LEGAL, CONSTITUTIONAL AND ADMINISTRATIVE REVIEW COMMITTEE

52nd Parliament

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<table>
<thead>
<tr>
<th>REPORTS</th>
<th>DATE TABLED</th>
</tr>
</thead>
<tbody>
<tr>
<td>4. Truth in political advertising</td>
<td>3 December 1996</td>
</tr>
<tr>
<td>5. The Electoral Amendment Bill 1996</td>
<td>20 March 1997</td>
</tr>
<tr>
<td>6. Report on a study tour relating to the preservation and enhancement of individuals’ rights and freedoms and to privacy (31 March 1997—14 April 1997)</td>
<td>1 October 1997</td>
</tr>
<tr>
<td>8. The Criminal Law (Sex Offenders Reporting) Bill 1997</td>
<td>25 February 1998</td>
</tr>
<tr>
<td>12. The preservation and enhancement of individuals’ rights and freedoms in Queensland: Should Queensland adopt a bill of rights?</td>
<td>18 November 1998</td>
</tr>
<tr>
<td>18. Issues of electoral reform raised in the Mansfield decision: Regulating how-to-vote cards and providing for appeals from the Court of Disputed Returns</td>
<td>17 September 1999</td>
</tr>
<tr>
<td>19. Implications of the new Commonwealth enrolment requirements</td>
<td>2 March 2000</td>
</tr>
<tr>
<td>20. The Electoral Amendment Bill 1999</td>
<td>11 April 2000</td>
</tr>
<tr>
<td>22. The role of the Queensland Parliament in treaty making</td>
<td>19 April 2000</td>
</tr>
<tr>
<td>27. Review of the Queensland Constitutional Review Commission’s recommendation for four year parliamentary terms</td>
<td>28 July 2000</td>
</tr>
<tr>
<td>REPORTS</td>
<td>DATE TABLED</td>
</tr>
<tr>
<td>------------------------------------------------------------------------</td>
<td>------------------------------</td>
</tr>
<tr>
<td>31. Review of the Members’ oath or affirmation of allegiance</td>
<td>25 October 2001</td>
</tr>
<tr>
<td>32. Freedom of Information in Queensland</td>
<td>20 December 2001</td>
</tr>
<tr>
<td>33. The Electoral (Fraudulent Actions) Amendment Bill 2001</td>
<td>27 March 2002</td>
</tr>
<tr>
<td>34. Meeting with the Queensland Ombudsman – 12 April 2002</td>
<td>14 May 2002</td>
</tr>
<tr>
<td>35. Annual report 2001-02</td>
<td>23 August 2002</td>
</tr>
<tr>
<td>36. The Queensland Constitution: Specific content issues</td>
<td>27 August 2002</td>
</tr>
<tr>
<td>37. Meeting with the Queensland Ombudsman – 26 November 2002</td>
<td>12 December 2002</td>
</tr>
<tr>
<td>38. Meeting with the Queensland Ombudsman – 29 April 2003</td>
<td>6 June 2003</td>
</tr>
<tr>
<td>40. Annual report 2002-03</td>
<td>21 August 2003</td>
</tr>
<tr>
<td>41. Review of the Queensland Constitutional Review Commission’s recommendations regarding entrenchment of the Queensland Constitution</td>
<td>27 August 2003</td>
</tr>
<tr>
<td>42. Hands on Parliament – A parliamentary Committee inquiry into Aboriginal and Torres Strait Islander peoples’ participation in Queensland’s democratic processes</td>
<td>11 September 2003</td>
</tr>
<tr>
<td>44. Meeting with the Queensland Ombudsman - 11 May 2004</td>
<td>17 June 2004</td>
</tr>
<tr>
<td>46. A preamble for the Queensland Constitution?</td>
<td>30 November 2004</td>
</tr>
<tr>
<td>47. Meeting with the Queensland Ombudsman – 23 November 2004</td>
<td>21 December 2004</td>
</tr>
<tr>
<td>49. Meeting with the Queensland Ombudsman (24 May 2005); meeting with the Queensland Information Commissioner (24 May 2005); and report on matters raised in a Ministerial Statement by the Premier and Minister for Trade on 23 March 2005</td>
<td>9 June 2005</td>
</tr>
<tr>
<td>50. Constitutional and Other Legislation Amendment Bill 2005 (Qld)</td>
<td>28 September 2005</td>
</tr>
<tr>
<td>52. Meeting with the Queensland Ombudsman; Meeting with the Queensland Information Commissioner – 29 November 2005</td>
<td>21 December 2005</td>
</tr>
<tr>
<td>53. Meeting with the Queensland Ombudsman; Meeting with the Queensland Information Commissioner – 23 May 2006</td>
<td>14 June 2006</td>
</tr>
<tr>
<td>55. Voices &amp; Votes – A parliamentary Committee inquiry into young people engaging in democracy</td>
<td>10 August 2006</td>
</tr>
</tbody>
</table>
## REPORTS

<table>
<thead>
<tr>
<th>REPORTS</th>
<th>DATE TABLED</th>
</tr>
</thead>
<tbody>
<tr>
<td>58. Meeting with the Queensland Ombudsman – 22 May 2007</td>
<td>12 June 2007</td>
</tr>
<tr>
<td>59. Meeting with the Queensland Information Commissioner – 22 May 2007</td>
<td>12 June 2007</td>
</tr>
<tr>
<td>61. Hands on Parliament – Interim Evaluation of the implementation of recommendations made following a Parliamentary Committee Inquiry into Aboriginal and Torres Strait Islander Peoples’ Participation in Queensland’s Democratic Processes</td>
<td>14 November 2007</td>
</tr>
<tr>
<td>62. Meeting with the Queensland Ombudsman on 13 November 2007</td>
<td>7 December 2007</td>
</tr>
<tr>
<td>63. Meeting with the Acting Queensland Information Commissioner on 13 November 2007</td>
<td>7 December 2007</td>
</tr>
<tr>
<td>64. The Accessibility of Administrative Justice</td>
<td>15 April 2008</td>
</tr>
</tbody>
</table>

## PAPERS

<table>
<thead>
<tr>
<th>PAPERS</th>
<th>DATE TABLED</th>
</tr>
</thead>
<tbody>
<tr>
<td>Truth in political advertising (Issues paper)</td>
<td>11 July 1996</td>
</tr>
<tr>
<td>Privacy in Queensland (Issues paper)</td>
<td>4 June 1997</td>
</tr>
<tr>
<td>The preservation and enhancement of individuals’ rights and freedoms: Should Queensland adopt a bill of rights? (Issues paper)</td>
<td>1 October 1997</td>
</tr>
<tr>
<td>Upper Houses (Information paper)</td>
<td>27 November 1997</td>
</tr>
<tr>
<td>Inquiry into issues of Queensland electoral reform (Background paper)</td>
<td>25 November 1999</td>
</tr>
<tr>
<td>The role of the Queensland Parliament in treaty making (Position paper)</td>
<td>25 November 1999</td>
</tr>
<tr>
<td>Freedom of Information in Queensland (Discussion paper)</td>
<td>8 February 2000</td>
</tr>
<tr>
<td>Four year parliamentary terms (Background paper)</td>
<td>11 April 2000</td>
</tr>
<tr>
<td>Review of the Queensland Constitutional Review Commission’s recommendations relating to a consolidation of the Queensland Constitution (Position paper)</td>
<td>27 April 2000</td>
</tr>
<tr>
<td>Inquiry into the prevention of electoral fraud (Issues paper)</td>
<td>8 September 2000</td>
</tr>
<tr>
<td>The Queensland Constitution: Specific content issues (Issues paper)</td>
<td>18 April 2002</td>
</tr>
<tr>
<td>The Queensland Constitution: Entrenchment (Proposals for Comment)</td>
<td>27 August 2002</td>
</tr>
<tr>
<td>Hands on Parliament - A Parliamentary Committee Inquiry into Aboriginal and Torres Strait Islander Peoples’ Participation in Queensland’s Democratic Process (Issues paper)</td>
<td>12 December 2002</td>
</tr>
<tr>
<td>A preamble for the Queensland Constitution? (Issues paper)</td>
<td>17 June 2004</td>
</tr>
<tr>
<td>Voices &amp; Votes – A Parliamentary Committee Inquiry into Young People’s Engagement in Democracy in Queensland (Discussion paper)</td>
<td>8 July 2005</td>
</tr>
<tr>
<td>The Accessibility of Administrative Justice (Discussion paper)</td>
<td>1 December 2005</td>
</tr>
<tr>
<td>Hands on Parliament: Interim Evaluation of the implementation of recommendations made following a Parliamentary Committee Inquiry into Aboriginal and Torres Strait Islander People’s Participation in Queensland’s Democratic Processes (Consultation Paper)</td>
<td>5 April 2007</td>
</tr>
<tr>
<td>The Accessibility of Administrative Justice (Supplementary issues paper)</td>
<td>16 August 2007</td>
</tr>
</tbody>
</table>
CHAIR’S FOREWORD

The Committee’s meeting with the Acting Information Commissioner was the sixth formal biannual meeting. The meeting was timed to occur prior to the finalisation of the report by the Freedom of Information Independent Review Panel: The Right to Information: Reviewing Queensland’s Freedom of Information Act.

This process is one of the mechanisms that the Committee utilises to monitor and review the performance of the functions of the Information Commissioner, as well as the ongoing implementation of recommendations made in the latest strategic management review of the Office. This particular meeting also provided an opportunity for the Committee to receive performance information for the first six months of the 2007-2008 financial year. This report sets out, for the consideration of the Legislative Assembly, information on these matters.

I thank Ms Rachael Rangihaeata, who was Acting Information Commissioner during this period, and Ms Julie Kinross, the new Acting Information Commissioner, for meeting with the Committee. I also thank the staff of the Office of the Information Commissioner who assisted with the provision of information to the Committee.

As always, the timely and accurate assistance provided by Hansard for the transcription of committee meetings is very much appreciated. The transcript provides an accurate record of the meeting and objective information about the Committee’s enhancement of the accountability of public administration in Queensland.

I also thank my fellow Committee members for their attention to committee responsibilities regarding the Information Commissioner and the Committee’s secretariat for assisting the Committee perform this important function.

