Appendix A

Review of the *Right to Information Act 2009* and Chapter 3 of the *Information Privacy Act 2009*

Background

Objects of the review include:
- Deciding whether the primary objects remain valid;
- Deciding whether the Acts are meeting their primary object;
- Deciding whether the provisions of the Acts are appropriate for meeting their primary objects; and
- Investigating any specific issues recommended by the Minister or the Information Commissioner

Part 1 – Objects of the Act – 'Push Model' strategies

The primary object of the RTI Act and access and amendment provisions in the IP Act are to:
Section 3 of the RTI Act and section 3(b) of the IP Act state outline the primary objects of the RTI and IP legislation which is to "*Give a right of access (and amendment) to information in the government's possession or under the government's control, unless, on balance, it is contrary to the public interest to give access (or allow amendment).*" This is achieved through what is known as a 'push model', making information available to the public and a 'pro-disclosure bias' which means information should be released unless, on balance, disclosure would be contrary to the public interest.

1.1 Is the Act's primary object still relevant? If not, why not?

Council supports the primary object of the legislation and believes it is still relevant.

1.1 Is the 'push model' appropriate and effective? If not, why not?

In general, the 'push model' is appropriate; there are still real challenges within local government in fully implementing this approach. The reason it has not been fully achieved, particularly within local government are varied. Challenges with records management, technology play a part as well as officers having the skills and knowledge to make appropriate decisions about publication of documents. Often documents contain financial, personal or business information which makes straight publication challenging. There is also sometimes conflict or perceived conflict between different legislation which can cause confusion and therefore reluctance to publish.

Part 2 – Interaction between the RTI and IP Acts

The RTI Act gives a general right of access to documents but the IP Act provides a right for individuals to access their own information. The only practical difference between an application under the RTI Act and an application under the IP Act is that there are no application or processing charges for an application for personal information under the IP Act. The form, timeframes, process and decision requirements are the same for both RTI and IP applications. Assessing whether information is personal information can be complex and there have been inconsistencies in the way different agencies have dealt with this matter. As there is a right of access to documents under both the IP Act and the RTI Act, there is duplication of legislation. The legislative processes are set out twice and there is a need for extensive cross referencing of both Acts when making a decision.

Appendix A

2.1 Should the right of access for both personal and non-personal information be changed to the RTI Act as a single entry point?

Having two pieces of legislation, with duplication of provisions and the requirement to cross reference, can be time consuming and add administrative processes to dealing with applications. Certainly, Council has experienced challenges in deciding whether an application should be dealt with under RTI or IP and has also, at times, seen applicants who are confused and frustrated by the process. To change an application from one Act to another is time consuming and confusing for the applicant. Council would, therefore, support a move to combine all legislation regarding access to both personal and non-personal information under the RTI Act.

Part 3 – Applications not limited to personal information

If an application is made under the IP Act, but the agency identifies that some documents contain non-personal information the applicant can either change the scope of their application and continue under the IP Act or pay the RTI application fee and have the application dealt with under the RTI Act. If the application is changed to RTI, the start date for the application is taken to be when the fee is paid but if the application continues under the IP Act, no extra time is allowed, even if the agency has spent time consulting with the applicant about how to progress the application.

3.1 Should the processing period be suspended while the agency is consulting with the applicant about whether the applicant can be dealt with under the IP Act?

In our experience, early telephone contact with the applicant has proved to be the best way to resolve issues relating to application type, clarification of scope and timeframes. This approach tends to allow fast resolution of these issues. However, if it is not possible to resolve in person or by phone, and written communication is required, this would take a significant amount of time. Therefore, it would be appropriate to suspend processing time while the agency is awaiting a response.

3.2 Should the requirement for an agency to again consider whether the applicant can be made under the IP Act be retained?

If an agency considers that the application cannot be made under the IP Act at the start of the process, the requirement to 'consider again' later, when the applicant has not responded, seems unnecessary. If the option suggested under part 2 is implemented and all applications are made under a single piece of legislation, this will no longer be such a complex challenge. However, we believe that the current process is unnecessarily complex.

3.3 Should the timeframe for section 54(5)(b) be 10 business days instead of calendar days, to be consistent with the timeframes in the rest of the Act?

Yes.

Appendix A

Part 4 – Scope of the Acts

Documents of an agency

The legislation includes access to documents in Council's possession or under Council's control, including documents to which an agency is entitled to access.
There are situations where applicants may apply for documents which are not in Council's possession or in Council's control and these applications are therefore not under the scope of the legislation. There is no process under the legislation for Council to refuse to deal with an application on the basis that the documents are not Council documents. Council can advise an applicant that documents being requested are not documents of Council but this is not a reviewable decision.

