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# **Right to Information Uplift Project – Discussion Paper**

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**Version 4.1**

## Executive Summary

The RTI Uplift Project was initiated to identify opportunities to improve the Tasmanian State Service's provision of right to information (RTI) services.

Two surveys were conducted with right to information delegates across the Tasmanian State Service to identify any inconsistency in business practice between agencies and any barriers to the successful application of, and compliance with, the *Right to Information Act 2009* by right to information delegates.

This Discussion Paper examined a range of successes, issues, and unknowns affecting the performance of right to information services in the Tasmanian State Service between February and August 2023. These were identified through the responses provided to the surveys, an analysis of the Annual Right to Information Report 21-22, an interjurisdictional and international analysis, and an analysis of departments' community interfaces.

The success stories found in right to information performance in the Tasmanian State Service were identified as:

- Right to information delegates employed across the Tasmanian State Service are highly skilled and complete their work with competency and passion.
- Over the 22-23 financial year, only 2 per cent of decisions made under the *Right to Information Act 2009* were reviewed, both internally and externally.
- Over the 22-23 financial year, less than 20 per cent of applications were not completed within a timeframe permitted under the *Right to Information Act 2009*, despite a 191 per cent increase in applications made since the previous financial year.
- Most right to information delegates surveyed (90 per cent) reported feeling confident making decisions within six months of their delegation commencing.
- Eighty per cent of right to information delegates surveyed reported that their manager is responsive enough to allow them to make effective decisions under the *Right to Information Act 2009*.

The main issues affecting the performance of right to information were identified as:

- Inadequate right to information delegate staffing despite significant increases in applications made.
- Inconsistent processes undertaken between agencies which leads to an inconsistent experience for applicants.
- Where possible, proactive disclosure is not being used as the primary method for releasing information, limiting a public authority's ability to advance the object of the *Right to Information Act 2009*. Noting that many requests do require assessment and cannot be responded to actively.
- A negative public perception of the work undertaken by right to information delegates reduces work morale.

- A lack of a formal or consistent process for determining when a person has the requisite skills and knowledge to be delegated powers and functions under the *Right to Information Act 2009*.
- Inconsistency in the types and amount of information provided on RTI on agency websites which may make accessing RTI services harder and more frustrating for applicants who are seeking information from multiple public authorities and Ministers.
- Limited training provided to new right to information delegates which is primarily reliant on the existence of current skilled delegates within an agency. This also means that training of new delegates is potentially restrained by the subject matter of the agency's work.
- The time taken for external reviews to be completed and a lack of mechanisms for agencies to resolve longstanding matters outside of the formal review process.
- The difficulty in handling requests for personal information with confusing and contradictory statutory mechanisms.

A survey was conducted with RTI applicants from late July to early September 2023 which provided insight on applicants' experience with the process of applying for information. The survey was completed by members of Parliament, members of the public, organisations and one journalist. The main findings from that survey were:

- Applicants largely find the process for applying for information to be clear (59 per cent) with 30 per cent finding it neither clear nor unclear.
- Applicants advised that the process could be improved by having a phone number that they could contact to receive an update on their application and through having standardised forms across departments.
- Applicants indicated that information on departmental websites could be more helpful. One applicant noted that the information on the Department of Natural Resources and Environment Tasmania's RTI webpage was very helpful.
- All (100 per cent) applicants who did not receive an acknowledgment of their request advised that they would have found it helpful to receive an acknowledgment.
- Seventy five per cent of those who did receive an acknowledgment advised that the information within the acknowledgment was helpful.
- Some applicants (35 per cent) did not understand the reasoning provided for the decision they received in response to their request and did not think the decision had enough detail to explain each exemption applied.
- Applicants reported having positive experiences obtaining helpful information and advice from RTI delegates.
- Forty-seven per cent of applicants reported feeling very dissatisfied with the process of applying for information from the Tasmanian Government in contrast with the 30 per cent who were very satisfied.

The matters that needed to be investigated further are:

- How we can improve the process for applying for personal information to make it easier for the applicant and less restrictive and confusing for the actioning officer.
- Whether the community is aware of their rights to access information under the *Right to Information Act 2009* and *Personal Information Act 2004*.
- What the community needs to improve their access to right to information processes.
- How effective changes made by other jurisdictions have proven to be.

Throughout the Discussion Paper, opportunities to celebrate the success of current right to information delegates have been utilised and processes that are working well have been identified.

The further work that needs to be undertaken to fully understand how right to information can be improved for both applicants and delegates has been called out.

Potential causes for the issues are discussed where appropriate and recommended solutions have been identified.

Since the original drafting of the Discussion Paper, several reviews have been conducted into government practice which have resulted in recommendations for improving information access. The Government has committed to implementing many of these recommendations as well as agreeing to review RTI legislation with the goal of increasing transparency and accountability of public administration across the State through a 2024 Confidence and Stability Agreement reached between the Premier and the Jaquie Lambie Network members of Parliament.

In consideration of this, the Discussion Paper has been updated to reflect where else the discussed issues have been identified and what action the Government has committed to take to rectify them. Where an issue has not been covered by a separate Government commitment, the Discussion Paper proposes a solution to be achieved through the RTI Uplift Project.

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## Glossary

<b>Active disclosure</b>	The disclosure of information which has not been subject to assessment under the provisions of the RTI Act by a public authority or a Minister in response to a request from a person.
<b>Assessed disclosure</b>	The disclosure of information by a public authority or a Minister in response to a request from a person made under section 13 of the RTI Act which has been assessed under the RTI Act. Application for assessed disclosure is the method of last resort.
<b>Delegated officer</b>	Officers delegated under section 24 of the RTI Act to make a decision on an application for assessed disclosure on behalf of the principal officer or Minister.
<b>DECYP</b>	Department of Education, Children and Young People
<b>DoH</b>	Department of Health
<b>DoJ</b>	Department of Justice
<b>DPAC</b>	Department of Premier and Cabinet
<b>DPFEM</b>	Department of Police, Fire and Emergency Management
<b>DSG</b>	Department of State Growth
<b>NRE Tas</b>	Department of Natural Resources and Environment Tasmania
<b>Treasury</b>	Department of Treasury and Finance
<b>Exempt information</b>	As set out in Part 3 of the RTI Act.
<b>Information</b>	Means: <ul style="list-style-type: none"><li>a) anything by which words, figures, letters or symbols are recorded and includes a map, plan, graph, drawing, painting, recording and photograph;</li><li>b) anything in which information is embodied so as to be capable of being reproduced; and.</li><li>c) information which relates to the official business of the public authority and excludes information which is in the possession of the public authority for the sole purpose of collation or forwarding to a body other than another public authority.</li></ul>
<b>Personal information custodian</b>	Means any of the following: <ul style="list-style-type: none"><li>(a) a public authority;</li></ul>

	(b) any body, organisation or person who has entered into a personal information contract relating to personal information;
	(c) a prescribed body.
<b>Personal information protection principles</b>	personal information protection principles referred to in section 16 of the <i>Personal Information Protection Act 2004</i>
<b>PIP Act</b>	<i>Personal Information Protection Act 2004</i>
<b>Principal officer</b>	The Head of Agency.
<b>Public authority</b>	Means: <ul style="list-style-type: none"> <li>a) an Agency, within the meaning of the <i>State Service Act 2000</i>; or</li> <li>b) the Police Service; or</li> <li>c) a council; or</li> <li>d) a statutory authority; or</li> <li>e) a body, whether corporate or unincorporate, that is established by or under an Act for a public purpose; or</li> <li>f) a body whose members, or a majority of whose members, are appointed by the Governor or a Minister of the Crown; or</li> <li>g) a Government Business Enterprise within the meaning of the <i>Government Business Enterprises Act 1995</i>; or</li> <li>h) a council-owned company; or</li> <li>i) State-owned company.</li> </ul>
<b>Released in part</b>	In response to a right to information request, a public authority or Minister may release only part of the information requested if some of the information is exempt information under the RTI Act.
<b>Required disclosure</b>	The disclosure of information by a public authority where the information is required to be published by the RTI Act or any other Act, or where disclosure is otherwise required by law or enforceable under an agreement.
<b>Refused application</b>	A Right to Information application may be refused under section 9, 10, 12, 19 or 20 of the <i>Right to Information Act 2009</i> . This means that the public authority has decided the application is invalid in some way and advised the applicant that they will not proceed with collating and assessing the requested information.
<b>Routine disclosure</b>	The disclosure of information by a public authority which the public authority decides may be of interest to the

public, but which is not a required disclosure, an assessed disclosure or an active disclosure.

