail how the information custodian undertakes this process.

In addition, we note that a number of the policies, directives and plans are out-of-date and one is still in draft. For example, TCC last reviewed its 'Information Custodianship Administrative Directive' in 2010 and the 'Information Security Administrative Directive' is in draft.

High-level procedures with insufficient detail could result in the information custodians undertaking their roles and discharging their responsibilities inconsistently. This can affect how council identifies and makes its information assets routinely available in line with the objective of the Acts. The appointment of new information custodians and the council's restructure increases the risk the council will lose corporate knowledge.

Recommendation 6

We recommend that TCC:

- a) within 12 months, reviews and updates its information management policies, directives, standards and plans to reflect current practices and strategies for managing its information assets
- b) within 12 months, develops and implements operational procedures for its information custodians.

Performance monitoring

Performance monitoring and reporting contributes to greater accountability and transparency. By establishing a robust framework to assess their progress and compliance, agencies can determine areas of good practice and those that require additional effort.

Performance monitoring can help agencies to identify:

- information to publish proactively
- opportunities to improve the quality and efficiency of agency processes
- training needs.

TCC has not established a review process to ensure the ongoing quality and consistency of the RTI and privacy decisions it makes or the information it releases. With the change in responsibility for RTI and IP application handling, a quality assurance process could assist the council to improve its compliance and enhance the community's confidence in its decision-making processes.

Recommendation 7

We recommend that TCC within six months, implements a quality assurance process of its RTI and IP applications operations to improve compliance, enhance procedures and identify needs for further professional development.

At the operational level, key performance indicators (KPI) and measures are also useful for identifying improvement opportunities in processes and identifying training needs for decision-makers.

We saw one KPI for measuring council's achievement for processing RTI applications within the legislative processing period. Figure 4 shows the KPI as reported in the council's June 2017 quarterly performance report. The September 2017 report does not have a performance measure or deliverable about RTI.

Figure 4
Applications processed within statutory timeframes

KPI	PTD Target	PTD Actual	YTD Target	YTD Actual
100% of RTI applications are processed within statutory timeframes	100%	100%	100%	83.33%
<i>Comment> Target was not met this quarter as extensions have been requested from applicants</i>				

Source: Office of the Information Commissioner

The measure is inadequate because when the applicant agrees to a longer processing period under section 35 of the RTI Act, the statutory timeframe becomes the longer period. A better timeliness indicator of efficiency would be the proportion of applications where the decision-maker requested an extension.

An agency could also adopt measures about the application process, such as the average number of times per application that the RTI and Privacy unit contacts each applicant or the

average time between contacts with an applicant. Regular, informal discussions with applicants correlate with quicker application handling times.

TCC's operational plan 2017-18 details the day-to-day operations of how it delivers services to the community. It outlines the performance measures to track delivering its commitments. While the plan's objectives and deliverables include elements of RTI, such as improving community knowledge of council services, there are no measures for assessing progress in delivering these objectives. As a result, we are unable to determine the extent to which the council has included RTI and IP performance measures at the strategic level.

Recommendation 8

We recommend that TCC within 12 months, develops more robust performance measures aligned to its operational plan.

Organisational structure

Delegated decision-makers exercise their powers subject to the legislated requirements, common law and other principles. The RTI and IP Acts protect them and other officers involved in the RTI or IP process from interference, when processing and making decisions on applications. The Acts effectively create a shield of independence. Agencies support that independence through their organisational structure and processes.

At the beginning of the audit, the RTI officer was the council's delegated decision-maker. The RTI officer reported to the Risk Management & Compliance Co-ordinator until the council's restructure in July 2017. The position description for the RTI officer did not mention information privacy as an area of responsibility. It also systematically referred to the *Freedom of Information Act 1992*, repealed in 2009 and replaced by the RTI Act.

In July 2017, the Legal Services unit took over the handling of applications for information under the RTI Act and IP Act. TCC also created the position of Policy and Governance officer within Legal Services. It developed a new position description that articulates the role and responsibilities for RTI and information privacy decision-making and application processing more clearly. This officer is now the council's delegated decision-maker and reports to the Chief Legal Officer, who in turn reports to the Chief Financial Officer. This reporting structure supports the independence of the decision-maker.

Delegations

Under the Acts, the principal officer of an agency must deal with RTI access applications and information privacy access and amendment applications. The principal officer may delegate the power to deal with the applications to another officer of the agency, including to conduct an internal review. A valid instrument of delegation removes any doubt about whether a person other than the principal officer makes a lawful decision.

TCC has adopted an uncommon delegations model. It provided three delegation instruments: to the former RTI officer dated January 2013, to the Chief Legal Officer position dated October 2016, and to the Policy and Governance officer dated September 2017. They do not link to specific legislative requirements, rather they are framed around individual roles as outlined in the position descriptions.

The council explained it adopted this approach because it minimises the need to continually change delegation instruments and to specifically refer to relevant sections of legislation, which over time may change or become out-dated.

In an email dated 4 September 2017, TCC advised that:

In developing its template delegation instrument, the Council has sought to describe the delegated powers in the broadest possible way, so that it can never be successfully argued that any officer's decision – made in respect of a matter that is within the officer's area of responsibility – was ultra vires⁷. That is why the delegation instrument typically gives officers "...power to take any action related to the conduct of the business of the delegate's area of responsibility...". The officer with operational responsibility for information privacy and RTI matters is presently the Chief Legal Officer (CLO). His delegation instrument therefore operates to give him all necessary powers to discharge that responsibility, include [sic] to sub-delegate tasks to others within the areas of responsibility of the CLO (that is, including RTI and privacy). If another officer becomes responsible for that work, then that other officer's delegation instrument without amendment will give that officer the necessary power.

⁷ Ultra vires means 'beyond the powers'

Section 5 of the delegations for the RTI officer and for the current Policy and Governance officer, endorsed by the principal officer, state:

It is my intention that to the greatest extent possible I have delegated all powers necessary for the delegate to perform this role, and I intend that this delegation will be effective even if a specific piece of legislation is not listed above/in the register of delegations. Further, recognising that legislation is changed and made on an ongoing basis, this delegation is to be interpreted as continuing to be effective even though amendments are made to empowering legislation.

However, on the other hand, the delegations narrow the powers delegated to the former RTI officer and to the Policy and Governance officer to:

...signing all correspondence in relation to right to information applications [and complaints management] originating from within the delegate's area of responsibility or in response to correspondence referred to the delegate's area of responsibility.

The position description for the former decision-maker, the RTI officer, refers to acting 'as the FOI Decision Maker for FOI applications as Council Decision Maker'. While the title of the position aligns with the current legislation, the rest of the document refers to the *Freedom of Information Act 1992*, repealed in 2009.

The position description for the new Policy and Governance officer's role refers to the current RTI and IP legislation and to 'RTI Privacy applications'. However, while the new delegation the council provided in January 2018 explicitly mentions RTI [access] applications, it is silent on information privacy access and amendment applications.

In the email dated 4 September 2017, the council argues that the delegation instrument for the Chief Legal Officer:

...operates to give him all necessary powers to discharge [his] responsibility, include to sub-delegate tasks to others within [his] areas of responsibility (that is including RTI and privacy).

However, only the principal officer under the Acts has the authority to delegate. The Acts do not provide for sub-delegation within a local government. While it may be convenient to assign practical tasks to assist the delegate, powers of the principal officer cannot be sub-delegated under the RTI and IP Acts.

The delegation to the Chief Legal Officer is broader than the delegation to the RTI officer, but it does not specify any legislation. It states:

'This delegation is made pursuant to all legislation and regulations relevant to the delegate's area of responsibility.'

The delegations for the former RTI officer and for the current Policy and Governance officer include conditions that apply to the exercise of delegated powers. These conditions create a risk that the independence of a decision-maker is restricted. The Acts contain provisions that build a shield of independence for those involved in making decisions on access to information. Agencies should therefore ensure that they does not express the conditions of the delegation in a way that may limit or compromise, or be perceived as limiting or compromising, the decision-maker when they exercise the delegated powers.

Condition 4.2 requires the delegate to *'discuss with the delegate's supervisor prior to signing any decision which appears to be of significant public interest, potentially controversial, or to have major policy ramifications.'* We found no evidence in the sample of application files we reviewed that the independence of the decision-maker has been compromised. However we are concerned that one could perceive or construe the supervisor may be able to interfere with the decision. To do so may be an offence under the Act.

We recognise that even where principal officers have delegated powers, they will need to be kept informed of significant decisions to prepare for public debate. It is therefore critical that agencies carefully manage the briefing process to avoid interfering with independent decision-making. This issue should be considered as part of a review of the delegations to ensure there is a clear understanding about how briefings and decision-making are to be managed for RTI and IP applications.

We have not received an instrument of delegation that explicitly delegates powers for internal reviews to any council officer. While TCC acknowledges there is no such express delegation, it does not accept that there is uncertainty about whether that power to conduct internal reviews has been delegated. It argues that the internal review process is well understood within council but has not explained how it outlines the process to officers or whether the Chief Legal Officer conducts internal reviews under its delegation.

While this model may appear more efficient at first, it presents sizeable additional risks. A failure to have clear and accurate delegations in place can have serious and far reaching consequences, including making unauthorised and invalid decisions. The adopted model requires agencies to clearly and explicitly define an officer's area of responsibility and to

ensure the position descriptions are accurate and current at all times. It also requires agencies to closely manage the approval process of a position description because of the flow on effect on delegations. This may significantly reduce any efficiency gains.