4.1 Should the Act specify that agencies may refuse access on the basis that a document is not a document of an agency?

Although Council has not encountered this specific issue in dealing with applications, it seems sensible to clarify this process in the legislation and formalise this process as a reason to refuse access.

4.2 Should a decision that a document is not a 'document of the agency' be a reviewable decision?

If, as suggested in question 4.1, refusal is allowed if a document is not a 'document of the agency', then Council would agree that this should be a reviewable decision. The applicant could potentially have information or evidence that the documents are held by Council or under Council's control and need some route to challenge a decision otherwise.

Part applications

The RTI Act has complex processes for applications where some documents fall within the scope of the Act and some do not. An agency has 10 days to decide if documents are outside the scope of the Act and 25 business days for the remainder of the application. This can cause issues with review rights.

4.3 Should the timeframe for making a decision that a document or entity is outside the scope of the Act be extended?

Whilst Council has not dealt with this issue, it would suggest that one decision is issued and that the standard timeframes apply. Often it is difficult to assess an application until all documents have been received which often takes much longer than 10 business days.

Government Owned Corporations (GOCs)

The RTI specifies which bodies are covered by the legislation. Local government is clearly covered but there is ongoing discussion about some agencies, in particular government owned corporations (GOCs).

Appendix A

4.4 Should the way the RTI Act and Chapter 3 of the IP Act applies to GOCs be changed? If so, in what way?

4.5 Should corporations established by the Queensland Government under the Corporations Act 2001 be subject to the RTI Act and Chapter 3 of the IP Act?

No comment

Documents of contracted service providers

Currently, there is no right of access to documents held by non-government organisations even if those bodies perform functions that are considered to be government responsibility. For example, if a contractor provides documents to Council, they are subject to RTI, but if the documents have not been provided to Council then there is no right of access. Given there is an increasing trend to contract private sector bodies to provide services to the public, a degree of accountability may be lost. However, the cost of complying with an information access regime may be unreasonable.

4.6 Should the RTI Act and Chapter 3 of the IP Act apply to the documents of contracted service providers where they are performing functions on behalf of government?

Council understands the concerns about potential loss of transparency and accountability when contracting services out to private sector or other organisations, not covered by the RTI legislation. However, we have serious concerns about the impact of including these organisations within the scope of the legislation. Not only would it create significant additional costs in terms of processing applications, these organisations would be operating under different legislation in terms of document management, record keeping, and privacy. Documents would be stored in different filing systems. Even electronic systems are unlikely to be as advanced in terms of search functionality.

It is important to note that RTI and access to documents provides just one type of accountability. In contracting out any service, Council (or any agency) would need to put in place appropriate performance and governance arrangements to ensure appropriate service standards were maintained.

Extending the rights of access to contract organisation would be a very significant administrative burden and cost to Council and this proposal is not supported.

Part 5 – Publication schemes

Council are required to have a publication scheme, setting out information available and the terms on which they will make it available, including any charges. Council is encouraged, although not required to make the publication scheme available on its website. There are sources of guidance for publication schemes. Publication schemes are intended to push information into the public domain.

5.1 Should agencies with websites be required to publish publication schemes on their website?

Council's publication scheme is available on its website. Noting that not all agencies have websites, Council would have no objection to there being a requirement to publish the publication on the organisation's website.

Appendix A

5.2 Would agencies benefit from further guidance on publication schemes?

Any additional guidance would be welcome but Council would suggest that the requirements for publication scheme be reviewed and any guidance is not too prescriptive. The wording for the classes of documents is not always consistent with terminology for the organisation. A greater degree of flexibility about how to present the publication scheme would be welcomed.

5.1 Are there additional ways that Government can make information available?

Council supports open access to information. Information can be made available through websites, social media, newsletters and fact sheets.

Part 6 - Applying for access or amendment under the Acts

Application form

Under the legislation, applications for access and for amendment must be on the approved form and provide sufficient information about the document being sought and how to contact the applicant. There have been criticisms that the requirement to submit a form is too bureaucratic and there have been suggestions that the form is not user friendly. An agency must make efforts to contact an applicant if their application is not valid and agencies can spend time dealing with non-compliant applications. No other Australian jurisdiction requires applicants to use a form, just that the application must be made in writing and include sufficient detail about what is requested. Forms are often made available as an option and sometimes applicants are required to state under what legislation they are requesting the information.