**RTI Act**

*Right to Information Act 2009*

# 1. Context

Since March 2014, the Tasmanian Government has committed to improving the openness and accountability of government decision-making through what has become known as the Government's Transparency Agenda. Since the Tasmanian Government initiated its Transparency Agenda in 2014, the following key reforms have been delivered:

- Right to Information (RTI) responses are published online within 48 hours of release to applicants to increase the broader public's access to information released under RTI.
- The amount of information routinely disclosed has increased, including the release of key information related to Ministerial and Parliamentary support expenditure such as employee and salary details, Tasmanian Government Card expenses, and Minister's travel and entertainment expenses.
- A public submissions publication policy has been implemented in relation to major policy and legislation reviews.
- A major review into electoral reforms including political donations and third-party disclosures has been initiated. Legislation is now before the Parliament.
- The Pecuniary Interest disclosures for all Members of Parliament has been significantly reformed.
- A new whole of government Gifts, Benefits and Hospitality Policy has been implemented which requires public reporting of gifts, benefits and hospitality received and given by officers across all agencies at least quarterly on agency websites.
- The Ministerial Code of Conduct has been amended with updates occurring in 2014, 2018 and 2021 to improve accountability in the performance of the duties of all Ministers, particularly related to conflict of interest, and ensure government operates in a manner that protects and upholds the public interest.
- All Ministerial RTIs are delegated to independent Departmental RTI officers for assessment.
- Additional oversight, misconduct prevention and education through the Integrity Commission has been supported with \$900,000 in added funding in the 2022-23 Budget, and the transfer of responsibility for the Tasmanian Lobbying Code of Conduct and Lobbying Register.
- A Disability Commissioner has been established to lead and drive oversight and monitoring related to the rights and safeguarding of people with disability.
- Oversight of the Public Trustee has been significantly reformed and strengthened, backed by an additional \$4.3 million provided in funding in the 2022-23 Budget.
- A Government Information Gateway webpage that is available on DPAC's website has been launched to make Government information proactively disclosed, easier to find.
- Significant additional funding has been provided to the Ombudsman's office including \$500 000 in 2021-22 and \$750 000 in 2022-23. An additional \$1 million will be provided in 2023-24 and again in 2024-25.

This Discussion Paper sets out a range of options for the next phase of implementation of the Transparency Agenda, with a specific focus on the RTI Uplift Project which seeks to address matters raised through the *Commission of Inquiry into the Tasmanian Government's*

*Response to Child Sexual Abuse in Institutional Settings*, noting that at the time of originally writing, no formal recommendations had been released. The Discussion Paper has since been updated to note where a Commission of Inquiry recommendation addresses an issue identified. The options described later seek to build on previous reform efforts and are aimed at:

- creating an applicant-centric experience by providing a consistent and fair RTI process that keeps the objects of the RTI Act at the forefront.
- creating a clear standard of practice for all officers involved with actioning an RTI request to ensure every decision under the RTI Act is informed by the same guiding policy and information and made within the same timeframes as much as possible.
- delivering dedicated training to RTI delegates to reduce single point dependencies and increase consistency in decision making across the Tasmanian State Service.
- reducing inconsistency by ensuring every RTI delegate handling an application for assessed disclosure for a public authority or Minister engages with the applicant in the same manner and at the same critical points in the RTI application process.
- identifying opportunities for the proactive disclosure of information.

Through the Commission of Inquiry, victim-survivors and members from the media have highlighted the complexities around seeking information from Government institutions, particularly with respect to a lack of consistency in process and decision-making. In response DPAC is working to introduce a consistent approach across Tasmanian State Service agencies. This work will include:

- the establishment of a consistent model RTI policy; and
- the provision of high-quality training to RTI practitioners to achieve a consistent approach to RTI requests.

## 2. Purpose

The purpose of this paper is to identify issues affecting the performance of RTI in the Tasmanian State Service as informed by RTI delegates and propose options to inform the next phase of implementation of the Government's Transparency Agenda, specifically the RTI Uplift Project.

The paper considers varying practice across State Service agencies, examines approaches in other jurisdictions, identifies issues for consideration, and concludes with a range of options. Two surveys were conducted to gather insights from current RTI delegates to inform the issues discussed and solutions proposed. Responses to these surveys are included at Appendix 1.

The solutions recommended will provide a guide for the project moving forward but are subject to the issues and solutions identified through external stakeholder engagement.

The Discussion Paper was provided to State Service agencies for feedback in July 2023 and updated in August 2023. . Following further updates made to the Discussion Paper in July 2024 to reflect changes in the information access landscape since the paper was originally drafted, the Discussion Paper will now be used to guide the RTI Uplift Project Steering Committee in ensuring the delivery of the project's outputs and achievement of the project's outcomes.

## 3. Right to Information

### 3.1 Purpose

Legislation which aims to promote government accountability by providing the public with access to information took off across the Western world in the late eighties and early nineties. The purpose of this legislation is to maintain public trust in the quality and impartiality of government decision-making by revealing the information relied on in the making of government decisions. The Federal Parliamentary Joint Committee and Security's 2020 inquiry into the impact of law enforcement and intelligence powers on the freedom of the press noted that access to information law is an important democratic right, saying:

*Regular, free and fair elections are fundamental to Australia's parliamentary democracy. Underpinning the concept of a free and fair election is access to information – including information from and about the government of the day. That is one of a number of reasons why schemes, such as the Public Interest Disclosure (PID) and the Freedom of Information (FOI) schemes exist.<sup>1</sup>*

Acts which create a legally enforceable right to access government information are premised on a model of pro-disclosure known as the 'push model', whereby government routinely and proactively releases information and RTI applications become necessary only as a 'last resort'.

### 3.2 Legislation

In Tasmania, the relevant legislation for increasing accountability by providing access to government information is the *Right to Information Act 2009* (RTI Act). The RTI Act creates a legally enforceable right for the public to access government information in recognition of the fact that government information is, in fact, public information.

In September 2013, the House of Assembly Standing Committee on Community Development (the Committee) recommended several amendments to the RTI Act following a review the *Right to Information Amendment Bill 2011*. The *Right to Information Act 2009* (the RTI Act) has been amended on a number of occasions since, however many of the reforms recommended by the Committee have not yet been enacted. The Ombudsman has also made more recent recommendations for several reforms.

DOJ had started work on progressing these reforms but this work has since been superseded by the Commission of Inquiry response.

#### Legislative reform

The Commission of Inquiry has recommended that the Tasmanian Government reform the RTI Act in recommendation 17.8.