We are encouraged that TCC advised:

...in light of the recent restructure across the council and internal changes in management accountabilities across some areas, the council is nevertheless progressing a review of its delegations to ensure they remain current and properly capture the area of responsibilities applicable to individual officers.

Our guideline on who can make decisions under the RTI Act and the IP Act covers delegations. It includes examples of instruments of delegations, which can be effective but short and straightforward as illustrated in Figure 5.

Figure 5
Example of an instrument of delegation within an agency

Delegation within an agency – access application under the RTI Act and access and amendment applications under the IP Act.

Under section 30(2) of the *Right to Information Act 2009 (RTI Act)*, I, [name 1] [position title 1] as principal officer of [agency 1] delegate my powers in respect of application for access under chapter 3, parts 1 to 8 of the RTI Act, to any officer for the time that they are appointed as [position title 2].

Under section 50(2) of the *Information Privacy Act 2009 (IP Act)*, I, [name 1] [position 1] as principal officer of [agency 1] also delegate my powers in respect of applications for access and amendment under chapter 3, parts 1 to 8 of the IP Act, to any officer for the time that they are appointed as [position title 2].

Dated this [day] of [month] [year]

[Signature of name 1]
[Name 1]
[Position title 1]

Recommendation 9

We recommend that TCC within six months, reviews delegations for powers to deal with RTI and IP access and amendment applications to ensure they are clear, current and consistent with the RTI and IP Acts.

Training and awareness

The compliance issues we found when examining application handling and template notices indicate that the council's decision-makers do not have up-to-date technical skills. There is no evidence of ongoing professional development in RTI and privacy. The former RTI decision-maker confirmed they last undertook RTI and privacy training in 2009.

Our office offers an extensive range of online training modules about RTI and privacy. They relate to applying the legislative framework and we designed them to support government agency employees. Our records show that between 2013 and 2017, seven council staff registered for online training, but none has completed it. We note that in December 2017 two council staff attended our RTI decision-making training hosted by the Whitsunday Regional Council.

An agency can provide training in-house to promote RTI and privacy and highlight how the Acts affect the obligations of staff (i.e. responding to requests from decision-makers or safeguarding personal information). However, TCC's induction material does not contain sufficient and appropriate information about the RTI and privacy legislation.

While the 'Keep the Knowledge – Information Management Awareness' presentation mentions the Acts and briefly describes a person's right to request access to information, the induction material does not sufficiently explain staff responsibilities in responding to requests for information from the RTI and privacy decision-maker. As the legislation applies to all council staff, the council is responsible to make them aware of their obligations under the Acts.

The council's organisational restructure and staff turnover increases the risk of losing corporate knowledge, expertise and general awareness of the staff's obligations under the Acts.

Recommendation 10

We recommend that TCC:

- a) within six months, ensures its decision-makers have up-to-date technical skills to deal with formal applications
- b) within 12 months, implements a program of ongoing professional development for decision-makers to maintain their technical and specialist skills
- c) within 12 months, ensures all staff are aware of their RTI and information privacy obligations related to their role, including their responsibility to respond to requests for information from the decision-maker.

TCC has resources about RTI and privacy on its intranet under the Governance and Internal Audit directory. However, the information is limited, as it does not provide further information to assist staff beyond what is available on the council's main website.

5 Maximum disclosure

Key findings

Townsville City Council:

- does not effectively promote the type of information it is prepared to release administratively
- has an information asset register, however it has not identified the information holdings suitable for public release.

Introduction

Information is a commodity and agencies must manage it as they manage their other assets. They should know what information they hold and ensure they put it to good use. This includes identifying ways to increase the value of the information.

Under the *Right to Information Act 2009* (Qld) (RTI Act), government agencies should release information as a matter of course, unless there is a good reason not to. A formal access application under the RTI Act should be the last resort. Proactive disclosure increases the flow of government-held information to the community. This approach increases transparency of, and community confidence in, government agencies.

Members of the community may access documents through an agency's administrative arrangements, such as its publication scheme or disclosure log, or under another Act.⁸ Administrative arrangements can significantly benefit agencies because they are a more simple and efficient way to release information to the community than the formal legislative application process.

A systematic approach to identifying and classifying information holdings or datasets helps agencies determine which information is suitable for public release. It also provides assurance that the agency is publishing the maximum amount of information.

To assess an agency's approach to disclosure, we review two strategies it can adopt to disclose information routinely and proactively: administrative access arrangements and online information delivery.

⁸ Section 19 of the RTI Act.

Conclusion

Townsville City Council (TCC) recognises that administrative access arrangements facilitate disclosure and support openness, accountability and transparency. In its RTI policy, it has committed to give members of the public access to information without requiring formal requests under the RTI Act. However, the council has not implemented procedures and practices to give effect to its proactive disclosure commitment.

TCC has not identified in its information asset register or on its RTI webpage the information holdings it is prepared to release administratively. Furthermore, the council does not effectively promote administrative access arrangements ahead of formal applications under the Act.

This approach means the council is unable to demonstrate that it proactively discloses the maximum amount of information, as the RTI Act intends. There is also a risk that TCC receives a number of formal applications it could have handled more efficiently under an administrative access arrangement.

Results

Administrative access arrangements

In 2014-15, we examined local governments' websites for compliance with the RTI and IP Acts. We recommended that TCC, on its RTI webpage, promote administrative access ahead of a request under the legislative process. The council accepted our recommendation.

The RTI webpage, under the section 'Making an application', acknowledges that applying under the legislative process is a last resort. The council invites people to contact the RTI Officer before lodging an application to see if it can release the documentation administratively. However, this advice is at the bottom of the section, after the details on how to apply under the RTI Act. This reduces its effectiveness and could discourage members of the public seeking to access council information.

The website includes examples of administrative access schemes such as:

- property searches
- interactive mapping services
- building and planning documents
- CityLibraries catalogue.

In 2015, we recommended the council mention its administrative access arrangements on the RTI webpage to increase their visibility and accessibility. Although TCC accepted our recommendation, there is no evidence that it has implemented it.

The council's RTI policy states that:

Council is committed to providing, as far as possible an open, accountable and transparent environment which enables members of the public to access council documents which do not require recourse to formal procedures in the Act. This will benefit in facilitating disclosure with minimum administrative delay and cost.

The policy commits TCC to releasing information administratively with minimal delay and cost, but we found no evidence of how the council guides staff or prospective applicants about the type of information that it is prepared to release administratively.

Recommendation 11

We recommend that TCC within 12 months:

- a) promotes its administrative access arrangements on its RTI webpage
- b) identifies the types of information it will make available administratively
- c) implements procedures to guide staff on administrative access arrangements
- d) explains how members of the public can access the information that is available administratively

Identification of data for publication

To assess the level of disclosure, we consider whether an agency has identified and classified its information holdings and datasets for confidentiality and suitability for public release.

TCC has developed an information asset register, although it is not available on the council's website. The register does not classify or identify which information holdings and datasets are suitable for public release.

As part of its restructure, TCC is identifying the new positions responsible for individual information assets. The council confirmed it needs to train these officers so they understand their roles and responsibilities as information custodians. This presents an opportunity for the council to include the objectives of the RTI and IP Acts into the training, in particular the

proactive disclosure objectives when classifying information assets for pushing out into the public domain.

Recommendation 12

We recommend that TCC within 12 months

- a) updates its information asset register
- b) classifies the information holdings and datasets to determine their suitability for public release
- c) publishes the register on its website.

6 Compliance

Key findings

Townsville City Council:

- generally manages its publication scheme in accordance with legislative requirements
- has an RTI policy that does not align with the proactive disclosure objective of the RTI Act and the Ministerial Guidelines
- could improve accessibility to information in its disclosure log
- has deficient recordkeeping practices and case management tools that contribute to non-compliant practices
- has not ensured that its decision-makers have up-to-date technical skills.

In our audits, we consider compliance with specific legislative requirements, application handling and generally the adoption of the push model that supports openness and transparency. More specifically, when assessing an agency's compliance with the RTI Act, we examine its:

- publication scheme
- disclosure log
- application handling process.

Publication scheme

Introduction

Section 21 of the RTI Act requires that all agencies publish a publication scheme.⁹ A publication scheme is integral to the push model where agencies disclose information proactively. The information should be easy for any person to find and use. Agencies should routinely provide as much information as possible and, in the interest of maximising access to information, in alternative formats.

Agencies must also comply with the *Ministerial Guidelines: Operation of Publication Schemes and Disclosure Logs* (the Ministerial Guidelines), which specify seven information classes and

⁹ Other than agencies specifically excluded by the legislation, or who have made other legislatively compliant arrangements.

outline their content. The information in the publication scheme must be significant, appropriate and accurate. As the significance of information can change over time it is important that agencies review and update their publication scheme so that it directs persons to the most current and up-to-date information.

We reviewed TCC's publication scheme for compliance with the prescribed requirements.

Conclusion

TCC meets most of its legislative requirements for operating its publication scheme.

However, while the council has a documented policy for releasing information on its publication scheme, the policy restricts the information TCC will make available. As a result, some significant and appropriate content is missing from the publication scheme. This means TCC has not effectively adopted the push model and is not proactively disclosing information.