6.1 Should the access application form be retained? Should it remain compulsory? If no, should the applicant have to specify their application is being made under legislation?

6.2 Should the amendment form be retained? Should it remain compulsory?

The application form can provide a useful way of capturing all the necessary detail for Council to process an application. However, when Council receives a letter, outlining details of the request and we have to ask the applicant to submit a form, this seems to be adding an unnecessary administrative step to the process. Council would prefer the form to be retained and that it be compulsory. It would be helpful if the form included specific space for contact phone numbers and email addresses.

Identity

Evidence of identity is required for access to or amendment of personal information. The RTI and IP Regulation provide a list of possible documents and copies must be witnessed by a qualified person. The requirements for copies can be challenging for some applicants, particularly in remote or rural areas or overseas. Agents acting for an applicant must provide evidence of their own identity and that they are acting on behalf of the person. The legislation does not specify this evidence. This is a particular challenge for legal practitioners who may make frequent applications.

Appendix A

6.3 Should the list of qualified witnesses who may certify copies of identity documents be expanded? If so, who should be able to certify documents for the RTI and IP Acts?

6.4 Should agents be required to provide evidence of identity?

Council believes the requirement for agents to prove that they are acting on behalf of the person is a very important safeguard for ensuring that information is not disclosed to a third party without the individual's consent. However, legal firms can often become frustrated with the requirements. Perhaps an alternative would be to slightly relax the requirements for legal firms but agencies continue to be very cautious when an individual is acting on behalf of another individual.

Application fee refund

An application fee must be paid in order for an application to be valid and cannot be waived. The only reason for an application fee to be refunded is if the decision is not made by the deadline or the application could have been made under the IP Act. There may be other circumstances when a refund might be appropriate.

6.5 Should agencies be able to refund application fees for additional reasons?

Council supports the requirement that the fee must be paid for an application to be valid. Council encourages applicants to contact the RTI team before submitting an application, which can help to prevent applications for documents which may already be publically available. However, from time to time, Council does receive an application where documents are already available. This might be an appropriate situation to offer a refund.

Children

The legislation outlines specific requirements about applications on behalf of children. This includes who can make applications on behalf of a child and when release of information will be in the child's best interest.

6.6 Are the Acts adequate for agencies to deal with applications on behalf of children?

Redland City Council has not dealt with any applications made on behalf of children. Other agencies will be better placed to provide advice on this matter, therefore we offer no response to this point.

Longer processing period (extensions)

Although agencies have 25 business days to process applications, the legislation allows extensions if the applicant agrees to this. If an agency contacts the applicant to request an extension, but the applicant does not respond immediately, there is a suggestion that, even if the applicant refuses the extension, that the agency should be given extra processing time while waiting for a response. If a decision is not made by the due date (either original or extended), the decision is taken to have been a 'deemed' decision which is effectively a refusal. However, an applicant can apply for a review which would require the agency to complete work on the application and process all documents. Therefore, it may be appropriate for an agency to continue processing even after the due date until a review has been submitted.

6.7 Should a further specified period begin as soon as the agency or Minister asks for it, or should it begin after the end of the processing period?

The additional time should be added at the end of the processing period. Whenever possible, we would contact the applicant by telephone to discuss an extension, which means the response to the request is received immediately. We can understand that it would be frustrating if a written request was sent and the response was delayed, but from our experience, this has not been a significant issue. Although we do not believe it is necessary to specify the 'waiting' time should be added to processing time, if other agencies feel strongly about this, Council would have no objections to this requirement being added.

6.8 Should an agency be able to continue to process an application outside the processing period and further specified period until they hear that an application for review has been made?

Council would suggest that in almost all cases, it is possible to negotiate timeframes with the applicant in order to avoid deemed decisions. In the unusual circumstance that a decision is not made by the due date and it becomes a deemed decision, Council would suggest that it would be more appropriate for the agency not to undertake further work on the application unless and until a review is requested. Often, at review stage, particularly at external review, the scope is discussed again and this could affect the processing of any documents. Council has regular contact with applicants throughout applications and although sometimes requests for extensions are refused early in the process, if it is a case of needing a few more days to finalise an application, applicants are usually very understanding and agree to our requests for extensions.

Charges estimate notices (CENs)

Agencies must provide an estimate of charges and a schedule of documents. The requirement for a schedule of documents can be waived, but the requirement for a charges estimate notice cannot be waived. This must be provided by the decision due date. Even if there will be no charges, Council should still issue a charges estimate.