Specifically, they recommended:

1. The Tasmanian Government should review and reform the operation of the *Right to Information Act 2009* and the *Personal Information Protection Act 2004* to ensure

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<sup>1</sup> Parliamentary Joint Committee on Intelligence and Security (2020) *Inquiry into the impact of the exercise of law enforcement and intelligence powers on the freedom of the press*, p. 14, [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Intelligence\\_and\\_Security/FreedomofthePress/Report](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Intelligence_and_Security/FreedomofthePress/Report)

victim-survivors of child sexual abuse in institutional contexts can obtain information relating to that abuse. This review should focus on what needs to change to ensure:

- a. people's rights to obtain information are observed in practice
- b. this access is as simple, efficient, transparent and trauma-informed as possible.

2. The review should consider reforms to the *Right to Information Act 2009* and the *Personal Information Protection Act 2004* to:

- a. include an explicit presumption in favour of disclosure in the *Right to Information Act 2009* and *Personal Information Protection Act 2004*
- b. embed the public interest test in specific exemptions in the *Right to Information Act 2009*, tailored to those exemptions
- c. streamline the interface between the *Right to Information Act 2009* and *Personal Information Protection Act 2004* to overcome what has, by default, become a two-step process to obtain personal information
- d. require that a personal information custodian under the *Personal Information Protection Act 2004* 'must provide' rather than 'may provide' personal information upon request from an individual who is the subject of that information, subject to any appropriate exemptions to that requirement
- e. include a 'reasonableness' test in the *Right to Information Act 2009* as part of the assessment of whether to withhold personal information relating to a person or third party other than the person making the request for information
- f. strengthen and streamline internal and external review processes in the *Right to Information Act 2009* and *Personal Information Protection Act 2004*, with a focus on options to enforce decisions of the Ombudsman and to apply for review by the Tasmanian Civil and Administrative Tribunal
- g. provide an automatic fee waiver for right to information applications relating to child sexual abuse made under the *Right to Information Act 2009* by victim-survivors or a person acting on their behalf.

3. The Tasmanian Government should consider centralising management of access to information processes in a specialist unit or department, supported by access to information liaison officers located in government departments and agencies.

4. The Tasmanian Government should provide funding to government departments, agencies and the Ombudsman, as the case may be, to:

- a. ensure access to information requests are processed within statutory timeframes
- b. speed up external review of right to information decisions
- c. provide trauma-informed training to the Tasmanian State Service in relation to victim-survivor access to information

(Recommendation 19.2).

While acknowledging that legislative reform is beyond the scope of this project and a matter for the DoJ to consider as the agency who administers the RTI Act, consideration should be given to where information accessibility can be reasonably improved through legislative reform and/or where legislative reform is needed to practically improve government transparency.

It should be acknowledged that information received as part of the project may identify options for reform and this should be communicated to DoJ. For example, several responses to the surveys suggested that amendments to the RTI Act may be needed. The content of

these suggestions and any others raised during project consultations should be provided to DoJ for their consideration.

### 3.3 Existing process

A process map showing the general process for assessing RTI applications is included at Appendix 3.

The RTI Act prescribes the general processes the public must go through to apply for information and the process that public authorities and Ministers must follow when considering and deciding an application. However, The RTI Act leaves plenty of room for discretion for the internal processing of applications.

To fill the process gaps in the RTI Act, section 23 of the RTI Act stipulates that a principal officer of a public authority must develop policies and procedures in relation to the disclosure of information for use in the public authority. Additionally, section 49 provides that the Ombudsman is to issue, provide and maintain guidelines, manuals, and advice relating to RTI.

While the existing policies and guidelines created and maintained under these sections are consistent across TSS agencies and provide useful high-level advice on the management of processes that exist under the RTI Act, there is still room for discretion in the handling of requests for assessed disclosure and this discretion has led to agencies having contrasting internal processes – which creates an inconsistent experience for the applicant.

There is also some concern that many State Service employees, including some who have been delegated powers and functions under the RTI Act, do not have any familiarity with these policies and guidelines and perhaps do not even know of their existence. There is also evidence that some newer public authorities do not have any of the policies or procedures required under the RTI Act. For example, a search of Brand Tasmania and Homes Tasmania's website returns no indication of an information disclosure policy existing, despite these being public authorities under the RTI Act.

Some RTI delegates raised criticisms when surveyed about how outdated the Ombudsman's Manual and Guidelines are. Most of the Ombudsman's current resources were developed in 2010 and have not been reviewed since, causing some of the survey participants to question their utility.

Each Tasmanian State Service department maintains its own Right to Information process in accordance with the RTI Act, the *Right to Information Regulations 2021*, the Ombudsman Manual and Guidelines, and each agency's own internal policy. Each agency is responsible for publishing guidance on how to make an application to them as a public authority under the RTI Act and then managing any application received.

At present, an applicant must apply directly to the public authority they seek the information from. This requires the applicant to locate information about making an application and contact details through the website of the relevant public authority or by contacting the public authority.

Once an application has been received, each agency follows the same general process (appendix 1) with some minor differences in how functions are performed.

Generally, once an agency has received a request for information, a delegated RTI officer will assess the scope of the request in consultation with the division or Minister's office which holds the information. During this process, the RTI officer will determine whether the application requires refinement in scope, whether an extension needs to be requested, or whether the application should be transferred to another public authority or Minister.

While the application is being initially assessed, an acknowledgement of receipt will typically be provided to the applicant informing them that there are ten working days from receipt of the application in which the scope of the application may be negotiated, or the application may be transferred to another public authority. This is not a legislative requirement, however. Not all agencies provide acknowledgement at this stage.

If the scope of the application is agreed upon by the applicant and the public authority, a formal acceptance of the application will usually<sup>2</sup> be sent by the delegated RTI officer to the applicant. This is usually done via a letter which will outline the process and timelines for the assessment of their application. Under section 15 of the RTI Act, a public authority or Minister should provide a decision within 20 working days of accepting the application.

Concurrently, the area or division within the agency which holds the requested information is instructed by the relevant delegated RTI officer to compile and provide relevant information within an agreed timeframe. This internal timeframe varies from agency to agency and is usually open to negotiation.

Once the information is received, the RTI delegate will assess the information to determine if any of it should be exempt from release. If they assess any of the information as being personal information of a person other than the applicant or as having the potential to expose trade secrets or open a business up to competitive advantage, they must consult with the person or business the information relates to.

If one of these processes is required, the timeframe for providing a response to an application will extend by 20 working days and the third party must be consulted on the release of information. In addition, the third party has review rights which may increase the time frame even further.

After making their assessment, the delegated RTI officer will write a decision letter and prepare the information for release.

All agencies enter a notification stage<sup>3</sup> after a decision has been drafted by the delegated RTI officer, who is the decision maker under the RTI Act, but before it has been released to the applicant. This provides relevant staff with an opportunity to review the information that is being released and prepare any necessary communications. How this process is conducted may differ in each agency.

Once information is released, most agencies share the information on their disclosure log within 48 hours if the information is deemed to be a matter of public interest and does not contain personal information or commercially sensitive information. This is a requirement of agency's information disclosure policies, though it is not always adhered to in practice.

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<sup>2</sup> Some agencies proceed with providing a decision if the request is for a small amount of information and uncomplicated.

<sup>3</sup> Though within some agencies the notification process is only entered into for certain types of requests.

Once a decision has been released, there are review options available to the applicant within 20 working days. A process map of these is provided at Appendix 2.

If an applicant seeks an internal review, the principal officer or a delegated RTI officer other than the delegated RTI officer who made the decision must review the decision and make a fresh decision.