Results

TCC has a publication scheme on its website, which clearly states the terms (including any charges) on which the council makes information available. It is organised under the seven information classes specified by the Ministerial Guidelines, but TCC does not explain how to request documents in alternative formats.

The information TCC has included in its publication scheme is current and up-to-date. However, the council does not include in the scheme all the information mentioned in the Ministerial Guidelines or listed in its RTI policy. For example, the policy states that TCC will list delegations and planning scheme information in the publication scheme, but it has not done so. Also, the 'Our Services' information class does not include information about all council services, such as building and planning services or waste and environmental services.

The policy tends to restrict what information the council will include in the publication scheme. This is because it specifically lists documents to publish under each information class, but does not outline the principles for identifying new information for publication. The policy also does not mention the Ministerial Guidelines' criteria for determining documents suitable for inclusion in the publication scheme.

This approach can reduce the scope for including other significant and appropriate documents in the publication scheme. It is inconsistent with the proactive disclosure objectives of the RTI Act. Our guideline 'Proactive disclosure and publication schemes' includes a number of factors that can assist agencies to identify significant information.

They include, but are not limited to:

- categories of information in high demand
- information required to be published by law
- documents relating to future challenges faced the agency
- information relating to programs or initiatives highlighted in corporate plans or strategy documents
- statistical information that could inform policy and work programs for other organisations.

The Ministerial Guidelines require agencies to have a procedure allowing people to complain if information listed in the publication scheme is not available. The procedure and relevant contact details for making such a complaint should be clearly set out.

TCC has a complaints policy and procedure. The policy includes a statement of commitment to a transparent method of responding to complaints:

Council is committed to a complaints management process which ensures the transparent, effective and timely resolution of complaints.

Both the policy and procedure promote the fair treatment of complainants and confidentiality.

However, the publication scheme webpage states that the Office of the Information Commissioner is responsible for enforcing the operation of the publication scheme and therefore directs individuals to complain to us. This is incorrect. The Information Commissioner does not have a statutory function to resolve complaints about agencies' failure to deliver information in their publication schemes.

Furthermore, the webpage does not explain how to give feedback about the availability of information in the publication scheme. It does not refer individuals to the council's complaints management process.

Recommendation 13

We recommend that TCC, within six months amends its RTI policy to support proactive disclosure and to promote the routine publication of significant, appropriate and accurate information.

Recommendation 14

We recommend that TCC within six months, reviews and updates its publication scheme to comply with the RTI Act and Ministerial Guidelines. This includes:

- a) explaining how to access documents in alternative formats
- b) populating information classes with significant and appropriate information
- c) explaining how to complain about the availability of information in the publication scheme.

Disclosure log

Introduction

Sections 78A and 78B of the RTI Act outline the requirements an agency must comply with when maintaining a disclosure log. This includes complying with the Ministerial Guidelines.

A disclosure log is a webpage or part of a website that lists documents an agency has released under the RTI Act. The rationale for disclosure logs is that, if one person has requested access to information other than their personal information, the wider community might be interested in the same information.

Disclosure logs are an important strategy for proactive disclosure. To progress the objective of giving a right of access to information unless there is a good reason not to, government agencies should publish as much information as possible in their disclosure logs.

We reviewed TCC's disclosure log for compliance with the prescribed requirements.

Conclusion

TCC's disclosure log complies with most of the requirements of the RTI Act and Ministerial Guidelines. Minimal information describing the purpose of the disclosure log, and its size and structure mean it is not as efficient and effective as possible in facilitating access to council information.

Results

Under section 78A(1) of the RTI Act, an agency may include a copy of a document it released under a formal application process in a disclosure log, if this is reasonably practical. For example, the agency's website capacity or the document's file size does not restrict its

publication. Otherwise, the agency may include, in its disclosure log, details identifying the documents and information about how to access them.

We encourage agencies to make these documents available online, for example through hyperlinks rather than by request. This approach has the following advantages:

- greater efficiency
- increased proactive release of information
- easier access to documents.

TCC's disclosure log describes the documents it released, as the Act requires. The council makes these documents available upon request. However, while TCC requests people who seek access to the documents to contact the council, it does not include contact details of the person or area responsible for such requests.

When an agency deletes information from a document under section 78B(2) of the RTI Act, this may result in blank pages. An agency may also redact whole pages of a document as part of its decision-making process. The Ministerial Guidelines state that agencies:

...should consider including information on their disclosure log pages explaining that where pages are blank as a result of decision-making processes, these pages are not included on the disclosure log.

TCC's disclosure log does not include this explanation. This may lead to unnecessary queries or misunderstanding of the decision-making process.

While not a requirement of the Act, good practice is to explain the purpose of a disclosure log. As people other than the applicant could be interested in the information the council released, directing individuals to search the disclosure log can reduce potential applications for the same information.

The council's RTI webpage has no information about what a disclosure log is or its purpose in giving the public more access to council information released under the RTI Act.

The structure and size of disclosure log affect the ability to search for information. At the time of our audit, TCC's disclosure log is a pdf document, 45 pages long and spanning from July 2009 to January 2017. Under the Act, an agency only needs to include details identifying documents released that do not contain the personal information of the applicant. The council lists all applications it received under the RTI Act, including withdrawn applications, or

applications where it decided not to release the documents or the documents do not exist. This practice contributes to the size of the disclosure log.

Recommendation 15

We recommend that TCC, within six months reviews and updates its disclosure log to give better access to information. This includes:

- a) publishing a statement about blank pages
- b) including contact details for the business area responsible for handling requests
- c) identifying only those applications where it has released information under the RTI Act
- d) publishing the disclosure log by financial or calendar year and, where practical, with hyperlinks to the documents.

From our review of application files, we noted TCC has included in the disclosure log the details of documents containing a mix of personal and non-personal information, which made them unsuitable for publication. In one instance, the council has published the residential address of the applicant. This is a potential breach of privacy.

Recommendation 16

We recommend that TCC immediately removes personal information from its disclosure log.

Application handling

Introduction

The RTI and IP Acts give a right of access to information in a government agency's possession or control unless, on balance, it is contrary to the public interest to do so.¹⁰ This means that if people cannot obtain government-held information from public sources or administrative access arrangements, they can apply to access the information under the RTI or IP Acts.

¹⁰ The IP Act also allows a right to amend personal information in the government's possession or under the government's control, unless on balance, it is contrary to the public interest to allow the information to be amended.

Agency decision-makers must balance competing public interest factors in light of legislation and their agency's business.¹¹ They have a key role in ensuring that decisions meet the intentions and the requirements of the legislation.

We consider compliance with specific legislative requirements, management of applications and release of information through the application process. We also examine the agency's process for locating and assessing the information. However, in an audit, we do not review the merits of the decision about accessing and/or amending documents.

Conclusion

There is a general misunderstanding of the requirements of the RTI and IP Acts in TCC and how to apply them when processing applications. We identified a number of practices affecting compliance with the Acts, and the effectiveness and efficiency of the application handling process. In particular:

- ineffective recordkeeping practices
- ineffective case management tools and support for the decision-maker in processing the applications
- business units not understanding their obligations in supporting the decision-maker and responding to requests for document searches.

Results

We reviewed 15 RTI and IP application files. Figure 6 summarises the level of compliance with Chapter 3 of the RTI and IP Acts.

¹¹ If the information requested is exempt information then the decision-maker is not required to apply the public interest test.

Figure 6
Application handling – summary of compliance

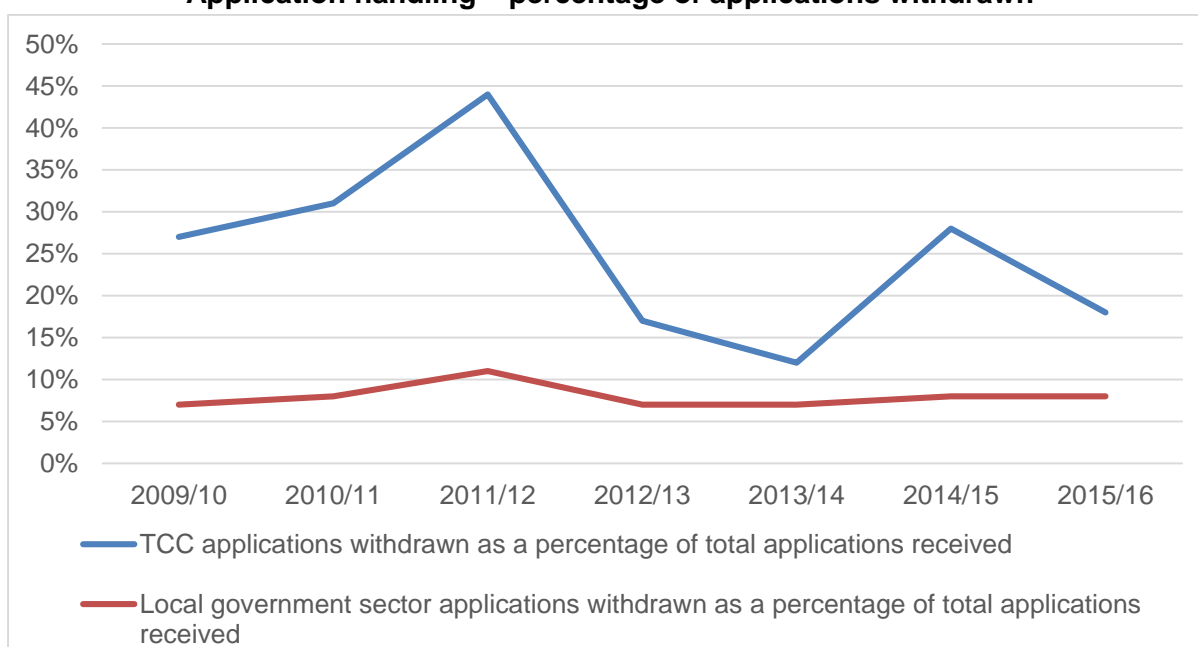
	Compliant	Non-compliant	Insufficient evidence*	Total of applicable files
Access applications	7 (47%)	4 (27%)	4 (27%)	15
Charges estimate notice and schedule	7 (70%)	3 (30%)	-	10
Third party consultation	4 (57%)	-	3 (43%)	7
Change Act ¹²	-	1 (100%)	-	1
Withdrawn	1 (100%)	-	-	1
Prescribed written notice	14 (100%)	-	-	14
Giving access	5 (50%)	1 (10%)	4 (40%)	10
Disclosure log	2 (29%)	5 (71%)	-	7