Mrs Dianne Reilly MP
Chair
TABLE OF CONTENTS

Page No

1. INTRODUCTION ........................................................................................................................................ 1
   The Committee........................................................................................................................................ 1
   This Report........................................................................................................................................ 1

2. COMMITTEE RESPONSIBILITIES ............................................................................................................... 1
   Overview ............................................................................................................................................... 1
   Committee’s Particular Responsibility for Freedom of Information.................................................. 2

3. BIANNUAL MONITORING AND REVIEW – MAY 2008 ......................................................................... 4
   Outline of the Process.......................................................................................................................... 4
   Written Questions on Notice.............................................................................................................. 4
   The Acting Information Commissioner’s Response........................................................................ 4
   Meeting with the Acting Information Commissioner on 13 May 2008........................................... 5
   Supplementary Information............................................................................................................... 5

4. COMMITTEE COMMENTS ....................................................................................................................... 6

APPENDIX A – QUESTIONS ON NOTICE
APPENDIX B – WRITTEN RESPONSES TO QUESTIONS ON NOTICE
APPENDIX C – TRANSCRIPT OF MEETING WITH THE ACTING INFORMATION COMMISSIONER
APPENDIX D – SUPPLEMENTARY RESPONSE
1. **INTRODUCTION**

**THE COMMITTEE**

1.1 The Legal, Constitutional and Administrative Review Committee (the Committee) is a multi-party standing committee of the Queensland Parliament. It is established by the *Parliament of Queensland Act 2001* and has a broad range of law reform responsibilities, including administrative review reform, constitutional reform, electoral reform, and legal reform. In addition, the Committee has responsibilities conferred by the *Electoral Act 1992*, the *Freedom of Information Act 1992* and the *Ombudsman Act 2001*.

**THIS REPORT**

1.2 This report provides information to the Legislative Assembly regarding the performance of the Office of the Information Commissioner of functions under the *Freedom of Information Act 1992*. The report relates to a meeting of the Committee with the new Acting Information Commissioner on 13 May 2008 and includes responses to both questions on notice and to questions without notice.

1.3 In the first part of 2005, the Office of the Information Commissioner was created as a separate entity and a stand-alone Information Commissioner was appointed. Subsequent amendments to the *Freedom of Information Act 1992* conferred the Committee with responsibilities in respect of monitoring and reviewing the performance of the functions of the Information Commissioner.

1.4 The meeting on 13 May 2008 was the sixth biannual meeting of the Committee (and the first with the new Acting Information Commissioner) since the relevant amendment to the *Freedom of Information Act 1992* and provided an opportunity for the Committee to receive performance information for the first six months of the 2007-2008 financial year.

1.5 The Committee also appreciated information from the new Acting Information Commissioner, Ms Julie Kinross, regarding the on-going implementation of recommendations made in the *Report of the Strategic Management Review – Office of the Information Commissioner, April 2006*.\(^1\)

1.6 The meeting was timed to occur after the tabling of the Committee’s recent report: *The Accessibility of Administrative Justice, No. 64 2008*\(^2\) (AAJ Report). It was also timed to occur prior to the finalisation of a review of the *Freedom of Information Act 1992* being conducted by the Freedom of Information Independent Review Panel. The Panel has since released its report: *The Right to Information: Reviewing Queensland’s Freedom of Information Act*\(^3\) (The Solomon Report). This report considers, amongst other things, the recommendations the Committee made in its AAJ Report.

2. **COMMITTEE RESPONSIBILITIES**

**OVERVIEW**

2.1 The Legal, Constitutional and Administrative Review Committee is a standing committee of the Queensland Parliament with a broad range of law reform responsibilities. The Committee is established legislatively under the *Parliament of Queensland Act 2001*.

2.2 The *Parliament of Queensland Act 2001* provides that the Committee has the following areas of responsibility:

\[1\] Tabled on 11 May 2006.

\[2\] Tabled on 15 April 2008.

\[3\] Delivered on 10 June 2008, by the Panel Chair, Dr David Solomon AM, to the Honourable Anna Bligh MP, Premier of Queensland and the Honourable Kerry Shine MP, Attorney-General and Minister for Justice and Minister Assisting the Premier in Western Queensland.
• Administrative review reform;
• Constitutional reform;
• Electoral reform; and
• Legal reform.  

2.3 Administrative review reform includes considering legislation about access to information, review of administrative decisions, anti-discrimination and equal opportunity employment. However, the Committee’s jurisdiction does not extend to investigating particular conduct, or reviewing a decision to, or not to, investigate a particular complaint or decision.

2.4 Constitutional reform includes considering any Bill for an Act that expressly or impliedly repeals any law relevant to Queensland’s Constitution.

2.5 Electoral reform includes monitoring generally the conduct of elections under the Electoral Act 1992 and the capacity of the Queensland Electoral Commission to conduct elections.

2.6 Legal reform includes the recognition of Aboriginal tradition and Island custom under Queensland law and proposed national scheme legislation referred to the Committee by the Legislative Assembly. National scheme legislation refers to a Bill for an Act that is intended to be substantially uniform with or complementary to legislation of the Commonwealth or another State and whose operation may, under the Act, be changed by amendment of a law of the Commonwealth or another State.

2.7 The Committee has a number of other statutory responsibilities in relation to the Queensland Ombudsman, the Information Commissioner and senior officers of the Electoral Commission of Queensland.

2.8 In addition, the Committee must ‘deal with’ issues which are referred to the Committee by the Legislative Assembly or under another Act, whether or not the issue is within the Committee’s areas of responsibility.

**COMMITTEE’S PARTICULAR RESPONSIBILITY FOR FREEDOM OF INFORMATION**

2.9 In addition to the jurisdiction conferred by the Parliament of Queensland Act 2001, the Freedom of Information Act 1992 also confers the Committee with responsibilities regarding the Information Commissioner.

2.10 The Committee has important statutory responsibilities in relation to monitoring and reviewing the operation of the Freedom of Information Act 1992, the legislation that regulates people’s right to access and amend information held by Queensland government agencies.

2.11 The importance of Parliamentary oversight of the operation of the freedom of information legislation was first recognised by the Electoral and Administrative Review Commission (EARC) in its 1990 Report on Freedom of Information. In this report, EARC considered that the Information Commissioner should be required to report to a Parliamentary Committee as an accountability mechanism.  

2.12 The Committee noted with interest the recommendations in the recently released Solomon Report regarding a strengthening of the role of the Information Commissioner in terms of auditing the practice of government agencies, and also the corresponding strengthening of the oversight role of the Committee.

2.13 The Committee’s particular responsibilities under the Freedom of Information Act 1992 include the following:

- monitor and review the Information Commissioner’s performance of the functions conferred by the Freedom of Information Act 1992 including the following functions:

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6 Freedom of Information Act 1992, s 108C.
investigating and reviewing decisions of agencies and Ministers regarding the release of documents under the Freedom of Information Act 1992; and

providing information and help to agencies and members of the public on matters relevant to the external review of decisions by the Information Commissioner or the Office of the Information Commissioner.7

- report to the Legislative Assembly on any matter concerning the Information Commissioner, the Information Commissioner’s functions or the performance of the Information Commissioner’s functions that the Committee considers should be drawn to the Assembly’s attention;

- examine each annual report tabled in the Legislative Assembly under the Freedom of Information Act 1992 and, if appropriate, comment on any aspect of the report; and

- report to the Legislative Assembly any changes to the functions, structures and procedures of the Office of the Information Commissioner that the Committee considers desirable for the more effective operation of the Freedom of Information Act 1992.

In addition to these particular responsibilities, the Committee also has a role in relation to the regular five yearly strategic reviews of the Office of the Information Commissioner, which is outlined in further detail below. The Committee is also to be consulted on the appointment of a person as Information Commissioner (including the process for appointment).8

Monitoring the Implementation of Strategic Review Recommendations

The Freedom of Information Act 1992 requires a strategic review to be conducted at least every five years of:

- the Information Commissioner’s functions; and

- the Information Commissioner’s performance of those functions to assess whether they are being performed economically, effectively and efficiently.9

After first consulting with the Committee and the Information Commissioner, the Governor in Council appoints a strategic reviewer and decides the terms of reference for the strategic review.10 Each such review must be undertaken by an appropriately qualified person, who provides a report on the review.11

The responsible Minister must table the strategic review report in the Legislative Assembly and it is referred to the Committee to deal with.12 The Committee may provide a report on it.13

In the Committee’s Report No. 5614 in which the Committee considered the Report of the Strategic Management Review – Office of the Information Commissioner, April 2006, it noted that:

The Committee commends the strategic review report to the Parliament as a framework for the continuing structural and operational effectiveness of the Office of the Information Commissioner as an accountability mechanism… endorses the recommendations of the strategic review report and the Committee has found it unnecessary to make any additional recommendations to Parliament.15

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7 Freedom of Information Act 1992, s 101C.
8 Freedom of Information Act 1992, s 101H.
9 Freedom of Information Act 1992, ss 108A(2) and (8).
10 Freedom of Information Act 1992, ss 108A(4), (5) and (6).
3. BIANNUAL MONITORING AND REVIEW – MAY 2008

OUTLINE OF THE PROCESS

3.1 To fulfil the monitoring and reviewing responsibilities conferred by the Freedom of Information Act 1992, the Committee of the 51st Parliament commenced the following process with the Information Commissioner:

- two general meetings with the Information Commissioner each year, one preceding the Estimates process and the other following the tabling of the Information Commissioner’s annual report;
- written questions on notice to the Information Commissioner, prior to each of the meetings, with a request for written responses to the questions to be provided by the Information Commissioner prior to the meeting;
- consideration of the written responses by members of the Committee;
- a meeting with the Information Commissioner to further discuss the responses to the questions on notice and to ask additional questions without notice; and
- a report to Parliament on that meeting incorporating a transcript of the meeting.

3.2 The Committee of the 52nd Parliament was appointed by the Legislative Assembly on 11 October 2006 and has continued this process with the Information Commissioner.

WRITTEN QUESTIONS ON NOTICE

3.3 Prior to the meeting, the Committee had by letter dated 22 April 2008, forwarded to the Acting Information Commissioner written questions on notice. The written questions on notice are included in this report at Appendix A.

3.4 The written questions on notice focused on the six month period to 31 December 2007, and included comparison data with the two previous financial years, namely 2005-2006 and 2006-2007.

3.5 The questions themselves related to the following matters:

- the timeliness of the completion of external reviews, the method of completion and the basis of appeals to external review;
- the details of appeals from external review decisions including the outcomes of these appeals and the costs involved;
- accessibility of decisions for the applicant and also for freedom of information decision-makers;
- the results of the most recent annual survey and complaints management processes;
- finalisation rates for vexatious applicant declarations and the procedure for making such decisions; and
- significant issues relevant to the Solomon Report.

THE ACTING INFORMATION COMMISSIONER’S RESPONSE

3.6 The Committee asked the Acting Information Commissioner to respond to the written questions on notice by 8 May 2008, which she did. The Acting Information Commissioner’s written response is included in this report at Appendix B.