After an internal review decision has been released, and in other circumstances specified in the Act, an applicant may seek an external review of a public authority or Minister's decision with the Ombudsman. While the Ombudsman does not have binding authority over public authorities, his or her decisions are generally utilised by agencies.

**Key observations:**

- 1. The purpose of the RTI Act is to proactively disclose information as much as possible, and use assessed disclosure only as a method of last resort. However, in practice, assessed disclosure is used as the default method.**
- 2. While the RTI Act provides some guidance on processes itself and stipulates the creation and maintenance of guidelines and policies for the disclosure of information, discretion is still afforded in managing requests for information and this can result in an inconsistent experience for applicants.**

### **3.4 The role of delegated right to information officers**

Under s 24 of the RTI Act, a principal officer or Minister may delegate his or her functions under the Act to a person whom they are satisfied has the skills and knowledge necessary to perform or exercise those functions.

Any act or thing done by or to a delegate while acting in the exercise of a delegation under that section has the same force and effect as if the act or thing had been done by or to the principal officer of a public authority or a Minister and is taken to have been done by or to the principal officer or Minister.<sup>4</sup>

The purpose of this section is to allow designated officers within a public authority to make assessments on requested information under the RTI Act on behalf of the principal officer or Minister who are unlikely to have requisite availability of time. It also extends the protections granted by the Act for an RTI decision maker to RTI delegates.

A public authority or a Minister must not delegate to a person the performance or exercise of his or her functions or powers under the RTI Act unless the principal officer or Minister is satisfied that the person has the skills and knowledge necessary to perform or exercise those functions or powers.

There is no standardised policy or assessment framework that guides the Minister or public authority to determine what a person is required to demonstrate before they can be deemed

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<sup>4</sup> *Right to Information Act 2009* s 24(5).

to have the necessary skills and knowledge. However, some agencies usually require a person to have a degree in law, experience interpreting legislation or significant experience assisting delegates with making decisions under the RTI Act before they can become a delegate.

A person may be delegated functions under the RTI Act by an instrument in writing signed by the relevant principal officer or Minister which specifies which functions are being delegated.<sup>5</sup>

A delegation may be for a period not exceeding three years,<sup>6</sup> and be wholly or partly revoked by an instrument in writing.<sup>7</sup>

The constitution of delegated officers differs from agency to agency. Five agencies reported having a dedicated RTI team or person whose sole duties are performing RTI functions.

Other agencies have general policy, legal, or executive services teams which include delegated RTI officers who perform RTI functions in addition to other policy, legal, or project work.

Some agencies have additional delegated officers in other areas of the agency to provide a surge capacity service, while others do not. Most agencies reported having more delegated officers than officers who regularly perform powers and functions under the RTI Act. Notably, DPFEM has fifty delegated officers, but only two who regularly perform the functions of an RTI delegate.

According to responses provided by agencies, there are currently 95 officers who have a current RTI delegation in place. Although only 25 officers regularly perform the functions and powers under the RTI Act.

**Key observations:**

- 3. Public authorities and Ministers may delegate their functions under the RTI Act to people they believe have the requisite skills and knowledge.**
- 4. The number and constitution of delegated officers in each agency differs substantially.**
- 5. There is no formal policy for what skills or knowledge a person is required to exhibit before they can be considered fit for a delegation by a principal officer or Minister.**

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<sup>5</sup> *Right to Information Act 2009* s 24(1).

<sup>6</sup> *Right to Information Act 2009* s 24(2).

<sup>7</sup> *Right to Information Act 2009* s 24(1).

## 4. Right to information statistics

The Department of Justice coordinates annual reporting of statistics under the RTI Act. These statistics offer a useful insight into how RTI process and engagement changes each year. However, RTI is a complex legal area, and its nuance cannot be wholly captured in numerical considerations like those reported on in the annual statistics. The numbers captured for the annual report do not reflect the qualitative decision making and negotiation work that RTI delegates undertake when handling a request.

Additionally, the statistics do not demonstrate the differences in scope of work or size of each agency which contributes significantly to how many RTI applications are received each year, the time taken to process a request, and the exemptions which may be applied.

Accordingly, while these statistics are useful for observing changes in the volume of requests received and determined each year, caution should be applied in interpreting public authority and Minister behaviour from the numbers reported.

*Table 1: Key Statistics as reported by the Department of Justice on applications received by all public authorities and Ministers*

Total Number	2018-19	2019-20	2020-21	21-22
Applications received <sup>8</sup>	859	1037	1389	1957
Applications determined <sup>9</sup>	797	867	1141	1615
Applications where information granted in full	238	281	399	672
Applications where information granted in part	316	405	462	566
Applications refused <sup>10</sup>	71*	75*	83	105
Applications for which exemptions were used <sup>11</sup>	316	430	534	692
Applications that took less than 20 working days to be determined	578	645	833	1021
Applications that took more than 20 working days to be determined	219	222	309	594

<sup>8</sup> Application means an application made under Part 2 of the RTI Act.

<sup>9</sup> An application may be determined by an authority making a decision to provide the information requested in full or part; to not provide the information because it is exempt; or that no information relevant to the application is in the possession of the authority; or the application is transferred, deferred or refused for another reason permitted under the RTI Act.

<sup>10</sup> Refused under sections 9, 10, 12, 19 and 20 of the Act.

<sup>11</sup> The number of applications in which one or more exemptions were claimed has been counted.

Total Number	2018-19	2019-20	2020-21	21-22
Internal reviews determined	52	59	66	49
External (Ombudsman) reviews determined	39	46	53	46

*Table 2: Applications received for each entity as reported by the Department of Justice*

Type of Entity	Applications Received 2018-19	Applications Received 2019-20	Applications Received 2020-21	Applications Received 2021-22
Government Departments	606	730	1108	1614
Ministers	0 <sup>12</sup>	22	16	152
Councils	145	177	167	151
Other Public Authorities	108	108	98	40
<b>All Entities</b>	<b>859</b>	<b>1037</b>	<b>1389</b>	<b>1957</b>

*Table 3: Applications determined by each entity as reported by the Department of Justice*

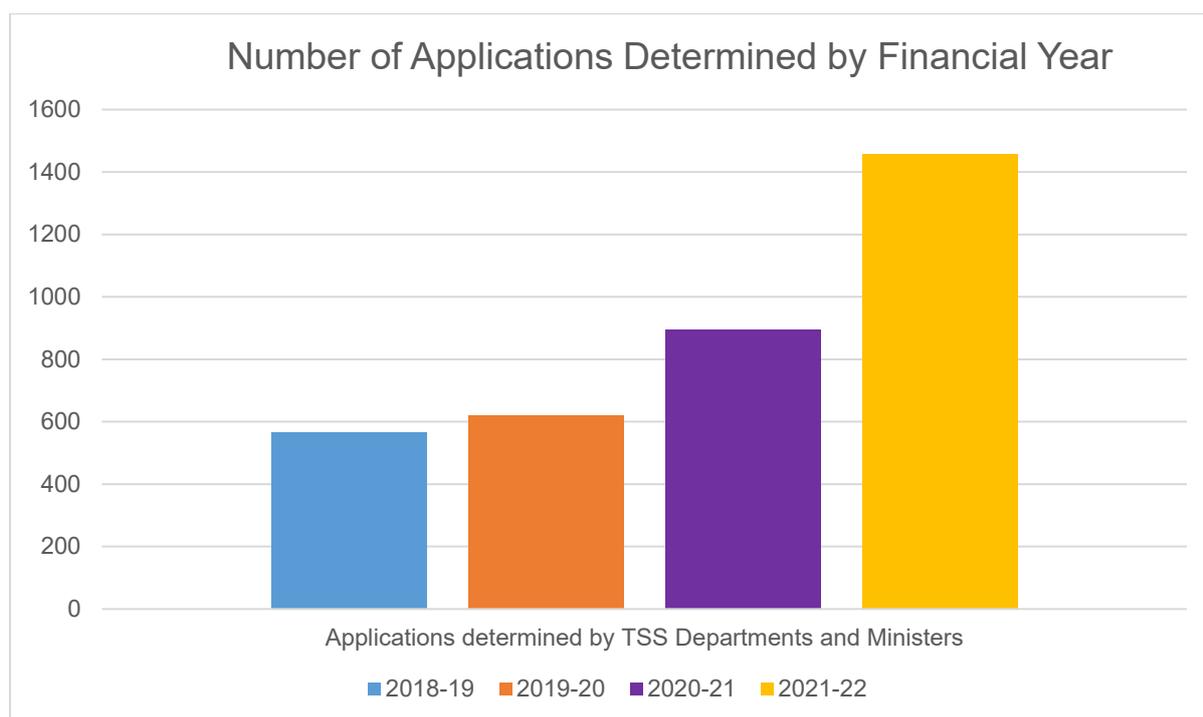
Type of Entity	Applications Determined 2018-19	Applications Determined 2019-20	Applications Determined 2020-21	Applications Determined 2021-22
Government Departments	565	601	878	1320
Ministers	0 <sup>13</sup>	19	17	138
Councils	140	153	154	124
Other Public Authorities	92	94	92	33
<b>All Entities</b>	<b>797</b>	<b>867</b>	<b>1141</b>	<b>1615</b>