* We could not determine whether the council complied with the requirements because there is insufficient evidence

Source: Office of the Information Commissioner

We noted that TCC has a higher application withdrawal rate compared to the local government sector. Figure 7 below highlights that on average, TCC’s application withdrawal rate is more than double the sector average for the last seven comparable years.

Figure 7
Application handling – percentage of applications withdrawn



Source: Office of the Information Commissioner, using Statistics from Annual Reports - Right to Information Act 2009 (Qld) and Information Privacy Act 2009 (Qld)

¹² The Change Act provisions within the RTI and IP Acts assist decision makers in dealing with applications received under one Act that could have been made under the other Act because the information requested is or is not limited to documents containing the applicant’s personal information.

The council received 74 applications in 2015-16 and 2016-17 and more than a quarter (20) were withdrawn. Over three quarters (16) were taken to be withdrawn by the applicant because they did not respond to the Charges Estimate Notice within the prescribed period.

Recordkeeping

Only 47 percent of the files reviewed have sufficient records of the actions TCC took in processing the application. We assessed the remaining application files as unsatisfactory due to the lack of adequate records to demonstrate appropriate process. These files are missing key records such as evidence of identity and agent authority documents, and file notes recording the outcomes of conversations with key stakeholders involved in the application process.

At the time of our audit, TCC had no single system that maintained a complete account of all actions taken in processing an application. As a result, it is difficult to assess what occurred during the application process and whether the council met its legislative obligations.

The council acknowledged that there was no single point of truth for RTI application files records. It has since modified its recordkeeping practices and now creates a separate folder in its Enterprise Content Management system for each new application file. The system also allows the decision-maker to record actions taken in processing the applications. We believe that this practice will improve TCC's recordkeeping and management of information in application files, but it is too early to tell.

Support systems

Effective case management can help agencies process applications in compliance with the legislation. It highlights tasks or requirements needing attention and makes milestones more visible. Case management systems can be as simple as a checklist to more sophisticated software packages. A comprehensive suite of template documents improves efficiency and supports a consistent and compliant process.

We assessed the council's case management and template notices. We believe that a number of the non-compliant actions TCC took when processing applications are due to the deficiencies of its case management systems and tools.

TCC has developed an RTI Summary Sheet and an IP Summary Sheet to case manage the applications. While these sheets identify and track some steps in the application process, they do not effectively cover the end-to-end process.

Most notably, the summary sheets do not:

- confirm the application is made under the correct Act or there is a need to invoke the change Act provisions
- identify applications that specifically mention an individual third party by name and whether the council should consider a 'neither confirm nor deny' response because standard use of early documentation may compromise prescribed information¹³
- include confirmation that the application complies with the requirements for a valid application
- record the access method type the applicant requested or prompt to contact the applicant to arrange access in a different access method type
- record when the decision-maker sent a request for documents to business units and the due date for the response
- prompt for considering the refusal to deal provisions within the Acts
- identify the date the decision-maker initiated the third party consultation and the due date for the response
- record requests for extension and applicants response
- include the initial decision due date or amended due dates.

TCC has developed more than 20 template notices to deal with applications under the RTI Act and the IP Act. We noted many inconsistencies between the notices and the Acts. For example:

- The timeframes for applying for external review are not consistent with the prescribed period under the Acts. This could potentially impact on the applicant's ability to exercise their review rights.
- There are incorrect references to sections in the Acts. Although the 'IPA Third Party Consultations' template is a notice under the IP Act, it refers to section 37(1), which is the third party consultation provision under the RTI Act.

TCC advised that it has engaged a law firm to review its template notices and make them compliant. While we acknowledge TCC's intention to improve its practices, we have not received any evidence this has occurred.

¹³ Section 55 of the RTI Act – Information as to existence of particular documents.

Recommendation 17

We recommend that TCC:

- a) within 12 months, embeds robust record keeping practices
- b) within six months, implements a more effective and efficient case management system, including a comprehensive suite of template notice documents to support legislatively compliant application handling.

Procedural compliance

In the 15 files reviewed, TCC applied the legislative requirements inconsistently when processing applications, resulting in non-compliance. We identified a range of compliance issues, including:

- determining the content of prescribed written notices including decisions
- assessing whether an applicant has made a valid application
- processing applications under the wrong act
- determining application charges
- redacting third party information
- publishing information in the disclosure log.

Section 24 of the RTI Act and section 43 of the IP Act set the requirements for a compliant application. When an agency determines an application does not satisfy these requirements, it must not refuse to deal with it without having given the applicant a reasonable opportunity to make the application compliant.

Four applications did not comply with these requirements. We found no evidence on these files that the council received documents confirming the applicant's identify or the agent's identity and authority to act. There is no documentary evidence that TCC identified the applications as non-compliant or followed up the outstanding application requirements. The applications are therefore invalid and any decision made about these applications is invalid. In addition, when the council releases personal information to an applicant or agent without having satisfied itself as to their identity or authority to act, it increases the risk of a breach of privacy.

We identified issues with how the council determines the amount of the processing and access charges. It is the duty of an agency to minimise any charges the applicant should pay.¹⁴ Overestimating the charges quoted in a Charges Estimate Notice is inconsistent with the Acts and can discourage applicants seeking access to council information.

In one instance, the 'Time Control' sheet used for recording the time spent processing the application does not correspond with the time quoted in the Charges Estimate Notice. Specifically, the council recorded nine hours of processing time on the control sheet but the notice charged for 15 hours. We found no evidence on file to explain the difference between the actual time recorded and the time charged to the applicant.

Under section 68(5) of the RTI Act, if an agency gives the applicant access to a document in a form different to that requested by the applicant, the agency must not charge the applicant more than what they would have paid if the agency gave access in the form requested.

We identified two application files where the council calculated and charged the applicant an access charge for an alternative access type to the one the applicant requested. The application form clearly states that if the applicant chooses to access documents by email, CD, DVD or inspection, there will be no charge. In each instance, TCC charged an access charge even though the applicant requested access by email.

An incorrect access charge may prompt applicants to withdraw their application or narrow its scope thereby reducing the information they could receive. It could contribute to the higher proportion of applications withdrawn due to the applicant not responding to the Charges Estimate Notice.

Under section 49 of the RTI Act, if an agency considers disclosure of information would be contrary to the public interest, the agency must:

- identify and disregard all irrelevant factors
- identify all factors favouring disclosure **and** all factors favouring non-disclosure
- decide whether on balance the disclosure would be contrary to the public interest.

We observed that in its decision notices, TCC is not describing its application of the public interest test as required for prescribed written notices. The evidence on five files shows that the council identifies only one set of public interest factors in weighing up the public interest: the factors that align with its decision. For example, if TCC's decision is to refuse access, the

¹⁴ Section 58 of the RTI Act and section 78 of the IP Act.

decision notice only acknowledges factors favouring non-disclosure and there is no mention of considering the factors favouring disclosure in the public interest.

The above findings indicate a reduced technical understanding in how TCC applies the Acts. TCC advised that it has engaged a law firm to train its Legal Services staff in RTI and IP but has not provided supporting evidence about the training and associated activities.

Recommendation 10 (from Chapter 4)

We recommend that TCC:

- a) within six months, ensures its decision-makers have up-to-date technical skills to deal with formal applications
- b) within 12 months implements a program of ongoing professional development for decision-makers to maintain their technical and specialist skills

Internal process

When an agency receives a valid access application, the decision-maker must enquire with the relevant business units about the existence of documents within the scope of the application. The agency should keep records of all searches to show that it took reasonable steps to locate the documents.

Three files contained no evidence of the business units' response to the request for searching for documents. It is imperative that business units return the completed request forms to the decision-maker so they can:

- calculate processing charges accurately
- substantiate searches for documents.

Under the RTI Act, the decision-maker is required to consider all documents in the agency's possession and control that are within scope of the application. Even if they have concerns about releasing documents, business units must send all responsive documents including any comments for consideration to the delegated decision-maker.

While TCC business units generally provided the information the decision-maker requested, we identified instances where they could have supported the application handling process better. This issue indicates not all council staff are aware of their responsibilities.