3.7 The written response was comprehensive and all questions were addressed. The Committee noted that the comparison data for 2005-2006 and 2006-2007 financial years was not provided, instead the Acting Information Commissioner provided comparison data for the six months to 31 December 2005 and to 31 December 2006.
3.8 The response highlighted that the performance of the functions of the Information Commissioner have generally steadily improved despite some under-staffing and also uncertainty about the future direction of the Commission resulting from the pending response of the Queensland Government to the Committee’s AAJ Report and the then pending recommendations of the Solomon Report.

3.9 The members of the Committee considered the written response prior to its meeting with the Acting Information Commissioner on 13 May 2008. Committee members used the written response as the basis for further examination of the performance of the functions of the Office during this meeting.

**MEETING WITH THE ACTING INFORMATION COMMISSIONER ON 13 MAY 2008**

3.10 The Committee conducted an in camera meeting on 13 May 2008. All members of the Committee attended.

3.11 The Committee met with Ms Julie Kinross, Acting Information Commissioner, Ms Rachael Rangihaeata, former Acting Information Commissioner and currently the Assistant Information Commissioner. Mr Michael Buckler, Office Manager, Office of the Information Commissioner attended as an observer.

3.12 The Committee’s meeting with the Acting Information Commissioner was transcribed by Hansard. The transcript is included in this report at Appendix C.

3.13 The Acting Information Commissioner provided an opening statement to the Committee highlighting a steady improvement in performance at the Office, despite the absence of back-filling arrangements in the last six months. She also specifically mentioned the productive and efficient organisational culture at the Office.

3.14 The Acting Information Commissioner also referred to the unclear future direction of the Office, given the Committee’s recent AAJ Report, the then pending completion of the Solomon Report and the possible creation of a Queensland Civil and Administrative Tribunal.

3.15 The members of the Committee discussed a range of performance related matters with the Acting Information Commissioner, including the following:

- Powers in relation to deciding external reviews brought on sufficiency of search grounds.
- The basis upon which applicants bring external reviews, such as the application of the personal affairs exemption.
- Staffing and backfilling arrangements during the previous six months arising from the resignation of the former Information Commissioner, Ms Cathi Taylor.
- The informal resolution process adopted by the Office.
- The process providing procedural fairness for, and also the timeliness of, deciding applications to declare an applicant vexatious.
- The absence of a statutory complaint process for persons wishing to lodge complaints about the Office.
- The response rate to the Commission’s annual survey.
- The recent changes to the Information Commissioner’s website to increase accessibility for users.

**SUPPLEMENTARY INFORMATION**

3.16 After the meeting the Acting Information Commissioner provided the Committee with supplementary information regarding the causes of the absence of back-filling arrangements prior to her appointment. Significantly, the Acting Information Commissioner stated that:

> The possible effect of understaffing in a small establishment of 13.8 FTEs is significant and its reach may extend into the 2008-2009 period.

3.17 The Committee considered this supplementary information and decided to include it in this report. The supplementary information is included at Appendix D.
4. COMMITTEE COMMENTS

4.1 The Committee is pleased to report that performance improvements are continuing to be made in the six months to 31 December 2007 compared to the financial years 2005-2006 and 2006-2007. The Committee would like to commend the Acting Information Commissioner, the former Acting Information Commissioner and the staff of the Office on the efforts taken to achieve this.

4.2 Most notably there has been an increase in the number of applications for external review received, a reduction in the time it takes to finalise applications for external review and an increase in the number of applications that were resolved informally.

4.3 For the six months to 31 December 2007 (with the corresponding statistics for the period 1 July 2006 to 31 December 2006 contained in brackets for comparison), improvements in performance include the following:

- Number of applications for external review received by the Office increasing to 158 (137).
- Number of applications for external review finalised by the Office increasing to 148 (136).
- Number of applications for external review finalised within 12 months of receipt increasing to 137 or 93% (121 or 89%).
- Number of applications for external review that were informally resolved increasing to 114 (106).
- Number of applications for external review that were not finalised within 12 months decreasing to 10 or 9% (17 or 12%).

4.4 The ongoing successful implementation of the recommendations of the Reports of the Management Review – Office of the Information Commissioner, April 2006, is reflected in this improving performance data.

4.5 The Committee noted that this improvement had occurred despite some positions in the Office not being back-filled during the period. The current Acting Information Commissioner, Ms Julie Kinross was appointed in April 2008. The Committee understands that following the resignation of the former Information Commissioner, Ms Cathi Taylor in 2007 it was anticipated that a new permanent Information Commissioner would be appointed and a selection process was undertaken. Mrs Dianne Reilly, the Chair of this Committee, was a member of the selection panel. This process did not result in the permanent appointment of a person due to uncertainty about the future direction of the position given the then pending Solomon Report.

4.6 In addition, in a supplementary response following the meeting, the Acting Information Commissioner advised the Committee that a decision was made not to back-fill other positions at the Office at this time because the positions were under review and funding was not approved until later in the financial year (see Appendix D).

4.7 The Committee also noted that this improvement in performance had occurred during a period of uncertainty regarding the future of the Office, and that this uncertainty will largely continue until the Queensland Government responds to the following reviews:

- The Committee’s AAJ Report;
- The Solomon Report into the Freedom of Information Act 1992; and
- The Independent Review of Civil and Administrative Tribunals (which is due to report shortly).
The Committee noted that by way of response to the written questions on notice, the Acting Information Commissioner advised the Committee that four applications had been received from agencies requesting applicants to be declared vexatious litigants\textsuperscript{16} and that three had not been decided as at 30 June 2007. At the meeting on 13 May 2008 the Acting Information Commissioner advised that a further three applications had been received and that the period of uncertainty surrounding the appointment of a permanent Information Commissioner had contributed to the delay in determining these outstanding applications. She further advised that these applications would be determined ‘as quickly as I can’.

The Committee noted that in the Solomon Report\textsuperscript{17} the Acting Information Commissioner, in a letter dated 21 May 2008, stated that she had received eight applications for s 96A declarations, with one having been dismissed, leaving seven on foot.

Recommendation 1: Whilst the previous Legal, Constitutional and Administrative Review Committee of the 50\textsuperscript{th} Parliament had recommended a scheme different to that created by s 96A\textsuperscript{18}, this Committee accepts that it is likely to remain and supports the relevant recommendations in the Solomon Report.

Recommendation 2: The Committee welcomes the Acting Information Commissioner’s commitment to deciding those seven outstanding applications as soon as possible, and recommends that this occur, particularly in light of Recommendation 72 of the Solomon Report.

Recommendation 3: The Committee recommends that the Acting Information Commissioner should urgently publish decision-making guidelines for the assessment of applications made under s 96A. Best practice for such a process is for guidelines to be prepared and published. The Committee is also of the view that such a process should stipulate a reasonable timeframe by which such decisions are made, such as 28 days.

The Solomon Report recommended the creation of a right of appeal for people subject to s 96A decisions of the Information Commissioner, and that such an appeal should be to the proposed new Queensland Civil and Administrative Tribunal\textsuperscript{19}. The Committee is concerned that those people who are declared vexatious under s 96A (including the people who are subject to the seven outstanding applications and any subsequent ones) up until the recommended appeal right came into effect, would be disadvantaged by not having access to this avenue.

The Committee is of the view that such a right of appeal should be made retrospective so as not to disadvantage such people. As this form of retrospectivity does not detrimentally affect the rights and liberties of any person, and instead creates an additional right for a small number of people, this approach is not likely to offend any fundamental legislative principles.

Recommendation 4: The Committee recommends that the Queensland Government, in its response to the Solomon Report, considers whether the recommended creation of appeal rights to the proposed Queensland Civil and Administrative Tribunal from s 96A decisions be retrospective for all people declared vexatious under the Freedom of Information Act 1992.

In a response to a written question on notice regarding the number of complaints received, the Acting Information Commissioner advised that the Office had not received any formal complaints under its Complaints Resolution Policy. Information about the number and nature of informal complaints was not provided to the Committee either in written form or in response to questions during the meeting on 13 May 2008.

\textsuperscript{16} Freedom of Information Act 1992, s 96A.
\textsuperscript{17} p206.
\textsuperscript{19} p208.
In addition, at the meeting on 13 May 2008, the Acting Information Commissioner advised that at present the Office is exempt from a statutory complaint process, such as to the Ombudsman. In her own view, regulation and oversight of the Office is not warranted at this point in time.

**Recommendation 5:** The Committee is of the view that the Attorney-General, the Honourable Kerry Shine should investigate whether the Information Commissioner should continue to be exempt from the Ombudsman Act 2001, and whether the Information Commissioner’s current approach to handling complaints (both formal and informal ones) about its own activities achieves best practice. This was a matter floated by the Solomon Report but did not result in a specific recommendation.

The Committee awaits the Queensland Government response to the Solomon Report, after which it will review its current approach to monitoring and reviewing the Office of the Information Commissioner.

The Committee commends the information in this report to Parliament.
Appendix A

Questions on Notice
MEETING WITH THE QUEENSLAND INFORMATION COMMISSIONER

13 MAY 2008

QUESTIONS ON NOTICE

Performance of External Reviews

1. Please provide the Committee with the external review statistics for the six month period to 31 December 2007 including:

   (a) applications received and finalised;
   (b) the proportion of applications finalised within 12 months;
   (c) the proportion of applications more than 12 months old;
   (d) the average time taken to deal with applications;
   (e) the median days to finalise a review;
   (f) the number of open reviews more than 12 months old and (as per ‘strategic review’ recommendation 17), an explanation of why each file could not be dealt with in the prescribed time frame and a target completion date;
   (g) the proportion of reviews resolved informally compared to reviews resolved by written determination;
   (h) the number of external review decisions subject to an appeal (either under the Freedom of Information Act 1992 or the Judicial Review Act 1991) and the basis upon which appeals have been brought;
   (i) the outcomes of appeals heard in this period, including any cost orders, and any resulting changes made to the procedures of the Information Commission; and
   (j) the cost to the Information Commission of obtaining any external legal advice in connection with appeals (heard during this period and costs incurred during this period).

   In each case, please provide a year-to-year comparison with statistics from the 2005-06 and 2006-07 financial years.

2. What proportion of all applications for external review in the six month period to 31 December 2007 relate to fees and charges, and what issues were raised by these applications? How does this compare with 2006-07?

3. During the previous two biannual meetings the Committee was concerned that the closure targets of individual officers were not being met; a matter also addressed in the strategic review report. What were the closure targets in 2006-07 and in 2007-08 to date? Please outline any actions taken to improve performance in relation to this performance indicator.