<sup>12</sup> Reporting change occurred as Minister's applications were originally included in Departmental RTI reporting.

<sup>13</sup> Reporting change occurred as Minister's applications were originally included in Departmental RTI reporting.

*Table 4: Outcome of applications for Government Departments as reported by the Department of Justice*

Application outcome	2019-20	2020-21	2021-22
Information provided in full	170	286	527
Exemptions applied	303	445	579
Transfer	23	62	118
Deferral	2	3	1
Refusal	54	63	84
Withdrawal	13	16	50
Other <sup>14</sup>	80	54	67



<sup>14</sup> Information sought in an application was not in the possession of the agency or Minister or information related to an excluded body under section 6 of the RTI Act.

## 5. Interjurisdictional analysis

This section briefly summarises right to information processes in other state jurisdictions and considers four international case studies from Westminster jurisdictions.

Across Australia, many jurisdictions have been subject to criticism for their government information access laws, policies, and processes. Articles in the media over the last five to ten years have detailed ballooning application handling times, shrinking of Freedom of Information (FOI) or RTI teams in government agencies, increases in application refusals, and chronic understaffing in Ombudsman or Information Commissioner offices.<sup>15</sup>

This criticism has led some state governments to undertake a review of their transparency and accountability frameworks. Queensland has produced a report which aims to 'open up government processes to the sunshine of the public gaze'.<sup>16</sup>

South Australia conducted an extensive review of its *Freedom of Information Act 1991* in 2019 and proposed more than 40 changes, such as mandating the proactive disclosure of government information, reinforcing the presumption in favour of disclosure, and setting clearer limits around what is considered an unreasonable request for access.

Access to government information is an area of policy subject to significant scrutiny across the West, and it is clear that the public want to see reform in this space.

### 5.1 NSW

The *Government Information (Public Access) Act 2009* (GIPA Act 2009) governs the right to access public information in New South Wales. The GIPA Act 2009 is administered by an independent statutory authority, the Information and Privacy Commission. Informal requests for information are encouraged with no processing fee or standard application form, however if the applicant is not satisfied, there is no right of appeal.

A number of NSW Government Departments have online formal application forms requiring proof of ID and creation of password protected applications to enable tracking of progress. Like the Tasmanian jurisdiction, approaches vary significantly between agencies.

There is no central Disclosure Log.

### 5.2 Victoria

The *Freedom of Information Act 1982* governs the right to access public information in Victoria. Victoria maintains a central Freedom of Information portal at [Freedom of Information Request | Office of the Victorian Information Commissioner \(foi.vic.gov.au\)](https://www.foi.vic.gov.au) - this portal can receive requests for most agencies.

Prior to lodging a formal request, prospective applicants are encouraged to contact the relevant agency to find out whether the information is available without a formal request, or

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<sup>15</sup> See <https://www.theguardian.com/australia-news/2019/jan/02/how-a-flawed-freedom-of-information-regime-keeps-australians-in-the-dark> or <https://www.themercury.com.au/news/tasmania/tasmania-politics-boom-in-right-to-information-requests-hits-bureaucratic-brick-wall/news-story/87b98b8d8fa3a1085172841d4fb0c326> for example.

<sup>16</sup> Professor Peter Coaldrake AO, 'Let the sunshine in – Review of culture and accountability in the Queensland public sector'. Final Report 28 June 2022.

whether the document is already public or available for purchase. Not all Victorian Government agencies direct potential applicants to the central portal from their web site.

Disclosure logs are difficult to locate for many agencies.

### 5.3 South Australia

The *Freedom of Information Act 1991* (FOI Act) governs the right to access public information in South Australia. A central application portal is available at [SA.GOV.AU - Make a freedom of information request \(www.sa.gov.au\)](http://SA.GOV.AU - Make a freedom of information request (www.sa.gov.au)).

South Australia's website encourages applicants to contact the relevant agency first to ascertain whether an FOI claim is the right approach. Disclosure logs are separately maintained by each agency under comprehensive rules issued via a Premier and Cabinet Circular [PC045-Disclosure-Log-Policy.pdf \(dpc.sa.gov.au\)](http://PC045-Disclosure-Log-Policy.pdf (dpc.sa.gov.au)).

### 5.4 Queensland

The *Right to Information Act 2009* governs the right to access public information in Queensland. The Queensland system resembles the Victorian model with a central lodgement system for most agencies and strong encouragement for prospective applicants to approach the relevant department first to explore the request in more detail before initiating a formal application.

Disclosure logs are separately published by agencies. Section 78A and section 78B of the RTI Act set the rules for agency disclosure logs. The office of the Information Commissioner has the power to audit disclosure logs.

It is understood that Queensland is implementing several progressive initiatives for government accountability such as requiring all cabinet submissions, agendas and decision papers (and appendices) to be proactively released and published online within 30 business days of a final decision being taken by Cabinet.

### 5.5 Western Australia

The Western Australian *Freedom of Information Act 1992* gives the public a right to access information held by Government departments and agencies. There is a central portal through which you can apply to most WA key departments and agencies [Submit a Freedom of Information \(FOI\) access application | Western Australian Government \(www.wa.gov.au\)](http://Submit a Freedom of Information (FOI) access application | Western Australian Government (www.wa.gov.au)).

There is significant guidance to prospective applicants on the central site. A number of departments maintain separate application sites and application forms vary significantly.

No Disclosure logs are available in Western Australia.

### 5.6 ACT

The *Freedom of Information Act 2016* (the FOI Act) governs the right to access public information in the ACT. A detailed guide for prospective FOI applicants is available on the ACT Chief Minister's website along with an application form, third party consultation guidance, and links to the Chief Minister's Department Disclosure logs.

As with other jurisdictions, each ACT directorate maintains separate FOI websites and disclosure logs, although all sites seem to use similar language in their advice to the public. Prospective applicants are also encouraged to approach the relevant directorate for information informally before lodging a formal request.

## 5.7 Northern Territory

The *Information Act 2002* gives the public a right to access information held by Government departments and agencies. Applicants are required to apply to the individual public sector organisation that they wish to access information from. Each agency maintains its own website and guidance on how to make an access application.