Three files contained no evidence of the business units response to the 'request for documents' search request. On one file, the business unit refused to give the requested documents to the decision-maker. This led to the decision-maker seeking advice from our Information & Assistance unit about how to proceed with the application. The decision-maker also sought an extension from the applicant to avoid the application exceeding the statutory timeframe and preventing council from making a decision about access. This affected the service to the applicant and delayed their access to the information.

Recommendation 10 (from Chapter 4)

We recommend that TCC:

- c) within 12 months, ensures all staff are aware of their RTI and information privacy obligations related to their role, including their responsibility to respond to requests for information from the decision-maker.

Giving access

Right to information recognises that the community has a fair and equitable right of access to information held by government agencies. Providing the information in a type other than requested may restrict the applicant's ability to access the information. For example, hardcopy format might disadvantage individuals with a disability who rely on screen reading devices to access information. If it is not possible to give access to an applicant as originally requested, for instance when a document is too sensitive to email, then it is good practice to contact the applicant to ensure that the proposed access type is appropriate.

We noted for six application files the council provided access to documents in a different access type than the applicant requested. We found no evidence that TCC contacted the applicant to ensure the access type was appropriate.

Recommendation 18

As a matter of good practice, we recommend that TCC negotiates with the applicant a suitable access type if it is necessary to provide information in an alternative access type.

7 Privacy

Key findings

Townsville City Council:

- does not sufficiently detail the type of personal information it holds nor explain how it uses it
- generally uses a generic collection notice that does not give enough detail to understand why the council is collecting the personal information
- has policies and procedures about camera surveillance that do not always align with the IP Act.

The *Information Privacy Act 2009* (Qld) (IP Act) gives individuals the right to access and amend their personal information held by government agencies. It also sets out how agencies must collect and handle personal information. Under the Act, an agency other than a health agency must comply with the 11 Information Privacy Principles (IPPs). It must also comply with provisions about transferring personal information outside Australia and using contracted service providers.

[Information privacy resources](#)

Introduction

Under IPP5, government agencies controlling documents that contain personal information must take reasonable steps to make people generally aware of the personal information they hold and how they are using it.

A good practice is to also explain how an individual can access their personal information and make a formal privacy complaint, if they think the agency has breached their privacy.

Conclusions

TCC does not meet its obligations under IPP5 as it does not adequately identify the types of personal information it holds or explain how it uses it. Its Information Privacy Policy is not always consistent with the IP Act and could lead to non-compliant practices.

Results

TCC has a Legal Information, Privacy, Security and Accessibility webpage, which is easy to locate and access. The webpage clearly states the council's commitment to privacy but does not include the contact details for the position or business unit responsible for privacy matters.

The council collects and holds personal information for many purposes, for example: determining rates, delivering waste services, assessing property development proposals, processing applications for registration, permits and licences and using council facilities.

In May 2015, we undertook a desktop audit of the council's compliance with IPP5. We found that, while the council had published an Information Privacy Policy, there was little detail about the personal information holdings. We recommended TCC updates its policy and the council responded that it was 'under review'.

TCC does not adequately detail on its website the type of personal information it holds or how it uses the personal information. For example, the privacy statement says:

We hold a range of information including personal information relevant to conducting business with council such as your name, address, property details, correspondence and building records.

This is too broad for an individual to understand the purpose for which the council uses their personal information. TCC also collects personal information through its network of surveillance cameras but has not included video footage in any list of personal information holdings.

In addition to the Information Privacy Policy, the council has published an Information Privacy Statement, an Information Privacy brochure and an Information Privacy – Frequently Asked Questions document on its website. The brochure outlines the process for accessing personal information and the review rights. The other documents contain incomplete information about seeking access to personal information and do not direct the reader to the more detailed brochure.

The policy is a high-level document, which paraphrases the privacy principles. This has resulted in a number of significant inconsistencies. For example:

- The policy defines 'collection' as "*gathering, acquiring or obtaining personal information from any source and by any means, including information that the council has come across by accident or has not asked for.*" The collection obligations in the IP Act do not apply to non-solicited information.

- The IP Act gives individuals the right to request amendment of personal information if their personal information is inaccurate, incomplete, out of date or misleading. The policy limits this right to inaccurate or out of date personal information.
- TCC has not included in the policy, the rules for contracted service providers¹⁵ and for transferring of personal information outside Australia¹⁶.

Furthermore, the policy does not accurately reflect an individual's privacy complaint rights under the IP Act. It states:

If an individual is not satisfied with the manner in which council has handled their request for access their personal information, they may lodge a formal complaint under council's Complaints Management Policy, a copy of which can be found on council's website.

An individual's right to make a privacy complaint is not limited to how an agency handles their access request. Under the IP Act, a person can make a privacy complaint when they suspect a government agency has breached their privacy. TCC does not sufficiently explain how to make a formal privacy complaint, the timeframes for council responding to the complaint or how an individual may bring their complaint to the OIC.

Recommendation 19

We recommend that TCC within six months updates its Information Privacy Policy and supporting resources so they:

- a) are consistent with the privacy principles and obligations of the IP Act
- b) list the type of personal information the council holds and the purpose for which it uses this personal information
- c) direct individuals to detailed information about accessing or amending their personal information
- d) explain privacy complaints, including how a person can complain to the OIC
- e) include contact details for the person or business unit where persons can direct their privacy enquiries.

¹⁵ Chapter 2, part 4 of the IP Act.

¹⁶ Section 33 of the IP Act.

Introduction

Agencies must not collect personal information unless it is necessary for their functions or activities. They also need to take reasonable steps to make people generally aware of why they are collecting the personal information, what they will use the information for and whether they disclose the personal information, and if so to whom and for what purpose (IPP2).

When an agency tells individuals about the personal information it collects, uses and usually discloses, we call this a collection notice. If practicable, the agency should provide the collection notice before, or at the time it collects personal information.

Conclusions

TCC uses a generic collection notice that does not sufficiently explain why the council is collecting the personal information, how it will use it and whether it shares it with another entity. When a collection notice is too broad, it becomes meaningless. Individuals are unable to make an educated decision about giving their personal information to the agency.

Results

We examined 14 forms available on the council's website. Two forms did not have a collection notice while only one form contained a notice stating the specific purpose for collecting personal information. The remaining 11 forms include a generic collection notice, in addition to their titles indicating why the council is collecting the personal information. The generic notice outlines a broad, non-specific purpose of collection, such as:

You are providing personal information which will be used for the purpose of delivering services and carrying out council business. Your personal information is handled in accordance with the Information Privacy Act 2009 and will be accessed by persons who have been authorised to do so. Your information will not be given to any other person or agency unless you have given us permission or the disclosure is required by law.

This does not give enough detail for an individual to understand how the council will use their information.

The generic statement does not sufficiently explain whether it is the council's usual practice to disclose personal information to another entity. Under IPP11, an agency may disclose personal information to a third party under six specific circumstances. The general collection

notice the council uses mentions only two circumstances. This may limit the council from relying on IPP11.

We reviewed five webpages where the council invites people to use the email addresses it provides. None of the sampled webpages has an individual collection notice. They all link to the privacy statement, which contains a general collection notice about the use and disclosure of personal information via email correspondence. This notice is broad and may not meet IPP2 in all instances.

Recommendation 20

We recommend that TCC within 12 months, amends its webpages and forms so their collection notices are consistent with the IP Act and the IPPs.

Camera surveillance

Introduction

Queensland government agencies collecting camera surveillance footage must manage their systems in line with the IP Act.

As at June 2017, TCC operates 291 fixed surveillance cameras, 209 cameras that relay images to a control room with 24/7 monitoring and 82 cameras that send images to standalone digital recorders. In addition, it operates 32 portable surveillance cameras.

We examined how TCC meets its privacy obligations when managing its camera surveillance systems. In particular, we assessed:

- whether there is a clear purpose for collecting personal information (IPP1)
- if TCC has taken reasonable steps to ensure individuals are generally aware of the purpose for collecting personal information (IPP2)
- whether TCC discloses footage only in circumstances the IP Act allows (IPP11)
- how the council protects footage against loss, unauthorised access, use, modification or disclosure and any other misuse (IPP4)
- how TCC binds contracted service providers to the IPPs (chapter 2, part 4 of the IP Act).

Conclusions

The council's policies, procedures and forms about camera surveillance are not always in line with the IP Act. As a result, TCC may not deal with, or share, camera surveillance footage in compliance with the Act and the privacy principles.

We identified a number of practices affecting compliance:

- the ability to extract or release footage when it is deemed in the council's interest
- the requirement to advise the Queensland Police Service when the council receives an access application for footage covered by the Memorandum of Understanding
- the inability for TCC to satisfy itself that disclosure is reasonably necessary for a law enforcement purpose.

Policies and procedures

TCC has a suite of policies, standard operating practices and forms governing the operation of its surveillance cameras. The 2012 Management, Operation and Use of Closed Circuit Televisions Policy includes a commitment to protect the privacy of individuals. The policy sets out how the council will manage its camera surveillance systems.