Accessibility of the Office and its Decisions

4. Please outline any further improvements made to the accessibility of written communication with applicants and agencies, and the educative material available on the Information Commission website, including the proportion of decisions which are published.
5. How does the Information Commissioner ensure that all decision-makers are aware when a review decision is subject to an appeal, and the outcome of the appeal?

6. Please provide details of recent enhancements and proposed enhancements to the Office’s research resources and in-house online knowledge management system to improve access to cases and precedents from other Australian jurisdictions.

7. Has there been an increase in the number of references to the law in other jurisdictions in decisions of the Information Commissioner in 2006-07 and 2007-08?

8. Have all 89 formal decisions in 2006-07 been published, and how many were published within one month of the decision being made?

Questions relating to the Annual Report

9. The Annual Report shows the median days to close an external review in 2006-07 was 90 days, and the median days to finalise an external review was 115 days. Can you explain the difference in the measures?

10. The Annual Report states that in 2005-06 and 2006-07 there were 72 and 89 external reviews finalised by decision respectively, representing a 157% increase on the 31 and 32 external reviews finalised by decision in the previous two financial years. What is the number of external reviews out of the 89 external reviews for 2006-07 that are from the inherited backlog?

Questions relating to the Annual Survey

11. How many applicant and agency surveys were sent out during the 2006-07 and the 2007-2008 financial year to date? What was the response rate to the survey? How many of these responses were from applicants whose applications were part of the ‘inherited backlog’?

12. Please provide the Committee with copies of the applicant survey and the agency survey, as well as an outline of the process that the Information Commissioner undertook to test the veracity of the survey questions so as to ensure that the survey is a useful survey instrument.

13. The Annual Report notes that complaints are dealt with in the Office through an independent and appropriate process. Please provide details of the number and nature of complaints received during the 2006-07 financial year and the current financial year to date.

Other

14. How many s.96A applications for members of the community to be declared vexatious has the Information Commissioner received in 2005-06 and 2006-07 and how many of these have been approved and how many have been declined? Are there any guidelines for the making of these decisions?

15. What significant issues do you see as important in the upcoming review of Queensland’s freedom of information legislation?
Appendix B

Written Responses to Questions on Notice
Responses to Questions on Notice

**Performance on External Reviews**

1. Please provide the committee with the external review statistics for the six month period to 31 December 2007 including:

   a. applications received and finalised
   
<table>
<thead>
<tr>
<th></th>
<th>01/07/05 – 31/12/05</th>
<th>01/07/06 – 31/12/06</th>
<th>01/07/07 – 31/12/07</th>
</tr>
</thead>
<tbody>
<tr>
<td>Received</td>
<td>175</td>
<td>137</td>
<td>158</td>
</tr>
<tr>
<td>Finalised</td>
<td>157</td>
<td>136</td>
<td>148</td>
</tr>
</tbody>
</table>

   b. the proportion of applications finalised within 12 months
   
<table>
<thead>
<tr>
<th></th>
<th>01/07/05 – 31/12/05</th>
<th>01/07/06 – 31/12/06</th>
<th>01/07/07 – 31/12/07</th>
</tr>
</thead>
<tbody>
<tr>
<td>Finalised</td>
<td>157</td>
<td>136</td>
<td>148</td>
</tr>
<tr>
<td>Finalised &lt; 12 months</td>
<td>135</td>
<td>121</td>
<td>137</td>
</tr>
<tr>
<td>%</td>
<td>86</td>
<td>89</td>
<td>93</td>
</tr>
</tbody>
</table>

   c. the proportion of applications more than 12 months old
   
<table>
<thead>
<tr>
<th></th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
</tr>
</thead>
<tbody>
<tr>
<td># &gt;12 months old at 1 July</td>
<td>26 of 136 = 19%</td>
<td>11 of 141 = 8%</td>
<td>7 of 97 = 7%</td>
</tr>
<tr>
<td># &gt;12 months old at 31 December</td>
<td>24 of 152 = 16%</td>
<td>17 of 142 = 12%</td>
<td>10 of 107 = 9%</td>
</tr>
</tbody>
</table>

   d. the average time taken to deal with applications
   
<table>
<thead>
<tr>
<th></th>
<th>01/07/05 – 31/12/05</th>
<th>01/07/06 – 31/12/06</th>
<th>01/07/07 – 31/12/07</th>
</tr>
</thead>
<tbody>
<tr>
<td># Finalised</td>
<td>157</td>
<td>136</td>
<td>148</td>
</tr>
<tr>
<td>Average days</td>
<td>211.85</td>
<td>155.96</td>
<td>127.85</td>
</tr>
</tbody>
</table>

   e. the median days to finalise a review
   
<table>
<thead>
<tr>
<th></th>
<th>01/07/05 – 31/12/05</th>
<th>01/07/06 – 31/12/06</th>
<th>01/07/07 – 31/12/07</th>
</tr>
</thead>
<tbody>
<tr>
<td># Finalised</td>
<td>157</td>
<td>136</td>
<td>148</td>
</tr>
<tr>
<td>Median days</td>
<td>93</td>
<td>115.5</td>
<td>74</td>
</tr>
</tbody>
</table>

   f. the number of open reviews more than 12 months old and (as per ‘strategic review’ recommendation 17), an explanation of why each file could not be dealt with in the prescribed time frame and a target completion date
   
<table>
<thead>
<tr>
<th></th>
<th>31/12/05</th>
<th>31/12/06</th>
<th>31/12/07</th>
</tr>
</thead>
<tbody>
<tr>
<td># of reviews &gt; 12 Months old</td>
<td>24</td>
<td>17</td>
<td>10</td>
</tr>
</tbody>
</table>
As at 31 December 2007 there were 10 open reviews more than 12 months old. These applications for external review were not finalised within a 12 month period because:

- Two external reviews are on hold pending judicial review (JR) on point.
- One external review was on hold for approximately 4 months while the conduct of the review was subject to JR. The Supreme Court dismissed the applicant’s JR application.
- A number of these external reviews involved sufficiency of search issues, large numbers of documents (several thousand folios), multiple parties to consult with, and complex or novel issues.

Of the 10 reviews older than 12 months at 31/12/07:

- five have since been finalised
- three are, or have been, affected by court proceedings. One of the three reviews that was affected by court proceedings has since been progressed and is expected to be finalised in May 2008.
- one involves a large number of documents in issue and multiple parties and is expected to be finalised in June 2008
- one is expected to be finalised in May 2008 (new grounds were raised warranting further agency searches on three occasions).

### g. the proportion of reviews resolved informally compared to reviews resolved by written determination

<table>
<thead>
<tr>
<th></th>
<th>01/07/05 – 31/12/05</th>
<th>01/07/06 – 31/12/06</th>
<th>01/07/07 – 31/12/07</th>
</tr>
</thead>
<tbody>
<tr>
<td># Finalised</td>
<td>157</td>
<td>136</td>
<td>148</td>
</tr>
<tr>
<td>Informal Res</td>
<td>133</td>
<td>106</td>
<td>114</td>
</tr>
<tr>
<td>Written Det</td>
<td>24</td>
<td>30</td>
<td>34</td>
</tr>
</tbody>
</table>

### h. the number of external review decisions subject to an appeal (either under Freedom of Information Act 1992 or the Judicial Review Act 1991) and the basis upon which appeals have been brought

Decisions of the Information Commissioner can be appealed on questions of law to the Supreme Court under the Judicial Review Act 1991 (Qld) (JR Act).

Five external review decisions were subject to an appeal under the JR Act during the six month period to 31 December 2007. Only one of those appeals was initiated during that period. The other four were initiated in 2005, 2006 and early 2007 and are yet to be resolved in the Supreme Court.

One JR application sought to have a preliminary view expressed by the Information Commissioner’s delegate declared void and of no effect and to prevent the Information Commissioner from progressing and finalising the review by making a decision. An external review decision has since been finalised.

The bases of the other four applications are as follows:

- Section 44 of the Freedom of Information Act 1992 (Qld) (FOI Act) (Matter affecting personal affairs) was misconstrued, relevant matters were not taken into account and irrelevant matters about the public interest balancing test were taken into account.

An improper exercise of power under section 44 in that the decision was so unreasonable no reasonable person could have made the decision (re identity of unsuccessful applicants, scope of the matter, the sufficiency of search and the nature of a report being private property.)
Appendix B

- An error of law in that section 12 of the FOI Act (Application of Act to Information Commissioner) was misconstrued and whether the identity of a person falls within the meaning of ‘personal affairs’ for the purposes of section 44.

- An error of law and contrary law concerning an external review decision that a matter was not exempt matter pursuant to section 42(1A) of the FOI Act (Matter relating to law enforcement or public safety – a matter is exempt matter if it consists of information given in the course of an investigation of a contravention or possible contravention of the law (including revenue law) and the information was given under compulsion under an Act that abrogated the privilege against self incrimination).

- An error of law concerning an external review decision that an audio recording was exempt matter pursuant to section 44(1) of the FOI Act (Matter affecting personal affairs – matter is exempt matter if its disclosure would disclose information concerning the personal affairs of a person, whether living or dead, unless its disclosure would, on balance, be in the public interest.) Further information on this matter follows.

  i. the outcomes of appeals heard in this period, including any cost orders, and any resulting changes made to the procedures of the Information Commission

  One judicial review was finalised in this period.

  The applicant sought access to audio intercom recordings of the Maximum Security Unit (MSU) within the Arthur Gorrie Correctional Centre (AGCC). Queensland Corrective Services (QCS) objected to the disclosure of the audio tapes to the applicant under section 44(1) of the FOI Act on the grounds that they involved shared personal affairs of the applicant and other prisoners of the MSU which could not be severed. QCS claimed that voices on the tape could not be identified.

  On external review it was found that the shared personal affairs of other prisoners could not be severed and as such the recordings were prima facie exempt from disclosure under section 44(1) of the FOI Act. Further, that public interest considerations favouring disclosure were insufficient to outweigh the public interest considerations against disclosure of the recordings and as such found the recordings were exempt from disclosure under section 44(1) of the FOI Act.

  The applicant sought judicial review of the decision.

  During the Court proceedings QCS reviewed the tapes again to see whether any part of the tape could be isolated as relating to the applicant. With the assistance of correctional officers, QCS were able to identify the prisoner’s voice in some conversations contained on one of the tapes in issue.

  Atkinson J subsequently issued an order on 1 November 2007 that QCS:

  …comply with the request for the information requested by Mr Scott to access information relating to him to obtain audio recordings from the maximum security unit on the 22, 25, 26, 27, 28 and 29 October 2004 and 1 November 2004.

  No written judgement was issued. The Court ordered the Office of the Information Commissioner to pay the applicant's costs of $44.