After receiving the CEN, applicants can confirm and go ahead based on the estimate, narrow their scope or withdraw their application. Only two CENs can be issued.

An applicant can't challenge the amount of time estimated, but they can challenge the charges to the extent that they believe they are personal information (for which no charges are payable) or if they don't believe it would take more than five hours overall. There is also a process to challenge a request to waive charges on the grounds of financial hardship. The process for review rights around charges is unclear, particularly if the applicant wishes to ask for a review of charges. It is not clear whether the agency should continue to process.

6.9 Is the current system of charges estimate notices beneficial for applicants? Should removing the charges estimate notice be considered?

Although it can be difficult to estimate charges for an application, a CEN provides useful information for the applicant about the likely costs of their application. Without this step, they could potentially get to a decision notice stage and receive notification of processing charges at the end of the process without any opportunity to revise their scope. Therefore, Council believes that the CEN process is beneficial for applicants where there are processing charges. It does not support the requirement for a CEN where there are not going to be any processing charges (less than five hours) as it does not add any value to the process.

Appendix A

Perhaps there could be the option to waive the requirement if there are to be no processing charges.

The CEN provides a focus for applicants when trying to negotiate the scope as it can help them to be more specific about what they want. Council tries to make very clear to applicants that a CEN is about the time spent on their application and does not necessarily reflect the number of documents they would receive. In fact, it's entirely possible that an applicant could pay fees for a decision where the majority of documents are refused. This is a difficult situation to manage. Anything which can be done to clarify this within the legislation would be appreciated. When an applicant pays processing fees and then receives much less than they were expecting this can be difficult.

6.10 Should applicants be limited to receiving two charges estimate notices?

Yes. The preparation of a CEN can be quite time consuming and we would not support an open ended or increased number of CENs. The CEN does help an applicant to refine their scope and the second CEN should ideally be a confirmation of what has been agreed. We would suggest that the legislation should be clarified to confirm that there cannot be further negotiation after the second CEN and that, at this stage, the applicant can choose to accept or to withdraw.

6.11 Should applicants be able to challenge the amount of the charge and the way it was calculated? How should applicant's review rights in this area be dealt with?

The level of charges for RTI does not come close to cost recovery for Council. The amount charged for processing charges is estimated based on discussions with other departments and the views of the decision maker, based on experience. Council would suggest that there should not be any review rights about the way it was calculated. If a review process was added it would be likely to add time to the process and tie up additional resources. The CEN already provides a breakdown of how the charges are made up which should be sufficient. There is already an ability for the applicant to narrow the scope or to withdraw their application. It is not as if they would be challenging actual fees charged at that stage, just effectively a quote for processing their application.

Schedule of documents

The schedule of documents is intended to assist applicants in deciding which documents they want or do not want as part of the application. It can be time consuming to produce a detailed schedule and it is not always a useful tool for applicants.

6.12 Should the requirement to provide a schedule of documents be maintained?

In Council's experience, the schedule of documents is not particularly useful. To produce a very detailed schedule at CEN stage, listing every document can mean spending a significant amount of time spent when we don't know if the applicant will pursue the application based on the charges. To produce a CEN, Council asks for estimates of time which would be spent searching documents, *if* the application goes ahead. Therefore, it is not possible at the point we send a CEN, to list every individual document. We do specify types of documents, but try to avoid doing extensive work on an application which may either not go ahead at all or when the scope could change significantly. In our experience, a telephone or face to face conversation with the applicant to understand what they want to achieve from their application is much more helpful.

Appendix A

Consultation

Under the old Freedom of Information legislation, third parties were only consulted if they were likely to have substantial concern but under RTI, Council must consult if the third party may reasonably be expected to be of concern to the third party. This has resulted in an increased number of third party consultations.

Sometimes it is difficult to decide whether to disclose an applicant's identity to a third party or vice versa. Agencies must make a decision on this matter on a case by case matter, balancing procedural fairness with the protecting the personal information of the individual. Ideally, the applicant will give consent to their identity being disclosed to third parties, but this is not always the case.

6.13 Should the threshold for third party consultations be reconsidered?

Council has certainly seen an increase in the requirement to consult third parties, based on the new threshold. This is particularly challenging when there are multiple third parties mentioned throughout documents. Further consideration about the requirements for third parties is important. Council would suggest a slightly tighter definition to make it clearer who should be consulted and probably move towards the slightly narrower definition under FOI would be beneficial.