We have two specific concerns about the policy:

- It states that a director may authorise extraction of a particular record from the CCTV system data when the director determines that it is in the council's interest. Under IPP10, an agency should only use personal information for the purpose for which it obtained it or for a use permitted by the IP Act. The statement that a director may authorise release of footage to a third party (i.e. media) where it is in the interest of council, is not consistent with IPP10.
- Similarly, this statement is not consistent with IPP11. While the council uses camera surveillance for public and asset safety, it is not the council's role to bring individuals engaged in unlawful or anti-social conduct to justice. The Queensland Police Service is responsible for such investigations and decides whether to release footage to the media to assist them with their enquiries.

Due to the recent restructure, the policy no longer aligns with the council's new management structure. Also, the scope of the policy does not include portable or body worn cameras.

TCC has developed procedures to support the policy. The scope of the Control Room Handling of RTI Requests for CCTV Vision procedure incorrectly refers to the Commonwealth's privacy legislation instead of the Queensland privacy legislation. This means

the council has built practices under different requirements and may not comply at all times with the IP Act.

Recommendation 21

We recommend that TCC within six months updates its 'Management, Operation and Use of Closed Circuit Televisions Policy' and associated procedures to ensure they:

- a) are consistent with the obligations of the IP Act
- b) clearly outline the responsibilities of business units or persons involved in operating the camera surveillance network, and accessing or approving the release of footage
- c) cover body worn cameras
- d) include a separate, robust procedure for extracting footage for the council's own use.

Collection (IPP2)

Agencies operating surveillance cameras can make individuals aware of why they collect this footage by placing prominent signs where security cameras operate. Individuals can apply for camera footage under the *Right to Information Act 2009* (Qld) (RTI Act) and Chapter 3 of the IP Act.

TCC has physical signage where there are cameras. The signs identify council as the operator of the cameras. They explain why the council is collecting footage and that it may disclose footage for law enforcement purposes. The council also issues ad hoc media release about its use of camera surveillance.

The CCTV Camera Justification document lists the location of surveillance cameras, the number of cameras at each site and their primary purpose. However, it is not up-to-date and significantly underreports the number of cameras in use.

Recommendation 22

We recommend that TCC regularly reviews and updates the CCTV Camera Justification document on its website with the current number of cameras in use and the locations in which they operate.

Storage, security (IPP4) and access (IPP6)

Under IPP4, agencies must adequately protect documents containing personal information against misuse, loss, and unauthorised access, use and disclosure. This means protecting stored camera footage and areas where monitoring of camera surveillance takes place.

TCC uses various security measures to protect personal information. It restricts access to the camera surveillance monitoring room through various controls such as swipe cards and network restrictions.

When government agencies create camera surveillance footage, they must ensure people can access the footage under the IP Act and RTI Act. If there are other identifiable people in the footage, or an organisation requests access to footage containing identifiable people, the agency needs to redact the footage before releasing the information.

Agencies, including TCC, increasingly use camera surveillance. This means the council is likely to receive more applications for footage. The ability to redact information can help the council fulfil its privacy obligations and provide effective access to information.

The council's RTI webpage and its 'Management, Operation and Use of Closed Circuit Televisions Policy' make it clear that individuals may seek access to camera surveillance footage. However, neither the webpage nor the policy explicitly mention the ability to apply under the IP Act.

The policy includes the council's retention period for camera surveillance footage: a minimum of 30 days and no longer than 60 days after creation. The policy outlines the circumstances when TCC will further preserve this footage.

Disclosure (IPP11)

Under IPP11, government agencies can use or disclose personal information for law enforcement purposes provided they are satisfied on reasonable grounds that the personal information is necessary.

When an agency regularly shares footage with another agency such as the Queensland Police Service, an agreement is an effective way of setting out how they will meet their privacy obligations. An agreement does not replace the requirement to comply with the IP Act. However, it promotes appropriate information sharing and sets out processes to manage the footage in accordance with the IP Act.

TCC has signed a Memorandum of Understanding with the Queensland Police Service. The memorandum establishes an agreed process for providing and handling information. The council has developed procedures and standardised forms to deal with CCTV footage requests under the memorandum.

We have one concern with the Memorandum of Understanding: it states that the council or the Queensland Police Service will make the other party aware of formal applications for any information the memorandum covers. Specifically, section 12.3 says that

...if either becomes aware that any information provided under this Memorandum of Understanding appears to be the subject of any Freedom of Information application, the other shall be advised immediately of that fact.

Unless TCC is formally consulting the Queensland Police Service as a third party under the RTI Act or IP Act, disclosing the name of an applicant is likely to be a breach of the council's privacy obligations. The memorandum should instead encourage TCC and the police to consider whether it is necessary to consult the other party under section 37 of the RTI Act or section 56 of the IP Act.

Recommendation 23

We recommend that TCC within six months, updates the *Memorandum of Understanding: Commitment to a Safe Community* to avoid a practice that exposes the agency to a potential breach of privacy.

Government agencies must assess requests for access to camera surveillance footage on a case-by-case basis. The council has developed forms to gather the information needed for assessing requests.

The council's CCTV Footage Request (QPS) form captures limited information about the proposed use of the footage. It is insufficient for TCC to satisfy itself that disclosure is 'reasonably necessary' for law enforcement. The form has only two tick boxes - Prosecution and Other – to outline the purpose of the request. It does not require the counter signature of a senior police officer.

The instructions on the form suggest that the Queensland Police Service can submit the request without a reference number from the Queensland Police Records and Information Management Exchange. However, the Control Room handling of QPS Requests for CCTV

Vision procedure and the Memorandum of Understanding state that the council will return forms that do not have a reference number.

Recommendation 24

We recommend that TCC within three months, adopts the standardised Queensland Police Service request form included in our camera surveillance and privacy guideline.¹⁷

Contracted service providers

Increasingly agencies engage contracted service providers to perform some of their functions or activities. If the services involve handling personal information, the IP Act requires agencies take all reasonable steps to bind the contracted service provider to the privacy principles.

TCC has contracted an external service provider to operate its camera surveillance system. The provider monitors live camera feed and locates footage on request. It does not decide whether to release footage in response to third party requests.

The tender documents show TCC intended to bind the service provider to comply with the IPPs and section 33 of the IP Act.¹⁸ The documents refer to both state and Commonwealth privacy legislation but it is not clear why the council mentions the *Privacy Act 1988* (Cth). The obligations in the Commonwealth legislation do not apply to a contracted service provider for any acts or practices it undertakes for a council.

As we did not receive a copy of the contract between the council and the service provider, we are unable to determine whether TCC effectively took all reasonable steps to bind the provider to the privacy principles.

¹⁷ Camera Surveillance and Privacy guideline available at <https://www.oic.qld.gov.au/guidelines/for-government/guidelines-privacy-principles/privacy-compliance/camera-surveillance-and-privacy>.

¹⁸ Section 33 of the IP Act sets out when an agency may transfer personal information outside of Australia.

8 Appendices

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TOWNSVILLE CITY COUNCIL



Date >> 13 February 2018



Office of the Information Commission

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Dear Ms Rangihaeata

Right to information & Information Privacy – Compliance Audit

Thank you for supplying Townsville City Council with a copy of the OIC's Compliance Audit Report and the opportunity to comment on the proposed report.

We have reviewed the various recommendations contained in the report. We do not have any material issues with supporting any of the draft recommendations. In some cases, actions were already underway within the Council to address a number of the items and recommendations raised by the OIC's audit, based on findings from the NOUS Report and our own internal reviews. An action list supporting the implementation of the various recommendations is also attached.

In relation to the various findings and factual matters contained in the draft report, as our officers have identified during the course of the audit, the OIC's audit was conducted and covers time periods prior to the Council restructure in mid-to late 2017 – being the first major restructure of the Council since its amalgamation in 2008. Additionally, we have previously commented on the substance of some of the OIC's findings during the course of the audit (e.g. delegations and the case law relevant to these matters – Recommendation 9) and do not propose to repeat those comments here.

At the time the OIC compliance audit took place, all of the functions that were the subject of the OIC's audit were in various states of structural change. Many of these areas were also at various stages of implementing action plans and new processes designed to address many of the legacy issues identified by the OIC's audit. For example, in relation to the findings and recommendation regarding training and education of our RTI officers (see Recommendation 10), a new RTI Officer role had

been created and filled following the restructure of the Legal Services unit, and the new RTI officer has already received relevant training from external service providers as well as the OIC.

Similarly, in relation to CCTV management (Recommendations 21 and 22), a review of the current CCTV operational support model has been undertaken by Council and an Expression of Interest has been released to the market for an external partner to help improve the management, value for money and overall effectiveness of this function. As part of this future CCTV operational model, the Council will review all Policies and Procedures related to management and operation of CCTV and review all roles and responsibilities for ongoing governance of data privacy and RTI of CCTV content.

In light of the various changes to the Council's structure in 2017, therefore, many of the findings and factual matters raised by the OIC have limited direct relevance to the current structure, processes and operating model being adopted and outworked by the Council to ensure it is meeting its RTI and Privacy compliance obligations.

As a result of the above, we do not propose to respond in detail to the various legacy findings and factual matters discussed in the OIC's audit report.

Going forward, the Council is confident that appropriate steps are now being taken to address the matters raised and to more fully incorporate the 'push model' and the principles and objectives of RTI and Privacy in the Council's policies, procedures and practices.