  In future, where an agency claims voices cannot be identified on an audio tape, appropriate action will be taken in the circumstances of the case to ascertain whether there are further avenues open to the agency to facilitate release.

  j. the cost to the Information Commission of obtaining any external legal advice in connection with appeals (heard during this period and costs incurred during this period).

  The cost to the Office of the Information Commissioner of obtaining external legal advice in connection with appeals during the period 01/07/07 to 31/12/07 was $37,603.10.
The cost to the Office of obtaining external legal advice in connection with appeals during the period 01/07/06 to 31/12/06 was $41,103.91. In this response, external legal advice includes representation by Counsel and, in some cases, solicitors in Supreme Court proceedings under the JR Act.

2. What proportion of all applications for external review in the six month period to 31 December 2007 relate to fees and charges, and what issues were raised by these applications? How does this compare with 2006-07?

<table>
<thead>
<tr>
<th></th>
<th>01/07/06 - 31/12/06</th>
<th>01/07/07 - 31/12/07</th>
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</thead>
<tbody>
<tr>
<td># Fees/Charges Matters</td>
<td>4% (6 of 137)</td>
<td>4% (7 of 158)</td>
</tr>
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</table>

During the period 01/07/07 to 31/12/07 the Office of the Information Commissioner received 158 applications for external review. Of the 158 applications, seven applications (4%) related to fees and charges. This is the same proportion of applications received in the same period in 2006.

The primary issue of those 7 applications was whether the applications related to documents concerning the personal affairs of the applicant and whether the applicant was required to pay an application fee. This is consistent with the issues raised in 2006 applications.

3. During the previous two biannual meetings the Committee was concerned that the closure targets of individual officers were not being met; a matter also addressed in the strategic review report. What were the closure targets in 2006-07 and in 2007-08 to date? Please outline any actions taken to improve performance in relation to this performance indicator.

In 2004-05 the Office of the Information Commissioner had an annual target of 250 reviews finalised. In that year it finalised 265. During 2005-06 the Office of the Information Commissioner received approval to amend the ‘OIC Non-Departmental Output Statement’ performance measures. The annual target of finalised reviews was lifted to 300 for 2006-07. The 2006-07 target number was exceeded in both 2005-06 (336) and 2006-07 (308).

The Committee’s concerns appear to have arisen when it became aware of the performance figure presented at the Estimates Hearing. That figure was less than the annual target figure however it was not a full year figure. When the full year actual performance figures are compared with the target number, it is clear the Office of the Information Commissioner has been meeting its targets.

The 2007-08 closure target is 300.

Many initiatives have been implemented to improve productivity. These include:

- a revision of the Office goals, strategies and performance measures to focus on timely resolution of reviews
- the adoption of a commitment to resolve all applications for external review within 12 months of receipt and where that does not occur, an explanation in the annual report
- implementation of the staff development plan to enhance decision making and informal resolution
- the improvement of legal and other resources to support timely decision making
- the implementation of a case management system with regular meetings of review officers with the respective Assistant Information Commissioner for supervision and regular meetings on all cases with the Information Commissioner; the regular monitoring of throughput with priority setting taking place at an Office level and case officer file load level
- the development of practices (such as communication by email where possible) and tools (such as decision templates) to assist in boosting productivity
• the increased availability of information about the Queensland FOI Act, including information material and access to Information Commissioner decisions on the website led to a downward trend in the number of applications for external review where the Office did not have jurisdiction to conduct an external review. Initiatives of this kind mean resources can be re-directed.

Accessibility of the Office and its decisions

4. Please outline any further improvements made to the accessibility of written communication with applicants and agencies, and the educative material available on the Information Commission website, including the proportion of decisions which are published.

The Office has placed particular emphasis on reviewing the accessibility of written communication with applicants and agencies in 2007-08.

The Office engaged Dr McDonald, a senior lecturer in the Law Faculty of the Queensland University of Technology to conduct a review of documents produced by the Office and provide recommendations and guidance on Clear and Precise Decision Writing.

Dr McDonald provided her final report to the Information Commissioner in August 2007. Dr McDonald concluded that there had been a vast improvement in the documents produced in 2007 compared to those produced in 2002 and 2003. Dr McDonald also identified areas in which the Office could further improve.

The Office has made, and is continuing to make, a number of changes consistent with the recommendations made by Dr McDonald including:

• stylistic, formatting and structural changes to documents commonly produced by the Office including preliminary view letters and decisions, and templates for correspondence typically used in reviews

• changes to the presentation of technical legal arguments, particularly references to court cases, or previous decisions of the Information Commissioner to assist the readability of the document

• increasing the use of plain English throughout all documents produced by the Office, including documents published on the website

• updating the Office style guide to ensure consistent and efficient application of the changes across all documents produced by the Office.

Professional development sessions have been held to assist all staff to implement such changes. The Office is committed to continuous improvement and will ensure an ongoing process of review will assist the Office to produce documents that are easy to comprehend and helpful to recipients while ensuring they are accurate, including in relation to any technical legal issues involved.

All decisions finalising an external review are published on the website except in special circumstances. External review decisions are published in full text, as an edited version or in summary format, as appropriate for the particular review.

Decisions about new provisions of the FOI Act, or novel aspects of existing provisions are published in full or more detail wherever possible. In that respect, I note that a relatively high number of decisions were published in full in 2006-07 as such decisions included the first external review decisions made about a number of new provisions from the 2005 amendments to the FOI Act.

5. How does the Information Commissioner ensure that all decision-makers are aware when a review decision is subject to an appeal, and informed of the outcome of that appeal?

A notation is made on the decision summary on the website when a decision is subject to an appeal.

The outcome of all judicial reviews is reported on the judicial review page of the website. It lists all decisions subject of JR, the outcome, and citation of judgement if there is one.
The roles of the Department of Justice and Attorney-General and the FOI Officers Network continue to be supported by the Office of the Information Commissioner and are an important part of the Office’s communication and demand management strategy.

6. Please provide details of recent enhancements and proposed enhancements to the Office’s research resources and in-house online knowledge management system to improve access to cases and precedents from other Australian jurisdictions.

The Office of the Information Commissioner continuously reviews and improves Office access to cases and precedents from other Australian jurisdictions through an electronic subscription network and other resources. Such improvements include expanding Office access to particular subscriptions dealing with areas of law more frequently considered by the Office. For example, the Office has recently subscribed to Alert 24, which specifically focuses on recent developments in Administrative Law, of key importance to the work of the Office.

The Office has implemented improvements to the in-house electronic database of decisions and cases from other jurisdictions to improve its capability and utility for staff.

The Office has also established systems for specific staff members to conduct high level legal research and monitor relevant developments in Queensland and other jurisdictions to support the resolution of particular issues on external review. Results of this research and analysis of the relevance to the work of the Office are shared with all staff, including through monthly case issue meetings of review staff to discuss novel or complex issues arising in current external reviews. For example, the Office has this year implemented a Legal Developments Monitor where research and analysis of current relevant topics is pulled together and distributed to members of staff.

7. Has there been an increase in the number of references to the law in other jurisdictions in decisions of the Information Commissioner in 2006-07 and 2007-08?

Recommendation 12 of the Report of the Strategic Management Review (the Report) recommended that the ‘preliminary views’ and decisions issued by the Office of the Information Commissioner should reference the most recent relevant higher court cases where possible in the first instance, then decisions of tribunals from other jurisdictions and if still necessary and currently applicable, previous decisions of the Information Commissioner.

The Report noted a significant decline in the number of decisions having to be issued by the Information Commissioner between 2001-02 to 2004-05 as a result of the emphasis on informal resolution. The Report noted that there had been criticism in the past that decisions were too long, complex and too legalistic. The Report noted that the ‘Office needs to be alert to the need to use the most recent precedents and principles of relevant courts and tribunals when formulating ‘preliminary views’ and decisions for applicants and agencies.

In response to the Strategic Management Review, the Office has significantly changed the style and presentation of decisions so that they are shorter, less complex and less legalistic. As a consequence, it may be that where appropriate, fewer cases are mentioned and discussed within decisions.

The Report captured one of the principles of quality decision making – the citing of the most relevant higher court cases where possible in the first instance – and highlighted the hierarchy of precedent authority.

Decisions of the Information Commissioner use this principle and the hierarchy of precedent authority as they are fundamental to good decision making. As higher authorities become available, reference to precedence of lesser value decreases. Where novel issues are raised, extensive research is undertaken and this may lead to references to law in other jurisdictions, including international jurisdictions.

Case officers have access to highly effective online legal research databases to support them in efficiently accessing the most recent case law relevant to specific reviews.
8. Have all 89 formal decisions in 2006-07 been published, and how many were published within one month of the decision being made?

Section 89 of the FOI Act requires the Information Commissioner to make a written decision after conducting a review. Section 89(5) gives the Information Commissioner a discretion as to whether or not to publish the decision.

Typically decisions are published either in full or summary form on the website.

In 2006-07 the Office of the Information Commissioner finalised 308 external reviews. 219 were resolved without requiring a written decision. While in most cases much of the matter in issue in the remaining 89 external reviews was resolved informally, a decision was required on the outstanding issues to finalise these 89 external reviews with 81 decisions published in summary on the website and 28 decisions published in full. Summary decisions are published on the website within 3 weeks of file closure.

Questions Relating to the Annual Report

9. The annual report shows the median days to close an external review in 2006-07 was 90 days, and the median days to finalise an external review was 115 days. Can you explain the difference in the measures?

The above reference appears to be a reference to page 7 of the 2006-07 Annual Report where it is stated:

The 2006-07 target median days to close an external review was 90 days. The median days to finalise an external review was 115 days.

The difference between the two is that the 90 day time frame is a performance target and the 115 day time frame is an actual performance measure.

The 90 day target was proposed by the independent consultant who conducted the five-yearly Strategic Management Review of the Office of the Information Commissioner in 2005-06. Measuring performance against a target of 90 median days was introduced as a new measure in the 2006-07 Ministerial Portfolio Statement and reflects a transparent and rigorous performance measure to accurately measure timeliness to resolve external reviews.

The explanation given in the Annual Report for the target not being met was that a number of the external reviews were impacted by a number of external reviews that were part of an inherited backlog of very old external reviews that were finalised in 2006-07.

10. The annual report states that in 2005-06 and 2006-07 there were 72 and 89 external reviews finalised by decision respectively, representing a 157% increase on the 31 and 32 external reviews finalised by decision in the previous two financial years. What is the number of external reviews out of the 89 external reviews for 2006-07 that are from the inherited backlog?

Three out of 89 external reviews for 2006-07 were from the inherited backlog. 31 of the 2005-06 external reviews were from the inherited backlog.