6.14 Should the Acts set out the process for determining whether the identity of applicants and third parties should be disclosed?

A much clearer direction on whether to disclose would be very helpful. Council has experienced many challenges in this area, both in terms of whether to disclose the identity of the applicant to third parties and also whether to disclose the identity of third parties to the applicant. Often Council deals with applications relating to neighborhood disputes which can be very sensitive. At times, the applicant clearly tells us they would prefer that their identity is not revealed. On other occasions, applicants and third parties can have a mistaken belief about who the other person is, which can cause issues with the consultation. Anything which can be done to clarify the issue would be much appreciated.

Transferring applications

Under the legislation, an agency can transfer an application if it has no documents but is aware that another agency holds relevant documents. Under the old FOI Act, an agency could transfer an application, even if it held documents, if the functions of another agency were more closely related to the application. An agency must consent to the transfer of an application.

6.15 If documents are held by two agencies, should the Act provide for the agency whose functions relate more closely to the documents to process the application?

We have had limited experience of transferring applications since the implementation of the RTI legislation. Sometimes an applicant chooses to submit similar applications to a number of agencies at the same time, for example state and local government, about a single issue. Therefore, it would be important to know whether the applicant was aware that it was more relevant to another agency. Perhaps the transfer should also be subject to the consent of the applicant?

If it is proposed that documents are passed on to the other agency as part of the transfer, this might be challenging. Each agency has different processes and approaches to decision making. It might be better if an agency has documents, that they process those documents itself.

Decision notices and reasons

Agencies must give a written decision notice. The legislation outlines what should be included and there is concern that the length and complexity of decision notices.

6.16 How could prescribed written notices under the RTI Act and IP Act be made easier to read and understood by applicants?

Through experience and through discussion with other local government agencies, Council has recognised that there are challenges with the requirements for decision notices. Over recent years, Council has developed a template for decision notices which includes the relevant information but attempts to do so in a plain language style, using footnotes for relevant legislation references. However, despite the development and subsequent review of our decision notice template, there are still times when the document can seem overly complex for what can be a very simple matter. Where the applicant has asked for a particular document and it has been located and is being released in full, with no redaction, it can seem bureaucratic to provide a long and complex decision notice. A review of the requirements, with a view to simplification, would be appreciated. Many Councils and agencies share template letters through networks and forums.

Information about the existence of certain documents

In some circumstances it is inappropriate for an agency to even acknowledge the existence of a document because it would reveal something about the agency's operations. Council can, in certain circumstances, neither confirm nor deny the existence of documents and do not have to explain detailed reasons for this. However, stating that the agency neither confirms nor denies existence of documents can be difficult for applicants to accept because they do not have detail about the decision. OIC have produced a guideline, including a template letter but it has been suggested that further clarification in the legislation would be of benefit.

6.17 How much detail should agencies and Ministers be required to provide to applicants to show that information the existence of which is not being confirmed is prescribed information?

This is a particularly difficult issue because to enter into an explanation of why it can't be revealed whether or not documents exist, could easily reveal information which could in itself be potentially harmful. Council would suggest that as this section is probably only used in a very limited number of situations, agencies should not have to go into a great deal of detail.

Appendix A

Notation of personal information

Under the IP Act, individuals can apply to amend documents containing their personal information if it is inaccurate, incomplete, out-of-date or misleading. Council may either amend the information as requested or add an appropriate notation. An applicant has a right to review if the agency refuses to amend the information and chooses to add a notation instead, there is no right of review in terms of the content of that notation.

6.18 Should applicants be able to apply for a review where a notation has been made to the information but they disagree with what the notation says?

Council has not received any applications to amend personal information under the IP Act. In the spirit of the legislation, it would seem reasonable that the individual has right of review over what is included in a notation. As a notation could clearly state that the individual had requested the notation and had identified particular issues, there seems no reason not to include whatever wording they would want in the notation. In adding a notation, the agency is not actually amending the information, or deciding whether what the individual says is correct or not, just adding it to the document or system to say the individual has disputed some aspect of the information itself.

Part 7 – Refusing access to documents

The Act does not apply

The legislation includes a list of documents which are not subject to RTI such as terrorism prevention, police and coroner investigations. The legislation also includes entities which do not come under the RTI legislation.

7.1 Do the categories of excluded documents and entities satisfactorily reflect the types of documents and entities which should not be subject to the Act?

Yes.