In particular, in line with our new community engagement model and consistent with Recommendation 1 in the OIC's report, the Council will undertake a complete review of its website including user testing, ease of use, community feedback and accessibility compliance to ensure the community can be confident in finding information. As previously advised during the course of the audit, our new Community Engagement team is also advertising Ordinary and Standing Committee Meetings of Council for 2018 via several new channels and encouraging all community members to attend and have their voice. These initiatives are designed to increase community confidence, promote an open and transparent organisation and actively promote community and business involvement.

TOWNSVILLE CITY COUNCIL



As previously advised, Council has also reviewed its community engagement strategies and has adopted the International Association for Public Participation (IAP2) model to Community Engagement which ensures Council will:

1. communicate strategies and frameworks that support the public and other stakeholders in communicating their information needs to the Council;
2. develop strategies and frameworks for communicating Council decisions to the community; and
3. develop community engagement policies, procedures and practices, which include how the Council engages with the community when developing policies affecting external operations and how the Council considers community comments.

Thank you again for the opportunity to comment on the report.

Yours sincerely

A handwritten signature in black ink, appearing to read "Adele Young".

Adele Young MBA, MMkt
Chief Executive Officer

Agency response and action plan

OIC recommends:-		Agency response and any proposed management action	Nominated owner	Nominated completion date
#	Recommendation			
1	<p>within 12 months, reviews and updates its RTI policy and RTI webpage so they:</p> <ul style="list-style-type: none"> a) explicitly state the council's commitment to RTI and reflect the community's right of access under the legislation b) are consistent with the requirements of the RTI Act and the Ministerial Guidelines. 	<p>Council is in the process of reviewing all policies and procedures throughout the organisation including the RTI & IP policies.</p> <p>The reviewed policies are currently in draft and it is anticipated where changes are made, that these will be adopted by Council before the end of the 2017/2018 financial year. Following adoption, they will be uploaded to the websites.</p> <p>In line with our new community engagement model Council is undertaking a complete review of its website including user testing, ease of use, community feedback and accessibility compliance to ensure the community can be confident in finding information. This should be completed by the end of 2018.</p>	<p>General Manager Community Engagement Chief Legal Officer</p>	<p>30 December 2018</p>

OIC recommends:-		Agency response and any proposed management action	Nominated owner	Nominated completion date
#	Recommendation			
2	within six months, makes its RTI policy and RTI webpage easy to locate on its website.	Community engagement are in the process of implementing a new model including the review of its website including user testing, ease of use, community feedback and accessibility compliance leading to improved information governance. The creation of streamlined Briefing templates which are linked to Council's electronic filing system allowing information to be easily accessed and read.	General Manager Community Engagement	Oct 2018
3	within six months, actively promotes community participation in its standing and advisory committees.	Council has created a specialised role of Stakeholder Engagement Advisor to actively promote community and business representative involvement. The Council is also advertising via several channels their Ordinary and Standing Committee Meetings of Council for 2018 encouraging all community members to attend and have their voice heard to increase community confidence, promote an open and transparent organisation and actively promote community and business involvement.	General Manager Community Engagement	Oct 2018

OIC recommends:-	Agency response and any proposed management action	Nominated owner	Nominated completion date
<p># Recommendation</p>			
<p>4</p> <p>a) within six months, incorporates the principles and objectives of RTI and privacy in its new model for community engagement</p> <p>b) within 12 months, reviews its community engagement strategies, policies and guidelines to support its new approach</p>	<p>Council has reviewed its community engagement strategies and has adopted the International Association for Public Participation (IAP2) model to Community Engagement which ensures Council will:</p> <ol style="list-style-type: none"> 1. communicate strategies and frameworks that support the public and other stakeholders in communicating their information needs to the Council; 2. develop strategies and frameworks for communicating Council decisions to the community; and 3. develop community engagement policies, procedures and practices, which include how the Council engages with the community when developing policies affecting external operations and how the Council considers community comments. 	<p>General Manager Community Engagement</p>	<p>Feb 2019</p>

OIC recommends:-		Agency response and any proposed management action	Nominated owner	Nominated completion date
#	Recommendation			
5	<p>a) within 12 months, re-establishes an information governance body responsible for overseeing the council's information management architecture and accountability framework for proactive disclosure and safeguarding of personal information</p> <p>b) within 12 months, establishes new terms of reference for the information governance body and incorporates the objectives and principles of the RTI and IP Acts within its scope and functions.</p>	<p>The RTI Officer and Manager of Information Management are working together to re-establish the Information & Data Governance Committee to provide initial sign-off on and monitor ongoing governance. This group will establish the new terms of reference including the RTI and IP Acts.</p> <p>Review of all data classification across TCC including the identification of new Information Custodians across TCC and providing SOP to manage information and data ongoing.</p>	Chief Information Officer	31 July 2018
6	<p>a) within 12 months, reviews and updates its information management policies, directives standards and plans to reflect current practices and strategies for managing its information assets</p> <p>b) within 12 months, develops and implements operational procedures for its information custodians.</p>	<p>Council is in the process of reviewing all policies and procedures throughout the organisation including the information management policies.</p> <p>Review (and potential consolidation) of Information Management and Information Security related policies and related Admin Directives and Std Operating Procedures.</p>	Chief Information Officer	Feb 2019
7	<p>within six months, implements a quality assurance process of its RTI and IP applications operations to improve compliance, enhance procedures and identify needs for further professional development.</p>	<p>Council have commenced the implementation of a QA process for its RTI and IP applications including separate electronic files, calendar reminders, process flowcharts, new templates and professional development of the new RTI/IP Officer conducted by the OIC and Clayton Utz.</p>	Chief Legal Officer	30 April 2018

OIC recommends:-		Agency response and any proposed management action	Nominated owner	Nominated completion date
#	Recommendation			
8	within 12 months, develops more robust performance measures aligned to its operational plan.	TCC is currently implementing various projects as a result of the NOUS project. New reporting measures will be developed throughout TCC to better align RTI & IP outcomes with the current operational plan.	Chief Information Officer General Manager Community Engagement Chief Legal Officer	Feb 2019
9	within six months, reviews delegations for powers to deal with RTI and IP access and amendment applications to ensure they are clear, current and consistent with the RTI and IP Acts.	The delegations of the Policy & Governance Officer, Chief Legal Officer and Legal Officers are all being reviewed as part of a broader review of TCC delegations. This review will examine the template delegation instrument and the application of the position descriptions. The position description of Policy & Governance Officer has been rewritten and a new Officer appointed.	Chief Legal Officer	16 August 2018

OIC recommends:-		Agency response and any proposed management action	Nominated owner	Nominated completion date
#	Recommendation			
10	<p>a) within six months, ensures its decision-makers have up-to-date technical skills to deal with formal applications</p> <p>b) within 12 months, implements a program of ongoing professional development for decision-makers to maintain their technical and specialist skills</p> <p>c) within 12 months, ensures all staff are aware of their RTI and information privacy obligations related to their role, including their responsibility to respond to requests for information from the decision-maker.</p>	<p>At the time the OIC compliance audit took place, all of the functions that were the subject of the OIC's audit were in various states of structural change.</p> <p>A new RTI Officer role has been created and filled and this person has undergone training provided by Clayton Utz and the OIC, with ongoing training identified throughout 2018.</p> <p>A new training package is being developed to be delivered to all relevant RTI/IP staff throughout the organisation.</p> <p>TCC is reviewing the induction presentation to include RTI & IP obligations to be delivered to all new employees commencing with the organisation. This will also be made available to existing staff.</p>	Chief Legal Officer	On going
11	<p>within 12 months:</p> <p>a) promotes its administrative access arrangements on its RTI webpage</p> <p>b) identifies the types of information it will make available administratively</p> <p>c) implements procedures to guide staff on administrative access arrangements</p> <p>d) explains how members of the public can access the information that is available administratively</p>	<p>As previously outlined Council is undertaking a complete review of its website including user testing, ease of use, community feedback and accessibility compliance to ensure the community can be confident in finding information. The administrative access arrangements have been identified as part of this wholistic review.</p>	<p>Chief Information Officer</p> <p>General Manager Community Engagement</p> <p>Chief Legal Officer</p>	Feb 2019

OIC recommends:-		Agency response and any proposed management action	Nominated owner	Nominated completion date
#	Recommendation			
12	<p>within 12 months</p> <ul style="list-style-type: none"> a) updates its information asset register b) classifies the information holdings and datasets to determine their suitability for public release c) publishes the register on its website. 	As part of a greater review of all Information Management systems and applications TCC will be examining the information asset register and adopting the recommendation.	Chief Information Officer	Feb 2019
13	<p>within six months amends its RTI policy to support proactive disclosure and to promote the routine publication of significant, appropriate and accurate information.</p>	The RTI policy has been externally reviewed to incorporate this recommendation and will be adopted by TCC in the coming months.	Chief Legal Officer	May 2018
14	<p>within six months, reviews and updates its publication scheme to comply with the RTI Act and Ministerial Guidelines. This includes:</p> <ul style="list-style-type: none"> a) explaining how to access documents in alternative formats b) populating information classes with significant and appropriate information c) explaining how to complain about the availability of information in the publication scheme. 	<p>As previously outlined Council is undertaking a complete review of its website including user testing, ease of use, community feedback and accessibility compliance to ensure the community can be confident in finding information.</p> <p>Reviews have been conducted on other successful publications schemes and further amendments will be made to the TCC scheme in line with this recommendation.</p>	Chief Legal Officer	June 2018