Questions Relating to the Annual Survey

11. How many applicant and agency surveys have been sent out during the 2006-07 and the 2007-08 financial year to date? What was the response rate to the survey? How many of these responses were from applicants whose applications were part of the ‘inherited backlog’?

Surveys were sent to applicants in relation to external review applications that finalised during the financial year. None of the applications finalised in 2006-07 or in 2007-08 in relation to which surveys were received, were applications from the ‘inherited backlog’.
<table>
<thead>
<tr>
<th>Agency Surveys sent</th>
<th>2006-07</th>
<th># of Responses</th>
<th>Response Rate %</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>53</td>
<td>37</td>
<td>69.8%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Applicant Surveys sent</th>
<th>2006-07</th>
<th># of Responses</th>
<th>Response Rate %</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>107</td>
<td>41</td>
<td>38.3%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Agency Surveys sent</th>
<th>2007-08 YTD</th>
<th># of Responses</th>
<th>Response Rate %</th>
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<tbody>
<tr>
<td></td>
<td>74</td>
<td>48</td>
<td>64.9%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Applicant Surveys sent (as at 01/05/08)</th>
<th>2007-08 YTD</th>
<th># of Responses</th>
<th>Response Rate %</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>70</td>
<td>28</td>
<td>40%</td>
</tr>
</tbody>
</table>

Ordinarily the 2007-08 agency survey response rate would be expected to be higher. This year only 13 of the 27 local government councils surveyed provided a response. This suggests that the agency response rate has been affected by the council amalgamations. The responses received from councils are very positive.

12. Please provide the committee with copies of the applicant survey and the agency survey, as well as an outline of the process that the Information Commission undertook to test the veracity of the survey questions, so as to ensure that the survey is a useful survey instrument.

Following the Forster Strategic Review in 2000, the Office introduced a practice whereby each applicant was surveyed approximately two or three months after the external review. This was done by telephone with the survey administered by Office staff.

The 2006 Strategic Review of the Office of the Information Commissioner reviewed the surveys and this practice. Recommendation 34 of that review was that the applicant surveys should continue but the questionnaire should be simplified to a single page if possible and mailed to the applicant with the final letter closing the file for their external review. There were no specific recommendations about the agency surveys. To implement the review recommendation the then Information Commissioner developed a one page survey using internal feedback on the wording of questions. The survey instrument is under review by the Office of Economic and Statistical Research.

The surveys used by the Office are attached as Annexure 1 and 2.

13. The annual report notes that complaints are dealt with in the Office though an independent and appropriate process. Please provide details of the number and nature of complaints received during the 2006-07 financial year and the current financial year to date.

The Office of the Information Commissioner has not received any complaints under its Complaint Resolution Policy.

Other

14. How many section 96 applications for members of the community to be declared vexatious has the Information Commissioner received in 2005-06 and 2006-07? How many of these have been approved and how many have been declined? Are there any guidelines for the making of these decisions?

Section 96A of the FOI Act (Vexatious applicants) commenced on 1 September 2005. One application was received in 2005-06 and three applications were received in 2006-07. Of these, one application has been declined. The other applications remain to be decided.

Decisions under section 96A of the FOI Act are made by the Information Commissioner and not by a delegate, unless the Commissioner has a conflict of interest. The procedural guidelines are ultimately subject to the legislation. The FOI Act lays down rules in relation to the decision-making process. The FOI Act makes it clear
that the applicant is entitled to procedural fairness and has a right to be heard and heard by a decision-maker who is and who appears to be, unbiased.

The FOI Act is silent on the form of hearing. The standards expected of the Commissioner are determined by reference to what seems appropriate given the context within which the decision is to be made. The party with respect to whom the application relates is entitled to know the detail of the application and to make a written response in relation to that. The parties may choose to be legally represented and do not have to seek the leave of the Commissioner. The parties, in particular the applicant who will be required to answer various allegations will be informed of which matters will be considered by the decision maker. This will enable parties to provide evidence on matters central to success or failure of the application.

Section 96A sets out the statutory test to be met before the making of a declaration that an applicant is vexatious.

15. What significant issues do you see as important in the upcoming review of Queensland’s freedom of information legislation?


On 12 March 2008, the Premier announced the establishment of the Queensland Civil and Administrative Tribunal, an amalgamation of existing civil and administrative tribunals in Queensland. The Department of Justice and Attorney-General is leading the establishment of the new tribunal. The Premier also announced the establishment of an independent panel of experts to provide advice on how best to implement the tribunal. The panel is composed by former Queensland Court of Appeal Justice, the Hon. Glen Williams AO QC, Ms Julie-Anne Schafer, Chairperson of the Commercial and Consumer Tribunal, and Mr Peter Applegarth SC. The panel will provide advice to government on the scope of the jurisdiction of the new tribunal.

It is understood that the Government’s time frame for the introduction of any necessary legislation to implement the new tribunal is March 2009. The Department of Justice and Attorney-General has advised possibly affected agencies that in order to achieve that timeframe, “the panel will report to Government in three stages:

1. June 2008: report on scope of jurisdiction and initial establishment and implementation arrangements;
2. October 2008: report on any necessary legislative amendments required to implement the civil and administrative tribunal; and
3. March 2009: final report detailing full operational implementation requirements.”

The panel has begun face to face consultation sessions with a number of tribunal members and other community stakeholders. The role of the Information Commissioner and the Office of the Information Commissioner is currently being considered by the panel and the Department of Justice and Attorney-General as to whether it will fall within the scope of the Queensland Civil and Administrative Tribunal.
The statutory role of the Office of the Information Commissioner is to review the merits of decisions by State and local government agencies about access to, or amendment of, documents under the Freedom of Information Act 1992 (the FOI Act).

As an applicant for external review of a decision made under the FOI Act, your feedback is important to us so that we can continuously improve our service.

**Question 1.**
The information and assistance you received when interacting with the Office throughout your review was of a high standard.

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Comment

**Question 2.**
The courtesy and professionalism you experienced when interacting with the Office throughout your review was of a high standard.

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**Question 3.**
The Office’s letters and written correspondence (including a decision if made) were clear and in plain English.

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**Question 4.**
The time taken to resolve your review was satisfactory.

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**Question 5.**
The case officer provided useful information and timely assistance regarding the commencement, progress and outcome of your external review, including any telephone contact, in-person meetings and written correspondence.

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Please provide any additional comments and suggestions here (or attach additional comments)

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Please use the attached ‘postage paid’ envelope to return your survey.
Thank you for taking the time to complete this survey.
The Office of the Information Commissioner values your input and feedback on our activities and interactions with your agency to assist us continually improve our service.

Please provide your response to the following statements by circling your answer. You can rate us by using the scoring method of:

1 = strongly disagree   2 = disagree   3 = agree   4 = strongly agree   N/A = Not applicable

1. The information and assistance you received when interacting with the Office during 2007 was of a high standard:

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   If your answer to this question was ‘strongly disagree’ or ‘disagree’, what specifically was unsatisfactory?

_____________________________________________________________________________________

2. The courtesy and professionalism you experienced when interacting with the Office during 2007 was of a high standard:

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   If your answer to this question was ‘strongly disagree’ or ‘disagree’, what specifically was unsatisfactory?

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3. Decisions made by the Information Commissioner or delegate during 2007 were clear and useful:

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   If your answer to this question was ‘strongly disagree’ or ‘disagree’, what specifically was unsatisfactory?

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4. The timeliness of actions taken to resolve external reviews was satisfactory:

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   If your answer to this question was ‘strongly disagree’ or ‘disagree’, what specifically was unsatisfactory?

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5. The Office of the Information Commissioner website is a key source of information and assistance regarding external reviews of FOI decisions:

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   If your answer to this question was ‘strongly disagree’ or ‘disagree’, what specifically was unsatisfactory?

_____________________________________________________________________________________

Please use the space provided below for any additional comments and suggestions:

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Survey Completed by: ________________________________ (Name/Position)
Survey Completed for: ________________________________ (Agency)

We appreciate you taking the time to complete this survey.
Appendix C

Transcript of meeting with the Acting Information Commissioner
This is a transcript of private and confidential evidence taken before the committee and should not be copied or republished in any way without the express authority of the committee. Any unauthorised publication of this Hansard may constitute a contempt of Parliament. If the transcript becomes the subject of any request under the Freedom of Information Act, the committee should be notified.

LEGAL, CONSTITUTIONAL AND ADMINISTRATIVE REVIEW COMMITTEE

Members:
Mrs D.A. Reilly MP (Chairperson)
Mr A.P Cripps MP
Ms V.E. Darling MP
Mrs B.M. Kiernan MP
Ms R.T. Lee Long MP
Mr T.J. Nicholls MP
Mr S.P. Wettenhall MP

MEETING WITH THE INFORMATION COMMISSIONER

TRANSCRIPT OF PROCEEDINGS

(In camera)

TUESDAY, 13 MAY 2008
Brisbane
TUESDAY, 13 MAY 2008

Committee met at 2.53 pm

KINROSS, Ms Julie, Acting Information Commissioner, Office of the Information Commissioner

RANGIHAEATA, Ms Rachael, First Assistant Information Commissioner, Office of the Information Commissioner

BUCKLER, Mr Michael, Acting Manager, Corporate and Executive Services, Office of the Information Commissioner

CHAIR: I apologise for everything being a little bit rushed today. We have a super charged program that we have to get through. There is only one more sitting day this financial year, with the budget sitting coming up. Somehow it has all gone very quickly. The deputy chair, Tim Nicholls, will be in and out—he will be back. Steve Wettenhall, the member for Barron River, has had to go to the chamber to speak, so he will be back at some point as well.

We have your responses to the questions on notice, along with the annual report of the Information Commissioner. We have Ms Julie Kinross, the Information Commissioner; Ms Rachael Rangihaeata, the Assistant Information Commissioner; and Michael Buckler also from the Office of the Information Commissioner here today. I begin by welcoming Julie to the meeting. Thank you for agreeing to meet with us and your timely response to the questions on notice. I note that you have previously been provided with a copy of instructions to committees regarding witnesses. The committee will be following these instructions during our meeting. The meeting will be recorded by Hansard.

Before I ask you to make your opening statement, I will introduce the members of the committee who are here—Andrew Cripps, the member for Hinchinbrook; Betty Kiernan, the member for Mount Isa; Rosa Lee Long, the member for Tablelands; and Vicky Darling, the member for Sandgate. I think you met Michelle and Allison, our research staff. Welcome and please begin with your opening statement if you have one.

Ms Kinross: Thank you very much, Madam Chair. I thank the committee for their indulgence in allowing Michael Buckler to attend today. Michael is the office manager and he is responsible, along with Rachael, in assisting me to prepare information in answer to questions on notice. I thought it would be a useful developmental experience for him to come and observe the committee proceedings. It will enhance his capacity, no doubt, to assist me to provide useful information to the committee. So I thank you very much for that.