Exempt information

Access to documents can be refused if the information is exempt information. No public interest test is required, if information is considered to be exempt. There are 14 exemptions outlined in Schedule 3 of the RTI Act.

7.2 Are the exempt information categories satisfactory and appropriate?

Yes

Public interest test

If information is not exempt, Council must apply the public interest balancing test. This involves balancing factors favouring disclosure against those favouring non-disclosure. Schedule 4 of the RTI Act includes four parts. Part one lists irrelevant factors, part two lists factors favouring disclosure, parts three and four both contain factors favouring nondisclosure. There is overlap between parts three and four which can cause confusion when considering the public interest test. The public interest test is not straightforward and it can be difficult to explain to applicants.

7.3 Does the public interest balancing test work well? Should the factors in Schedule 4 Parts 3 and 4 be combined into a single list of public interest factors favouring nondisclosure?

Although at times difficult to explain to applicants, the public interest balancing test does provide decision makers with a useful framework when considering documents. Council would strongly support the review of Schedule 4 to combine Part 3 and 4 into one list. It would help to make the process simpler and assist decision makers to explain the process.

Public interest factors

The way the public interest factors are drafted means that the decision maker must be satisfied that the outcome in question 'could reasonably be expected to' result in that particular outcome. For example, one of the factors favouring disclosure is *'disclosure could reasonably be expected to ensure effective oversight of expenditure of public funds'.* A document could be about public funds, but the threshold for the release to 'ensure effective oversight' is very high. Other public interest factors require several things to be in place before it can apply. The lists of public interest factors are not exhaustive and agencies can adapt or create others if needed.

7.4 Should existing public interest factors be revised considering:

- ***Some public interest factors require a high threshold or several consequences to be met in order to apply***
- ***Whether a new public interest factor favouring disclosure regarding consumer protection and/or informed consumers be added?***
- ***Whether any additional factors should be included?***

A review of the factors would be helpful, but given that decision makers already have the ability to adapt factors or create new factors, the lists of factors should continue to be a starting point for the decision making process, rather than be seen as a definitive pick list. Council would have no objection to an additional factor being added around consumer issues.

Protection of specific classes of information

The RTI Act outlines exemptions and the public interest balancing test but questions have been raised about whether certain types of information should have additional protection, including communications between Ministers and Departments, information briefings for incoming Ministers, Commissions of Inquiry and Mining Safety information.

7.5 Does there need to be additional protection for information in communications between Ministers and Department

7.6 Should incoming government briefs continue to be exempt under the RTI Act?

7.7 Are the current provisions in the RTI Act sufficient to deal with access applications for information created by Commissions of Inquiry after the commission ends?

Appendix A

7.8 Is it appropriate or necessary to continue the exclusion of commission documents from the RTI Act beyond the term of the Inquiry?

7.9 Are the provisions in the RTI Act sufficient to deal with access applications for information relating to mining safety in Queensland?

No comment.

Recruitment to public service positions

Applications about recruitment and selection are not uncommon. Documents sought can include application documents, the panel's selection process and decision, interview scores and references. The OIC prepared advice for agencies under the FOI Act, which highlighted the tension between the privacy of applicants and the need to demonstrate merit and equity principles. There is also the issue of referees being able to make candid statements about the suitability of a candidate and the need for unsuccessful applicants to receive meaningful feedback.

Each application must be considered on its merits, but there are some consistent approaches such as removal of personal contact details but release of some information about the successful candidate. Some non-identifying information relating to unsuccessful applicants may also be released.

It might be confronting for a person who has been appointed to a public service position to be consulted about an RTI application. There is a risk of conflict within the workplace. It is likely that at least some information will be released.

7.10 Are the current provisions in the RTI Act sufficient to deal with access applications for information about successful applicants for public service positions?

Council has received applications relating to recruitment and selection processes and has been able to provide the person with some information. The challenge in releasing applications such as selection criteria or resume's is that it is often very easy, especially in a relatively small organisation, to identify the individual from information in these documents. A person seeking information about their own application is quite different from dealing with an applicant who is seeking information about the successful candidate.

Part 8 – Fees and charges

Adequacy of fees and charges

The application fee is currently $41.90 and processing fees are $6.45 for each 15 minutes. If documents are provided in printed form, 'access charges' apply at 20c per page for a black and white copy but if documents are provided on CD, no access charges apply. Application fees cannot be waived and there is no different rate for media, corporations of larger organisations.

Costs recovered under the fee structure are only a small proportion of the actual costs spent by Council in administering the legislation. Fees are much lower than comparable fees for access to court documents.