The Northern Territory Information Commissioner encourages people to contact public sector organisations and discuss whether an application is necessary and how to best apply for information before lodging a formal access application.

There are no government-maintained disclosure logs containing publications of disclosures made under the *Information Act 2002*. Information responsive to an access application is provided only to the applicant.

## 5.8 Commonwealth

The *Freedom of Information Act 1982* (FOI Act) gives Australians the right to access Federal government information. The objects of the FOI Act are to give the Australian community broad access to information held by the Government by requiring agencies to proactively publish certain information and giving citizens a right of access to documents. Information held by the Government and its agencies is to be regarded as a national resource and treated accordingly.

Applicants must lodge an application in writing directly with the Commonwealth agency they are seeking information from. Each agency also maintains their own FOI information and disclosure log.

## 6. International analysis

Right to information practice across four Westminster jurisdictions is considered below. The following four jurisdictions are considered:

- England and Wales
- Scotland
- New Zealand
- Canada

### 6.1 England and Wales

The *Freedom of Information Act 2000* provides public access to information held by public authorities in England, Wales, and Northern Ireland and for national authorities operating in Scotland. Public authorities are required to comply with requests within 20 working days of receipt, although there are circumstances when this time limit can be extended. A request must be complied with, unless one or more of the exemptions in the Act are relevant. Most of the exemptions are subject to a public interest test. The 2000 Act is enforced by the [Information Commissioner's Office](#).

Exemptions in the UK legislation reflect similar practice across Australian jurisdictions including refusal based on cost and staff time, vexatious requests, and repeat applications from the same person. UK officials can charge £25 per hour to assess an application if they deem the cost associated with assessing the application is likely to be excessive.

Applications are made to the relevant government department for assessment. In recent years, the UK Cabinet Office has assumed a more central role in managing the FOI architecture including through the 'FOI Clearing House' which manages sensitive claims including national security, the Royal Household, significant live policy issues, and what is termed, in the UK context, 'round robin' applications which require multiple transfers between agencies – in these circumstances, the Cabinet Office assumes responsibility for managing the application.

The UK Disclosure log is at [Transparency and freedom of information releases - GOV.UK \(www.gov.uk\)](#) and is searchable by topic, agency, and information type (for example by routine data release or FOI release).

### 6.2 Scotland

The *Freedom of Information Act 2002* (Scotland) came into force on 1 January 2005. Under FOISA, a person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority subject to certain conditions and exemptions set out in the Act. The FOI Act is enforced by the Scottish Information Commissioner.

Potential applicants are encouraged to first seek information informally from the relevant agency; these requests can be made verbally over the phone or in person at the public authority's location. Formal FOI claims must be in writing, must include a basic level of essential information, but there is no prescribed form.

The Scottish Government maintains a central access site [Request information - gov.scot \(www.gov.scot\)](#) for prospective applicants. Disclosure logs appear to be agency-specific but most, like the UK, appear to have useful search facilities available.

### 6.3 New Zealand

The *Official Information Act 1982* (OIA Act) creates a public right to access information held by government bodies in New Zealand. There is no charge for an application unless the agency decides that the costs is prohibitive.

There are two primary systems for accessing official information in New Zealand.

Government departments maintain separate information access sites with advice on how to lodge a request along with guidance for potential applicants. The 'look and feel' of each agency site varies and each maintains separate disclosure logs.

There is also a well-established civil society managed portal which appears to have the most user-friendly access point - [FYI - Make and browse Official Information requests](#). The 'FYI' website allows New Zealand citizens to search for the relevant authority and then lodge the application on-line.

The site is updated in real time listing the running total of requests and to which agencies. The applicant lodges online, the request is sent to the authority and the portal managers send an email to the applicant when an answer has been provided. Soon after receipt, the information is placed on the same web site where it can be searched by any user.

### 6.4 Canada

The *Access to Information Act 1985* regulates public access to information from Federal Government agencies in Canada. Canada has an 'open government' entry point with a fully searchable database for routine disclosures and links to lodging a request for information on-line - [Open Government | Open Government, Government of Canada](#). This relates to information held by the National Government; this Discussion paper has not considered approaches in Canada's provinces. Applicants need to establish a secure account in their name, pay a fee of \$5, and use various drop-down menus to narrow the search for the information they are after.

#### **Key observations:**

- 6. A number of state jurisdictions maintain central information access portals with online application forms and payment systems. States and territories have a focus on encouragement to make informal requests for information prior to lodging an application.**
- 7. Disclosure log practice varies across state jurisdictions - for example, the timing for the release of information ranges from 48 hours in Tasmania to 90 days in South Australia.**
- 8. Internationally, practice standards that warrant further consideration in the Tasmanian context, include:**
  - **Public access is generally centralised through a whole-of-Government portal.**
  - **Potential applicants are encouraged to first seek information informally.**
  - **Lodging of applications and fee payment is increasingly available online.**

- ***Disclosure logs, along with routine disclosures are generally consolidated in one location, along with search facilities of varying complexity.***

## 7. Routine disclosure

### 7.1 Existing process

Routine disclosure is a method for disclosing information under the RTI Act. Routine disclosure means a disclosure of information by a public authority which the public authority decides may be of interest to the public, but which is not a required disclosure, an assessed disclosure, or an active disclosure.<sup>17</sup>

All agencies have been successfully identifying information and data sets for routine disclosure. There are currently several data sets routinely disclosed, and new datasets are being added as identified. A list of each department's routine disclosures can be found on the central Tasmanian [information gateway](#).

Some agencies find RTI applications come in for the same topics repeatedly and have identified that these topics could be subject to routine disclosure to improve government transparency. For example, NRE Tas routinely discloses information about Steward inquiry decisions within the Office of Racing Integrity following repeated RTI applications submitted on the topic.

Legislation and policy mandate the disclosure of certain information. This is considered required disclosure under the RTI Act.<sup>18</sup> Through required disclosure, all departments must disclose their governance policies, employment and workforce statistics, Senior Executive Service details, gifts and hospitality received, contracts and consultancies awarded to a certain amount, and communications expenditure.

DPAC routinely requests that agencies consider what data sets should be released as part of this reform agenda.

Routine disclosures are an important tool for increasing government transparency and community trust in government decision making. While increasing routine disclosures, particularly on matters that are subject to repeated RTI requests, are in part intended to reduce the community's need to submit requests for assessed disclosure, it is important to note that increased routine disclosures serve the primary purpose of increasing community access to information.

#### **Key observations:**

- 9. Departments currently routinely disclose several data sets that are in the public interest and these datasets are continuously increasing**

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<sup>17</sup> *Right to Information Act 2009* s 5.

<sup>18</sup> *Ibid.*

## 8. Personal information protection

### 8.1 Purpose

Personal information protection legislation exists to protect the privacy of individuals by providing for the fair collection and handling in government of personal information and a right of access to, and amendment of personal information in the government's possession.

In some jurisdictions, information access and personal information protection laws were introduced at the same time 'to promote easy and improved access to public sector information while simultaneously protecting personal information'.<sup>19</sup>

The RTI Act and the PIP Act are intended to act in tandem and should be considered so by relevant officers to ensure information in government possession and the access of it by the public is managed effectively with respect to both Act's objects. However, as will be considered later in the paper, it is not always clear how to meet the requirements of both Acts and deliver the best outcomes to applicants.

### 8.2 Existing process

Importantly, there are four key agencies who receive large amounts of requests for personal information (DoJ, DECYP, DPFEM, and DoH).. The RTI Uplift Project team acknowledges that these agencies have different experiences with the PIP Act compared to others and that these experiences are important for any reform in this space.