I also thank the committee for its invitation to meet today to enable the committee to perform its function of reviewing the performance of the functions of the Information Commissioner under the Act. From the answers to the questions on notice, the committee will be aware of the steady improvement in the performance figures for external review for the six-month period up to 31 December 2007. The achievements of the office in that period show a higher number of applications finalised than the corresponding period last year, a higher proportion of applications finalised within 12 months, a smaller proportion of applications on hand being more than 12 months old, shorter time periods within which applications are dealt and a higher number of informal resolutions. These figures, I think, are a credit to the former Information Commissioner responsible for setting up the office, which was only created in 2005. Within a very short period of time the office was set up—its structure, systems, staffing, strategies and processes. They were put in place and I think provide a very good foundation for the good performance figures reported to the committee today.

Since commencing in the role of Acting Information Commissioner, I have been very impressed by the office’s commitment in doing its job as efficiently and effectively as it can. That is the culture of the office. The culture has continued since the resignation of the previous Information Commissioner and has been promoted under the steady hand of Rachael Rangihaeata, whilst acting as Information Commissioner. A conducive organisational culture is one of the necessary inputs to high productivity, and I will continue to place strong emphasis on the quality of the office’s work to ensure that it delivers independent, fair, just and timely decisions.

The performance figures to 31 December 2007 reflect the office’s continued efforts to improve its performance, discussed in more detail in the answers to the questions on notice. With the expectation of the appointment of a new Information Commissioner last year, backfilling arrangements were not put in place. Consequently, the office has not been operating with a full staff complement for about six months. While I have now recruited staff to those vacancies to soften the impact of that on future statistics, the effect of these vacancies may however show up in the end of year budget and in performance statistics.
that the committee will review in due course, particularly the finalisation numbers. However, this only serves to underscore how impressive the performance figures are for the six-month period to the end of December. I hasten to add that I commenced in this role on 14 April, so I cannot take any personal credit for those numbers. They are impressive in the light of the rising number of applications received in that period, the fewer staffing numbers and of course the changeover of information commissioners.

The period since 2005 can only be described as a period of change for external freedom of information decision making in Queensland. With LCARC’s recent report on the Accessibility of Administrative Justice, the current review of the Freedom of Information Act about to report in June and the Premier’s announcement of the establishment of the Queensland Civil and Administrative Tribunal, the period ahead may not be one of consolidation and continual improvement for the office if institutional and other fundamental changes are recommended through those processes. We do look forward to decisions of government about those matters which will impinge on the office, but in the meantime we will continue our efforts in providing fair, impartial, high-quality and prompt review with as little formality and technicality as possible. Thank you, Madam Chair.

CHAIR: Congratulations. I absolutely have to commend you on the continued improvements you seem to be making despite all of the things that are being thrown at you with increasing applications. It must be very difficult in any organisation when there is such uncertainty around what the future holds. As you say, there could be fundamental changes. You have both done really well—Rachael, I know you have certainly kept your eye on things—to continue to do what you do with all of that happening. I will let the other committee members start with questions.

Ms DARLING: I have a general question. With the change that the office has been through over the last 12 months, I would imagine that you gathered together quite a few recommendations for the review of the Office of the Information Commissioner yourself. Have you felt that you have been able to contribute to that process and make some really solid recommendations to improve your office?

Ms Kinross: Indeed, if the committee wishes, we would be happy to provide it with a copy of any submissions that we have made, but we have been happy with the consultation processes put in place. Indeed, as recently as yesterday we received a letter from the review of the Act, seeking further details about some of the recommendations for change to the legislation that had been made.

CHAIR: Do you want to flag anything? We would love to see your submission—that would be great—but is there something that you want to flag for us, or a couple of things that might be the most important?

Ms DARLING: Are there any particular changes to the Act that would make your life much easier?

Ms Kinross: Do you feel you can pick up on that?

Ms Rangihaeata: Yes, sure. It is probably easier to see the detail from our submissions, but we focused on key parts of the review that related to external review as opposed to exemptions and so on. Part 5 of the Act relates to the procedures and the requirements for external reviews. So we have looked at a couple of things. For instance, we are seeing a lot more—and I know we have mentioned this to the committee in the past—of sufficiency of search type external reviews. People are looking for documents that they believe exist, and so some of the recommendations or issues that we raised with the review panel related to that topic, because that is something that was not perhaps envisaged back in 1992 when the Act was brought in and it is something that is emerging as not necessarily a neat fit. The 2005 amendments did pick up on that to an extent, but as we learn more in order to deal with those reviews effectively and efficiently we are seeing changes that would be really good to ensure that they do run as smoothly as possible, and we do have the powers that we need and so on to ensure that we get the information, evidence and so on to make an informed decision in an efficient manner.

Ms LEE LONG: I have a question about the external review relating to fees and charges. I notice that only four per cent related to fees and charges—only a very small percentage. What were the major things that were asked for?

Ms Kinross: It is a small number and a small percentage. The Act precludes the imposition of fees on matters relating to personal affairs. So agencies are able to charge fees on matters that do not relate to personal affairs. Clearly the issue of contention between the office and the agencies is over what constitutes personal affairs. So when the agency imposes the fee, that is what the objection is typically about.

Ms LEE LONG: Yes, but complaints about that comprised only four per cent. What was the other 96 per cent, or what were the major complaints?

Ms Kinross: I see; I beg your pardon. Many of the other matters, almost half of them, are about personal affairs issues. So they have been refused access on their applications for information concerning personal affairs, and those applications or part of the applications have been refused by agencies for a particular reason. But primarily the applications are about refusal for access to information.

Ms LEE LONG: That is the major complaint?

Ms Kinross: Yes, absolutely.

Ms LEE LONG: What would the second major complaint be after that, then?
Ms Kinross: Around personal affairs, would you have a bit of an idea about what the rest of the break-up is?

Ms LEE LONG: Just say the next one or two.

Ms Rangihaeata: At the moment probably the next exemption provision we deal with after personal affairs would be confidential information—information provided in confidence.

Ms LEE LONG: That is personal affairs as well, isn’t it, really?

Ms Rangihaeata: Yes, there can be an overlap. Or legal professional privilege claimed over documents.

Ms LEE LONG: Legal professional privilege?

Ms Rangihaeata: Yes. They would be our top three provisions that we are considering at the moment, I would say. Then you get a smattering of other provisions.

Ms LEE LONG: Why did it take so long to fill those vacancies you were talking about? Why were you understaffed for so long?

Ms Kinross: I think there was an expectation that the position would be permanently filled and that that recruitment exercise would be undertaken fairly quickly, but as I understand it Dr Solomon, who was responsible for the review, provided advice to the government that at this juncture in time it may be best not to permanently fill the position until the government had received his report on the review of the Freedom of Information Act. So in those circumstances a decision was made not to proceed with the recruitment process and an alternative acting person was found.

CHAIR: We actually went through the recruitment process. It was advertised. I was on the selection panel. Someone was selected but then the appointment could not go ahead. That was a reasonable request from Dr Solomon which would suggest that we have the review happening, recommendations are coming down in the midyear and then we will determine what happens after that.

Ms Kinross: So there was just some uncertainty as to when a new commissioner would arrive.

Ms LEE LONG: Sure.

Ms Kinross: So in those circumstances no backfilling arrangements were put in place.

Ms LEE LONG: Okay.

Ms DARLING: I have another question regarding the processes of external review and whether a written decision is required or not. You said in answer to our question on notice No. 8 that you finalised 308 externals and 219 were resolved without requiring a written decision. In those cases, is that just providing the information that is requested or is the applicant happy with the reasons you give without a full written determination?

Ms Kinross: What the Act requires the commissioner to do is to provide a written decision when a formal decision about upholding the agency decision has been made, or affirming or overturning or amending in some way the agency decision. So typically a written decision does not get finalised where the parties and the office have come to an agreement about the nature of the information to be released. That could be at any point. It could occur as a result of telephone contact from the office between the parties or it could happen further down the process where the office has written a provisional decision, the parties accept the provisional decision, and so no formal decision actually gets made after that.

Ms DARLING: Does that assist you with responding in a timely fashion as well, being able to resolve these informally in most of the cases?

Ms Kinross: Absolutely. The sooner the parties are satisfied or accept that they are or are not getting access to the information that they are after and the agencies accept that they will or they will not be required to release information, it absolutely settles things at an earlier point in the process.

Ms DARLING: Is that trend improving the percentage of the informal resolutions?

Ms Kinross: With regard to our answer to the question on notice, certainly the number of resolutions informally has increased numerically. If I can just find the statistics—

Ms DARLING: Yes, I was not quite sure where the ones relating to informal—sorry, there it is in 1G.

Ms Kinross: Yes, so the numbers have certainly gone up in that six-month period. By comparison with last year, the proportion is down a little bit. In comparison to the year before, it is on par with the year before.

Ms DARLING: Thank you.

Mr CRIPPS: Commissioner, I have a question for you in relation to your answer to our question on notice No. 14 in respect of when members of the community or applicants may be declared vexatious. The second paragraph of your answer says—

The FOI Act makes it clear that the applicant is entitled to procedural fairness and has the right to be heard and heard by a decision maker who is, and who appears to be, unbiased. The FOI Act is silent on the form of hearing. The standards expected of the commissioner are determined by reference to what seems appropriate given the context within which the decision is to be made.
I may misunderstand the answer, but there seems to be a decided lack of prescription in terms of the way that such a matter would be progressed. Could you explain who hears these types of questions where decisions are contested and how procedural fairness is ensured in that regard?

**Ms Kinross:** If the commissioner had declared an applicant vexatious and made a decision on that point, that decision would be appealable to the Supreme Court and it would be judicially reviewed. The onus is on the commissioner to conduct proceedings in such a way as to avoid criticism by the Supreme Court under judicial review, so absolutely those proceedings will be conducted in a way that is consistent with the understanding of what the common law and indeed the statute requires by way of procedural fairness.

**Mr Cripps:** But there seems to be a decided lack of prescription in the FOI Act about a hearing and how the hearing would proceed.

**Ms Kinross:** Yes, and that is not unexpected. Often an Act will not prescribe, say, the court rules for the court. That is a matter for the court to determine, and in the same way it is silent in those respects. So it is incumbent on the Information Commissioner to have procedures and guidelines in relation to how those matters might proceed. Typically, because the Information Commissioner is not a court and our proceedings are not conducted in the same way that a court is conducted, it intentionally allows for things to be resolved with as little formality and as little technicality as possible but whilst in keeping with the requirements of procedural fairness. What that means is that when I come to look at an application for a person to be declared vexatious I will look at all of the circumstances of the application. However, there are requirements on me—and I have set out some of those requirements here—that the person has a right to know what the issues are about them.