Appendix A

8.1 Should fees and charges for access applications be more closely aligned with fees, for example, for access to court documents?

Council would strongly support a review of the fee structure under the RTI Act to better reflect the resources required to process applications. However, whilst a fee for each page would be a valid option, there is still a challenge for applicants to understand why they would pay for pages which might have be redacted in full or in part.

Council has concerns about the current exemption from processing charges for pensioners. Council would prefer a discounted rate to be applied, rather than a full exemption from processing charges. Council notes that some of the most extensive applications we have processed, where the processing costs would have run to in excess of four figures, have come from pensioners. Generally these applications relate to planning matters and it has been apparent to Council that the pensioner applicant has been acting on behalf of, or in conjunction with, a wider community interest group.

To simply cap pensioner applications at the standard application fee opens the process to abuse and Council would recommend a more user pays type model where the pensioner must still pay processing costs at the rate of say 50% or 75%.

8.2 Should fees and charges be imposed equally on all applicants? Or should some applicants pay higher charges?

Fees and charges should remain consistent for all applicants. If certain types of organisations paid higher rates than others, we would be likely to see an increase in people making applications for others. This is also an issue to some extent with the exemption for pensioners to pay processing charges.

Waiver of charges – financial hardship status for non-profit organisations

Non-profit organisations can apply for a declaration of financial hardship which means they do not have to pay processing charges for one year. If the organisation makes an application before their application for declaration of financial hardship is decided, they would need to withdraw their application.

8.3 Should the processing period be suspended when a non-profit organisation applicant is waiting for a financial hardship status decision from the Information Commissioner?

Suspension of the processing period while the matter is being determined would prevent the organisation from having to resubmit the application. The only issue will be to ensure that the agency is made aware immediately about the decision about financial hardship because this would affect their decision due date. Therefore, Council suggests that the processing period should restart when the agency is provided with a copy of the OIC's decision, rather than the date of the decision.

Waiver of fees for multiple application to Queensland Health

Application fees cannot be waived and sometimes applicants need to apply to several different Hospital and Health Boards in order to request access to documents. A person's own information is accessible for free under the IP Act, but if someone is seeking documents about a relative, for example, this must be done under the RTI Act.

Appendix A

8.4 Should the RTI Act allow for fee waiver for applicants who apply for information about people treated in multiple Hospital and Health Boards?

8.5 If so, what should be the limits of this waiver?

No comment

Part 9 – Reviews and appeals

Internal review

Under the old FOI Act, applicants had to complete an internal review before applying for an external review. However, under the RTI and IP legislation, applicants may apply for an external review without having first completed an internal review.

The RTI and IP legislation limits the kinds of decisions which are 'reviewable'. Sufficiency of search is an area of the legislation which is not entirely clear.

Currently, the legislation allows 20 business days to conduct an internal review. There is no scope in the legislation to extend this deadline.

9.1 Should internal review remain optional? Is the current system working well?

Redland City Council would prefer that internal review remained optional. Sometimes, if an applicant is very unhappy with their decision, the ability to go outside of the organisation to seek review is seen as much more positive than asking someone within Council to undertake the review. There should be the ability to extend the due date for internal review as outlined in 9.4. It would be helpful if additional detail was provided about what the process should be for internal review. Whilst the legislation suggests that a new decision should be made, in reality, the internal review officer may be able to review the work carried out before the decision was made and assess the search processes, then reach a decision. Further guidance for internal review officers would be helpful.

9.2 If not, should mandatory interview review be reinstated, or should other options such as a power for the Information Commissioner to remit matters to agencies for internal review be considered?

We would prefer that the mandatory internal review was not reinstated, but it might be appropriate in some circumstances for the OIC to ask the agency to carry out a review of the decision.

9.3 Should applicants be entitled to both internal and external review where they believe there are further documents which the agency has not located?

Yes. This is a common concern for applicants and although Council has robust processes for searching for documents, for the larger and more complex applications, there may be additional information the applicant can provide to assist in locating specific documents. Therefore, it would appropriate to clarify in the legislation that if an applicant believes there are additional documents, they can request a review.

Appendix A

9.4 Should there be some flexibility in the RTI and IP Acts to extend the time in which agencies must make internal review decisions? If so, how would this best be achieved?