Each Tasmanian State Service agency is responsible for managing its obligations under the *Personal Information Protection Act 2004* (PIP Act) as a custodian of personal information.

One of the principles under the PIP Act is that people have a right to access their personal information.<sup>20</sup> However, the process for complying with this principle is inconsistent across the state agencies. Some agencies (DoH, DECYP) have dedicated forms that members of the public can fill out to apply for information (Appendix 4). These forms do not have an associated application fee. These two departments are also two of the few which report on how many requests for personal information were made under the PIP Act each year in their Annual Report.<sup>21</sup>

Other agencies (NRE Tas, DoJ, Treasury, and DPAC) only have information about the RTI Act on their websites and statements that personal information can be requested by contacting the agency. However, Treasury and Justice fail to provide contact information to inform potential applicants where they can send a request for personal information to, and all of these agencies fail to provide advice on how applicants should word their request.

DSG's webpage on personal information protection focusses primarily on how personal information is or is not collected when people use their website and provides no information about the protection principles, or how someone can seek to amend or request their personal information.

DPFEM has no information about the PIP Act or how community members can access their personal information on their various websites other than a brief statement that personal

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<sup>19</sup> C Fenton, Strategic Review of the Office of the Information Commissioner, 2017.

<sup>20</sup> *Personal Information Protection Act 2004* sch 1 s 6(1)(a).

<sup>21</sup> This is not a statutory requirement.

information will be managed in accordance with the PIP Act located at the bottom of their information page on [Police History Record Checks](#).

All agencies have statements in their RTI application forms about providing proof of identity if seeking to access personal information. DoH and DPFEM application forms follow this statement up with advice that personal information can be accessed by request to the agency but fail to advise the applicant that this request does not need to be in the form of an RTI application in the first instance, and that it will not have an associated fee.

The effect of this is that most people who are seeking to access their personal information may be misled into making an RTI request and paying the associated fee in the first instance, when the PIP Act stipulates that people have a right to access their personal information upon request to a personal information custodian and it does not impose a charge for information like the RTI Act does.<sup>22</sup> Section 17 of the PIP Act also explicitly provides that a personal information custodian must comply with the personal information protection principles.

It is possible that officers, particularly those in agencies which do not typically receive applications for personal information, do not understand their obligations under the PIP Act and the requirement to provide personal information separate from the RTI Act unless it becomes necessary to perform an assessed disclosure. This is supported by the fact that 5 out of 8 agencies surveyed reported that staff do not receive training on the PIP Act, and one agency reporting that RTI delegates in their agency are not familiar with the PIP Act. Additionally, one respondent reported that they do not consider personal information for release separately to the RTI Act in the first instance.

How each agency manages a complaint made under the PIP Act is also not subject to a consistent whole-of-government approach and the PIP Act provides little guidance to assist agencies when one is made.

Internal agency personal information protection policies simply reiterate information contained in the PIP Act with limited elaboration on how the Act actually applies to staff. Most agencies do not receive many, if any, complaints under the PIP Act and some officers may not know that a personal information protection policy even exists as a result.

Generally, there is limited guidance for how personal information should be managed across the State Service.

**Key observations:**

- 10. The PIP Act and the RTI Act are intended to act in tandem to provide access to personal information as easily as possible while still ensuring relevant sensitivities are taken into account in the provision of information to the public.**
- 11. The interaction between the RTI Act and the PIP Act is not entirely clear.**
- 12. Without a clear distinction in the application process for RTI vs PIP Act requests, people who are seeking to access their personal information may mistakenly make an RTI request and pay the associated fee, rather than having this information free to them under the PIP Act.**

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<sup>22</sup> *Personal Information Protection Act 2004* sch 1 s 6(1).

***13. There is inconsistency in how agencies report on PIP requests.***

***14. Delegated RTI officers are largely not given any training in handling PIP requests despite the fact that they are the officers most likely to receive personal information requests.***

## 9. Issues for consideration

While the RTI Act and other similar legislation in other jurisdictions is intended to increase public trust through disclosure, culture and practice towards these Acts have constrained their effectiveness in achieving this intent. The 2008 Solomon Report into Queensland accountability noted that:

*History in Queensland, as in many other jurisdictions, has proven unambiguously that there is little point legislating for access to information if there is no ongoing political will to support its effects. The corresponding public sector cultural responses in administration of FOI inevitably move to crush the original promise of open government and, with it, accountability.*<sup>23</sup>

More recently, the Australia Institute's report into Australia's Freedom of Information system noted that:

*FOI decisions cost twice as much as they used to, three in ten FOI decisions are late and, when reviewed, one in two turns out to be wrong. A review of Australia's FOI system and culture is urgently needed.*<sup>24</sup>

There have been many calls for reform to Tasmania's information access regime over the last decade, with several significant calls for change occurring over the 2023-24 financial year. A summary of some these are included below.

<p><b>House of Assembly Standing Committee on Community Development Inquiry</b></p>	<p>The Committee released its final report in 2013 which made 18 recommendations relating to the proposed amendments in the <i>Right to Information Amendment Bill 2011</i>, the interrelationships of the information management legislation, and consistency of information management practice.</p>
<p><b>Commission of Inquiry Final Report</b></p>	<p>The Commission of Inquiry made 2 recommendations relating to information access. 19.7 requires the Tasmanian Government to review confidentiality and secrecy provisions (incl. the PIP Act) to remove barriers to sharing information. This is due by July 2029. 17.8 requires a review and reform of the operation of the RTI Act and PIP Act to ensure simple and efficient access to information. This recommendation also asks the government to consider centralising RTI.</p>
	<p>The Tasmanian Law Reform Institute's report into privacy laws in Tasmania makes 62 recommendations. Many of these relate</p>

<sup>23</sup> David Solomon, *'The Right to Information'*, State of Queensland, 2008, 2.

<sup>24</sup> Bill Browne - the Australia Institute, 'Noting to see here: Australia's broken freedom of information system' (Discussion Paper, March 2023) 1.

<b>Review of Privacy Laws in Tasmania</b>	to suggested amendments to the PIP Act and operational guidance on how it should be applied. Other recommendations relate to things such as increasing the resources of the Ombudsman’s office and introducing new offences or other privacy regulation (such as surveillance legislation).
<b>Confidence and Stability Agreement</b>	The Jacquie Lambie Network reached a confidence and stability agreement with the Premier in April 2024. Clause 6(II) of the agreement requires a review of RTI legislation (including public interest disclosure laws) and resourcing of the Ombudsman with the goal of increasing transparency and accountability of public administration across the State.
<b>An investigation into the management of a right to information request in the Department of Health</b>	The Integrity Commission undertook an investigation into potential misconduct in DoH following a complaint received. The resulting report included 3 recommendations. Two of these were specific actions for DoH to take which have been completed. The other recommendation asked the Ombudsman to consider whether educational or other measures are needed to address the risk of RTI decisions being considered by ‘panels’ of people other than the decision maker.
<b>Misconduct risks in Tasmania’s right to information regime</b>	The Integrity Commission authored a research paper examining the improper exercise of powers and functions in RTI following a complaint made about an RTI delegate’s conduct and a subsequent investigation. The research report includes 5 recommendations relating to RTI resourcing, routine disclosure of RTI delegate information, restricting communications about RTI, and restrictions on delegates ‘double-handling’ matters.

Below are some of the key issues identified through this desktop analysis as affecting the effectiveness and consistency of RTI decision making.

### 9.1 Resourcing

The number of delegates who regularly perform RTI assessments has not increased over the last three years despite the fact that the number of applications received over that time has increased by 191 per cent.