OIC recommends:-		Agency response and any proposed management action	Nominated owner	Nominated completion date
#	Recommendation			
15	<p>within six months reviews and updates its disclosure log to give better access to information. This includes:</p> <ul style="list-style-type: none"> a) publishing a statement about blank pages b) including contact details for the business area responsible for handling requests c) identifying only those applications where it has released information under the RTI Act d) publishing the disclosure log by financial or calendar year and, where practical, with hyperlinks to the documents. 	<p>As local governments are not required to publish a disclosure log TCC has removed the log and reference to access from the public website.</p> <p>As part of this review several improvements were identified and until such time as Council can be satisfied that it will not breach the RTI/IP Acts it will not be publishing a disclosure log.</p>	Chief Legal Officer	Complete
16	immediately removes personal information from its disclosure log.	As local governments are not required to publish a disclosure log TCC has removed the log and reference to access from the public website.	Chief Legal Officer	Complete
17	<ul style="list-style-type: none"> a) within 12 months, embeds robust record keeping practices b) within six months, implements a more effective and efficient case management system, including a comprehensive suite of template notice documents to support legislatively compliant application handling. 	<p>Council have commenced the implementation of a new record keeping process for its RTI and IP applications including separate electronic files, calendar reminders, process flowcharts and new templates. This has led to an increase in legislative compliance and more efficient handling of applications.</p> <p>The implementation of video/audit redaction tools will be investigated in the coming year along with a purpose built RTI application.</p>	Chief Legal Officer	Feb 2019

OIC recommends:-		Agency response and any proposed management action	Nominated owner	Nominated completion date
#	Recommendation			
18	<p>negotiates with the applicant a suitable access type if it is necessary to provide information in an alternative access type.</p>	<p>With the appropriate training of the new RTI Officer communication with the applicants has increased and the identification of suitable access types has increased where necessary.</p>	<p>Chief Legal Officer</p>	<p>Ongoing</p>
19	<p>within six months updates its Information Privacy Policy and supporting resources so they:</p> <ol style="list-style-type: none"> are consistent with the privacy principles and obligations of the IP Act list the type of personal information the council holds and the purpose for which it uses this personal information direct individuals to detailed information about accessing or amending their personal information explain privacy complaints, including how a person can complain to the OIC include contact details for the person or business unit where persons can direct their privacy enquiries. 	<p>The redrafted Information Privacy Policy is currently in draft to be reviewed by the executive prior to adoption by the Council. This recommendation has been adopted in full.</p>	<p>Chief Legal Officer</p>	<p>May 2018</p>

OIC recommends:-		Agency response and any proposed management action	Nominated owner	Nominated completion date
#	Recommendation			
20	<p>within 12 months, amends its webpages and forms so their collection notices are consistent with the IP Act and the IPPs.</p>	<p>As previously outlined Council is undertaking a complete review of its website including user testing, ease of use, community feedback and accessibility compliance to ensure the community can be confident in finding information. This recommendation will be adopted in full.</p> <p>A new collection notice has been drafted and will be reviewed by the executive in the coming months.</p>	<p>General Manager Community Engagement Chief Legal Officer</p>	<p>Feb 2019</p>
21	<p>within six months updates its 'Management, Operation and Use of Closed Circuit Televisions Policy' and associated procedures to ensure they:</p> <ol style="list-style-type: none"> are consistent with the obligations of the IP Act clearly outline the responsibilities of business units or persons involved in operating the camera surveillance network, and accessing or approving the release of footage cover body worn cameras include a separate, robust procedure for extracting footage for the council's own use. 	<p>A review of the current CCTV operational support model has been undertaken by Council and an Expression of Interest has been released to the market for an external partner to help improve the management, value for money and overall effectiveness of this function.</p> <p>As part of this future CCTV operational model, the Council will review all Policies and Procedures related to management and operation of CCTV and review all roles and responsibilities for ongoing governance of data privacy and RTI of CCTV content.</p>	<p>Chief Information Officer</p>	<p>August 2018</p>

OIC recommends:-		Agency response and any proposed management action	Nominated owner	Nominated completion date
#	Recommendation			
22	regularly reviews and updates the CCTV Camera Justification document on its website with the current number of cameras in use and the locations in which they operate.	As part of this future CCTV operational model, the Council will review all Policies and Procedures related to management and operation of CCTV and review all roles and responsibilities for ongoing governance of data privacy and RTI of CCTV content.	Chief Information Officer	Ongoing
23	within six months, updates the <i>Memorandum of Understanding: Commitment to a Safe Community</i> to avoid a practice that exposes the agency to a potential breach of privacy.	As part of a holistic review of Community safety the MOU will be reviewed to ensure compliance with both the RTI and IP Acts. Stakeholder engagement will be required as part of this process.	Chief Information Officer	October 2018
24	within three months, adopts the standardised Queensland Police Service request form included in our camera surveillance and privacy guideline. ¹	Council has engaged with all stakeholders to develop a better form to standardise the request of CCTV footage throughout the Townsville region.	Chief Legal Officer	October 2018

1 Camera Surveillance and Privacy guideline available at <https://www.oic.qld.gov.au/guidelines/for-government/guidelines-privacy-principles/privacy-compliance/camera-surveillance-and-privacy>.

Appendix 2 – Acronyms

CCTV	Closed Circuit Television
ICT	Information and Communication Technology
IP	Information privacy
IPP	Information Privacy Principles
IP Act	Information Privacy Act 2009 (Qld)
KPI	Key Performance Indicator
OIC	Office of the Information Commissioner
QPS	Queensland Police Service
RTI	Right to Information
RTI Act	Right to Information Act 2009 (Qld)
TCC	Townsville City Council

Terms of reference

Compliance audit of Right to Information and Information Privacy Townsville City Council

Background

The *Right to Information Act 2009* (Qld) (**RTI Act**) requires agencies to push information into the public domain and to disclose information unless there is an over-riding public interest not to do so. The *Information Privacy Act 2009* (Qld) (**IP Act**) requires public sector agencies to safeguard the handling of personal information.

Objective

The objective of the audit is to establish whether Townsville City Council (**TCC**) is complying with the prescribed requirements of the RTI Act and the IP Act, to identify areas of good practice, and make recommendations about improvement opportunities.

Scope

The audit will cover TCC's policies and procedures for RTI and IP information handling practices, including:

- governance (leadership, governance mechanisms, information management including proactive identification and release of information holdings, policies, procedures, delegations and roles and responsibilities of key personnel and training).
- accountability and performance monitoring systems.
- whether TCC is maximising disclosure. This includes:
 - review of statistical reporting (including internal reporting and annual reporting under s. 185 of the RTI Act)
 - consultation with communities and industry stakeholders as to their information needs and information management issues, and the extent to which TCC addresses those needs
 - review of administrative access schemes
- Compliance with the requirements for:
 - an agency publication scheme (s. 21)
 - an agency disclosure log (s. 78)
 - access and amendment applications (chapter 3, parts 2-7 of the RTI and IP Acts)
 - review processes, including internal review of decisions under the legislation (Chapter 3, part 8 of the RTI and IP Acts).

- TCC's personal information handling practices including technologies, programs, policies, systems and procedures to review privacy related issues of a systemic nature generally, and agency compliance with the privacy principles. This review will also consider how TCC operates any camera surveillance systems in accordance with the privacy principles and manages access applications for footage.

Criteria for assessing compliance

The Office of the Information Commissioner (**OIC**) assesses an agency against the requirements of RTI Act and IP Act, and any subordinate guidelines or instruments made pursuant to the legislation.

Where the legislation states that the agency must meet a particular requirement, that requirement is considered to be an auditable element of the legislation. The review tests whether the agency complies with that requirement.

Where the legislation indicates that the agency should adopt a particular approach, the review will make a qualitative assessment of the extent to which the agency has adopted that approach.

These requirements are summarised in the electronic audit / self-assessment tool available on OIC's website and previously sent to agencies.

Process

The Director, Audit and Evaluation will work with an experienced team and complete the testing program. The audit team will liaise with your nominated contact officer to coordinate access to documentation and organise interviews with TCC officers. The team may gather appropriate evidence through the following processes:

- discussions with relevant staff and management about RTI and IP policies, procedures, systems and operations
- discussions with, and/or survey of, TCC staff, and community and relevant stakeholders about perceptions of agency openness and transparency, and protection of personal information
- discussions with, or survey of, applicants
- observation of RTI and IP handling practices
- examination of agency website including publication schemes, disclosure logs and arrangements for administrative access
- review of desktop audit recommendations and agency response
- examination of agency intranet
- review of statistical records/reporting
- testing of a random sample of application and internal review files.

The audit team will discuss the findings with the contact officer progressively during the review. If necessary, we will provide papers and/or a briefing to TCC management before drafting the report.

Reporting

Draft report

- OIC will provide the draft report to the contact officer for comment on language, accuracy and context.

Final report

- OIC will consider the contact officer's comments on the draft report when developing the final report. The final report is the report the Information Commissioner proposes to table in Parliament. It outlines findings and makes recommendations to improve implementation of RTI and IP requirements. OIC will formally issue the final report to the Chief Executive, TCC, for response to the findings and the recommendations.
- OIC will submit this report, together with the TCC's formal response to recommendations, to the Parliamentary Committee for Legal Affairs and Community Safety, for tabling.