Yes. For various reasons, including the possibility of additional documents being identified and staff resource issues, there could be legitimate reasons that 20 business days is not sufficient time to complete a review. Council would suggest that extensions to this timeframe be handled in the same way as for applications, with the consent of the applicant. It is also worth noting that we had a situation where additional documents were located as part of an internal review which required third party consult. Although in most cases, internal reviews are relatively simple, for more complex applications or where additional documents need to be processed, it is important that the legislation allows some flexibility to negotiate with the applicant regarding timeframes.

External reviews

The Office of the Information Commissioner aims to achieve early resolution. Informal resolution includes the methods used to resolve the issues without having to issue a written decision. This may involve release of additional documents but it is not clear whether agencies are covered by the same protections when releasing documents under informal resolution as they are under a formal decision.

9.5 Should the RTI Act specifically authorise the release of documents by an agency as a result of an informal resolution settlement? If so, how should this be approached.

Yes, agencies should be authorized to release documents but this would need to be as instructed by the OIC in writing.

Right of appeal to Queensland Civil and Administrative Tribunal (QCAT)

Currently an applicant can appeal to QCAT on a matter of law only and only after an external review has been completed. The Commonwealth Information Commissioner has discretion not to review a decision and instead refer the matter to the Administrative Appeals Tribunal.

9.9 Should applicants have a right to appeal directly to QCAT? If so, should the Commonwealth model be adopted?

No comment

Part 10 – Office of the Information Commissioner

Research has shown that ‘repeat applicants’ consume a disproportionately large amount of OIC resources. This is due to a higher number of reviews, the need for strategies to deal with unreasonable conduct, extra time involved in achieving informal resolution and extra time to issue decisions. An agency may refuse to deal with an application if it is for the same documents as a previous application or where processing the application would substantially and unreasonably divert their resources. On external review OIC can decide not to review, or further review, if the application is frivolous, vexatious, misconceived or lacking in substance. The same applies if the applicant fails to co-operate or cannot be contacted.

There are currently no timeframes imposed on OIC in dealing with external review.

Appendix A

10.1 Are current provisions sufficient to deal with the excessive use of OIC resources by repeat applicants?

10.2 Are current provisions sufficient for agencies?

It is a difficult balance between maintaining applicants right to obtain documents under the legislation and ensuring that the same people aren't using up the limited resources available. It would be helpful if the provisions about not dealing with applications if they are frivolous, vexatious, misconceived or lacking in substance could be also applied to agencies. Also, there should be the same ability to refuse to deal when applicant cannot be contacted or fails to co-operate with something essential to their application.

Council has seen repeat applicants but often, it is not for the same documents and the applicant is seeking information about another matter. This is not an issue, as long as the applicant is open to communication and negotiation about scope.

10.3 Should the Acts provide additional powers for the OIC to obtain documents in performance of its performance monitoring, auditing and reporting functions?

Council has always willingly provided information and documentation to OIC for the purpose of their audit and performance functions and would have no objections to additional powers being added to allow them to obtain documents.

10.4 Should legislative timeframes for external review be reconsidered? Is it appropriate to impose timeframes in relation to a quasi-judicial function?
10.5 If so, what would the timeframes be?

Council recognises that sometimes applications which reach external review are very complex and can take a considerable amount of time to resolve. Therefore, we would suggest leaving the external review process without specific deadlines.

Part 11 – Annual Reporting Requirements

Under the legislation, state government must table a report outlining the operation of the RTI and IP Act. These include, for each agency, matters such as numbers of applications, documents included on disclosure log, internal and external review applications. The preparation of the annual report is a significant burden both on Council and the State Government in compiling the data. It is important to have check how the legislation is being implemented but it is not clear whether current reporting is as useful as it could be.

11.1 What information should agencies provide for inclusion in the annual report?

Any simplification of the annual reporting requirements would be welcome. In particular we would question the requirement to report against the specific provisions used in each decision and how many times it has been used. Most decisions to redact are made using the public interest balancing test which means the data does not tell the 'whole story' about the reasons why something is redacted.

Appendix A

Part 12 – Other issues?

12.1 Are there any other relevant issues concerning the operation of the RTI Act or Chapter 3 of the IP Act that need to be changed?

Irrelevant factors – the wording of the irrelevant factor which relates to 'mischief' is difficult to use. To use this factor suggests that the decision maker believes that the applicant will 'make mischief'. The applicant is not required to say why they want access to the information. Perhaps this factor could be reworded to say that it is 'irrelevant what the organisation believes the applicant will do with the information'.

Council regularly deals with applications where there is potential legal action. It would be helpful if the RTI legislation more clearly outlines the relationship between access under court proceedings and the RTI process.