**Mr Cripps:** Yes, in your answer.

**Ms Kinross:** So what that requires me to do is to provide that information to the party. It does not require me to conduct in-person hearings, for example, because as long as the person knows the complaint about them and has had the opportunity to respond, it could well meet the requirements of procedural fairness. But, again, it is a matter for judgement in the individual circumstances of the case.

**Mr Cripps:** Sure. I can certainly appreciate and understand that there are circumstances in which the lack of direction or prescription would be useful so that certain situations can be overcome. But are you able to identify or point to any instances where the lack of direction or prescription has made it difficult for the Information Commissioner to overcome any certain situations, or could you think of any circumstances?

**Ms Kinross:** I am not aware of any situation where that has been an encumbrance on the Information Commissioner. There have been very few applications made for applicants to be declared vexatious. I do not have the numbers to hand, but I expect you could historically, bar the last couple of years, count the number of applications on one hand. So there is not a lot of experience, if you like, that flushes out some of the issues that might come about from that.

**Mr Cripps:** That is fine. Thank you for your answer.

**Chair:** Can I just follow on from that, just on this same topic. The vexatious applicant provision of the Act has only been available since 1 September 2005, so in that first year of 2005-06 there was one application, as you said in your answer to the question on notice, and three applications received in 2006-07. Are there any applications that have come in since 2007 to now?

**Ms Kinross:** Yes, there have been three applications.

**Chair:** Another three?

**Ms Kinross:** Yes, three, but they are from the one—

**Chair:** Plus three to date?

**Ms Kinross:** Yes, but they are from the one party concerning three individuals.

**Chair:** The one agency in relation to three individuals?

**Ms Kinross:** Yes, the one agency concerning three individuals to do with the same matter. So we would count that as three.

**Chair:** Right. But it also says that the applications have not been decided yet. Some of these sound like they are quite old. If you are the agency and you are still being bombarded by what the agency has already determined or viewed itself as vexatious and that is being repeated, I can only imagine the constantly repeated sorts of requests or complaints. Why is it taking so long to make decisions, or when do you expect that you could make decisions on those applications?

**Ms Kinross:** Having taken up appointment in April, it is—

**Chair:** Sorry, I did not mean you personally.

**Ms Kinross:** No, and I know you did not, Madam Chair, but I just did want to say that that is now the task before me to process those applications, and I will endeavour to do that as quickly as I can.
CHAIR: That has probably been an area, as you mentioned earlier, in which there has been a lot of change happening for the organisation since around 2005, since that provision came into the Act. That may have been an area in particular, would you say, Rachael, that could have been one that you could not pick up on necessarily when you were acting up into the position and waiting for the appointment of a permanent Information Commissioner?

Ms Kinross: If you would not mind, Madam Chair, I would have fully expected the Acting Commissioner to have waited for a commissioner to come on deck and I would have had no expectation that Rachael would have handled those matters during that period of time.

CHAIR: What I meant was that, clearly, the period of uncertainty and change that has occurred has resulted in these matters sitting on the table.

Ms Kinross: It has certainly contributed to the delay.

CHAIR: Yes.

Ms DARLING: I have another question, Madam Chair, if we have time. I am just having a look at your answer to our question on notice No. 13. Having just had our meeting with the Ombudsman, the answer is surprising. Can you explain this to me: does that really mean that your office has not received any complaints about any other officer in your office?

Ms Kinross: That is correct.

Ms DARLING: Do you think the complaints are going elsewhere, or are there no complaints?

Ms Kinross: My observation about that is that the office surveys every applicant and every agency and seeks feedback about their experiences. So the comments made in those surveys are not counted as complaints under the complaints policy. We have not received any formal complaints, but we do get feedback through the survey process. Some of that feedback by and large is very positive, but some of it goes to the timeliness of decisions and so on and so forth. So we are getting that kind of feedback through a survey process.

Ms DARLING: Do you ever have contact from the Ombudsman if a complaint about your office is that two offices have been split? I am just wondering whether people would then take it to the Ombudsman. Do you ever have something fed back to you via those channels?

Ms Kinross: I think I may have read in the Act that the office is exempt from complaint processes under the Ombudsman’s Act. But is that understanding correct?

Ms Rangihaeata: Yes.

Ms DARLING: Good. No complaints.

Ms Kinross: So if the Ombudsman received a complaint about the office, he would not be able to deal with it. Whether or not he might inform me of the complaint as a matter of professional courtesy, I do not know what his processes are in that respect. But we certainly have not had any notice from the Ombudsman that he has received any complaints.

CHAIR: Would that have been something that you would have raised yourself as an office in your submission to the FOI review panel—that potentially providing an enhancement or improved service for the consumer is a clearer or more direct avenue for complaints about the FOI office, or the application of the Act?

Ms Kinross: I think there are probably a couple of considerations there. One is that prior to the establishment of the office in 2005 the office was a part of the Ombudsman’s office. So as part of the Ombudsman’s office, the Ombudsman does not investigate himself formally under his Act but if he got complaints about him, or his office, he would deal with that administratively under his complaints policy. So I think it is an inheritance, if you like, of that approach.

Also, the Office of the Information Commissioner has powers in relation to the Ombudsman’s office and his release of information. That is correct. So in thinking about which watchdog is going to be responsible to which about what, I expect some care was taken in relation to that. You want the statutory authorities to be able to operate independently and fearlessly. You do not want to set up a dynamic between those watchdog agencies with respect to their respective accountabilities.

CHAIR: No, but you want to provide an avenue for the consumer to be able to make a complaint.

Ms Kinross: Yes. Thank you for reminding me. The third part of the answer would be that in the absence of any complaint, you would have to ask whether or not that form of regulation and oversight of office was necessary. That might be something that this committee forms a view about once you see the information coming back from agencies and applicants and you see how many complaints the office is receiving about itself. You might think at some point that there is a basis for warranting another kind of oversight of office. But I would think at this stage my own view would be that it is not warranted at this point in time.

CHAIR: Okay. So there was not anything from your office.

Ms Kinross: No, there was nothing in our submission.

CHAIR: In relation to it.
Ms Kinross: That was a very longwinded answer to the question.

CHAIR: That is okay. I wondered whether you had any ideas on how those improvements could be made. Any other questions?

Ms LEE LONG: Surveys were sent out. Were you happy with the response rates?

Ms Kinross: If you look at the agency response rate of between 60 and 70 per cent, that is actually very high.

CHAIR: It is very high.

Ms Kinross: It is very high. A typical survey response rate would be around 25 per cent, 30 per cent. So even the applicant response rate is not a response rate that you would be concerned about. So I am quite comfortable with that level of response.

Ms LEE LONG: So you are quite happy with that.

Ms Kinross: We are comfortable with that level of response.

Ms LEE LONG: And you will continue to send out those? They get sent out—

Ms Kinross: Yes, we would do that.

Ms DARLING: I have to confess to not having had a look at your web site recently. Are there any innovations there?

Ms Kinross: One of the pages on the web site concerns judicial review decisions. We have just recently rewritten that to make it more accessible and we have changed the format of that. It is yet to be loaded. It was meant to be loaded, but we were having some technical problems. That new page will be loaded up in the next couple of days. So that is one thing we have been able to do. Are there any changes to the web site that have happened?

Ms Rangihaeata: We have a few planned within the next few months. We will be focusing on that in the next few months, particularly in terms of plain English—reviewing all the pages on there and the information and ensuring that that is consistent with the changes we have been making along those lines and some new FOI concepts on issues that are emerging through some new trends and the types of applications we are seeing and the decisions that we are making as a result. So that information is available to people who may also be interested in that type of FOI application, if you like.

Ms DARLING: It seems to be increasingly a way that people search for answers to their questions. Hopefully, that will reduce the number of phone calls and inquiries to your office as you build that up. We were talking about your information management system the last time. What is that called?

Ms Kinross: Our case management system.

Ms DARLING: That is right. There were some improvements that you were working on six months ago. It is always people’s databases and people’s information management systems.

Ms Kinross: A continual—

Ms DARLING: There is always room for improvement, isn’t there.

Ms Kinross: There are no recent changes in relation to that. It is bedding down and it is obviously a useful tool and it has been one of those that has contributed to the office’s performance.

CHAIR: Well done, again, keeping your head in these uncertain times. It will not be much longer. All the recommendations will be down with the report in the next few weeks. In whatever format we meet the next time, we look forward to speaking with you further and seeing your continued progress. A transcript of today’s meeting will be sent to your office as soon as it is available. You can amend that for any mistakes and the report will be drafted and tabled in June as well. Thank you very much Julie, Rachael, and Michael for attending.

Committee adjourned at 3.29 pm
Appendix D

Supplementary Response
Office of the Information Commissioner
Queensland

23 May 2008

Chair
Legal, Constitutional and Administrative Review Committee
Parliament House
George Street
BRISBANE QLD 4000

Dear Mrs Reilly

Biannual Meeting – 13 May 2008

During my Opening Statement during the recent meeting with the Committee, I noted that the Office of the Information Commissioner had been understaffed for a period and that this may have a detrimental effect on the overall 2007-08 performance and budget statistics, particularly the achievement of the target of finalising 300 external review applications. The circumstances resulting in the understaffing during this financial year are related to two developments that occurred during the year.

In response to the question asked by Ms Lee Long on page three of the transcript:

"Why did it take so long to fill those vacancies you were talking about? Why were you understaffed for so long?"

I essentially answered that as there had been an expectation within the Office of an imminent appointment of a new Information Commissioner, no backfilling arrangements had been put in place for the staff member who took up the Acting role for a temporary period. As it happened, this situation was resolved after a period exceeding 7 months with the appointment of an Acting Information Commissioner from outside the Office.

In addition to this I wish to advise the committee as follows.

Following the relocation of the Office to independent and separate premises, a number of positions within the Office were revised to assume responsibility for additional corporate and business functions that then had to be performed autonomously within the Office. Funding for this purpose was not approved until December 2007. A number of decisions not to backfill certain positions were made in the first 6 months of the financial year prior to receiving funding approval to ensure the Office would not exceed its approved budget for 2007 - 08.
The possible effect of understaffing in a small establishment of 13.8 FTEs is significant and its reach may extend into the 2008-09 period.

Following the appointment of a new Acting Information Commissioner and the appointment of new staff members, the Office is currently operating at full capacity, thus softening the impact of the understaffing during 2007-08 on future statistics.

Thank you for the opportunity of more fully informing the Committee on this point.

Yours sincerely

[Signature]

Julie Kinross
Acting Information Commissioner