7 out of 8 departmental responses provided to the question, ‘what, if any, are the biggest challenges facing your RTI team right now’ reference under resourcing or being overwhelmed by the volume of applications.

It is clear that most current delegates see under resourcing as the primary issue affecting the performance of RTI.

Additionally, the current RTI structure of having each agency treated as a separate entity that must be applied to directly under the RTI Act creates issues of unnecessary double handling of applications which are lodged with the wrong public authority or Minister. While the work involved with transferring an application is minimal, when resources are already limited, this work creates added difficulty. There were 123 transfers between government departments and Minister's offices in the last financial year.

This resourcing issues doesn't just affect the ability to complete assessed disclosure on time and with adequate engagement with the applicant, but it also limits the identification of new information for routine disclosure. Because routine disclosure is not required under legislation, it will inevitably be made a lower priority than work which does have mandatory deadlines.

Specific recommendations about increasing resourcing in the Ombudsman's office and/or departments have been raised by the House of Assembly Standing Committee on Community Development, the Commission of Inquiry, The Tasmanian Law Reform Institute, and the Integrity Commission.

## **9.2 Information Management**

RTI delegates sometimes experience great difficulty accessing requested information due to the different systems across the Tasmanian State Service where relevant records may be located.

This is particularly relevant for agencies that deal with historical requests where information may be held in legacy systems or kept in paper records that require the delegate to inspect each record.

## **9.3 Inconsistent processes**

There are many points in the RTI application process where agencies have discretion in how they internally handle a request and deal with the applicant. While some discretion is needed to ensure agencies can flexibly adapt to issues that present in specific circumstances, the lack of a consistent internal policy across the TSS causes an inconsistent and potentially confusing experience for applicants.

Some of the key differences noted through responses provided in the business process survey are:

- The timeframe for providing an initial acknowledgement to an applicant ranges from within hours to five working days across agencies, with one agency reporting that they do not provide an acknowledgement.
- The process for requesting a search for information varies significantly across agencies with some making the request at SES level and some making it at officer level. The timeframe provided to divisions to search for information also varies from 5 days in some agencies to ten days in others. This creates an inconsistent experience for state servant officers who may need to compile information for different agencies at different points in their career.
- The award level of delegates ranges from band 4 up to SES 4, with those different levels attracting substantially different expectations regarding focus,

expertise, interpersonal skills, judgement, influence of outcomes, and responsibility for outcomes.<sup>25</sup>

- Most agencies have access to letter templates to assist with corresponding with an applicant. Two agencies reported not having access to the templates. There is also no consistency in the language and presentation of letters provided from different agencies.
- There is substantial difference in each agency's notification process.
- Despite a clear policy in all agencies that decisions in the public interest should be published on the disclosure log within 48 hours of being released to the applicant, this process is not consistently followed. Three agencies reported that this is currently not happening.
- How information is prepared before it is released to the applicant and published on the disclosure log differs in each agency. Some agencies put watermarks across the information, some simply keep information in the same form as what is provided to the applicant.
- Most agencies reported that they do not regularly review matters that are with the Ombudsman's office to see whether they can be resolved. However, some reported that they did.

Recommendations about increasing consistency between public authorities have been raised by the House of Assembly Standing Committee on Community Development and the Integrity Commission.

## 9.4 Culture

### i. Releasing information

Once a request for information is received, the RTI Act requires that a public authority should first consider whether the information can be actively disclosed.<sup>26</sup>

The PIP Act also requires that if a person is requesting personal information, a public authority must first decide whether the information can be provided to the individual without the application of any tests or exemptions before the request can be treated as a request for assessed disclosure under the RTI Act.<sup>27</sup> Only after the individual has been notified of a decision to refuse the request, or after 20 working days have transpired without a response being provided, should the public authority treat the request as a request for assessed disclosure under the RTI Act following the submission of a further request from the applicant.<sup>28</sup>

However, due to what can only be speculated as some officers' unfamiliarity with the requirements of the RTI Act and the PIP Act, a lack of confidence in applying a less prescriptive method, and/or a perceived conflict between an officer's duty to serve the government of the day and the less regulated release of the government of the day's information, some officers tend to treat assessed disclosure under the RTI Act as the preferred or correct way of processing requests for information.

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<sup>25</sup> Noting that most RTI delegates perform their RTI function in addition to their role's core work and the classification is associated with that role.

<sup>26</sup> *Right to Information Act 2009* s 12.

<sup>27</sup> *Personal Information Protection Act 2004* s 6.

<sup>28</sup> *Ibid.*

Several responses to the surveys indicated that RTI performance in agencies was being affected by some resistance to releasing information outside of the assessed disclosure process.

In addition to cultural forces impacting the occurrence of active disclosure, the amount of information routinely disclosed has not greatly increased over the last two years and it seems as though identifying information for routine disclosure is not a priority for Senior Executive Service staff.

These responses are consistent with the criticisms of other jurisdictions' practice. Bill Browne noted for the Australia Institute that the ultimate problems with Australia's FOI system are cultural and that a review into public service culture is needed.<sup>29</sup>

## **ii. Assisting with the RTI process**

In addition to a culture against proactive disclosure of information perpetuated by a minority of staff, there is also a general lack of appreciation for the significance and statutory timeframes of RTI. Searching officers consistently fail to meet deadlines for providing information to RTI delegates, as demonstrated in responses provided to the surveys.

It is likely that this is because RTI is not considered a priority and represents a competing priority. A cultural shift needs to occur from the top down for RTI to be considered a priority. While principal officers are generally acutely aware of the priority that RTI presents for the community, it is likely that this is not filtering down to managers, and accordingly not being reflected in their expectations for staff.

This cultural shift should be achieved in part by having senior officers within agencies supporting the negotiation of core work deadlines to facilitate an officer to assist with an RTI request. This should also be achieved in part by ensuring staff are adequately trained on responding to an RTI request so that they know to advise RTI officers as soon as possible if they are not going to be able to provide information or advice in time for the statutory deadline to be met.

It is acknowledged that sometimes core work will understandably prevent officers from actioning an RTI request within the necessary timeframe. In these situations, there are ways for officers to work with RTI delegates to negotiate an extension with the applicant. Problems arise when officers fail to turn their attention to an RTI matter because they are preoccupied with core work and unsupported to turn their consideration to RTI matters.

The RTI Uplift Project will not seek to dictate to officers that they should always prioritise RTI over core work, but it will seek to empower officers to work with their managers to determine how to prioritise RTI amongst their core work in consultation with the RTI delegate.

## **9.5 Public perception**

The cultural perception of RTI in the Tasmanian community is highly critical and degrading of the work RTI delegates do. One respondent to the survey noted:

*Constant public criticism that delegates are lazy, incompetent, or corrupt is very demoralising when those delegates are doing their best to make good decisions in line with the Act. It is also apt to deter people from wanting to be delegates. Applicants with a specific political agenda, where we know that it will not matter what*

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<sup>29</sup> Bill Browne - the Australia Institute, 'Noting to see here: Australia's broken freedom of information system' (Discussion Paper, March 2023) 2.

*response is provided, it will not affect what those applicants say publicly, up to misrepresenting the decision and/or information, or even lying. It is disheartening to hear criticism about 'lack of transparency' when for those of us who have worked in this space since before the current government know that nothing has changed in terms of how assessed disclosure is handled, including how information is assessed.*

Out of all 1320 applications determined by government departments in the 2021-22 financial year, only 28 decisions resulted in an internal review request, and only 30 decisions were referred to the Ombudsman for external review. This means that only approximately 2 per cent of applicants were dissatisfied with the decision they received.

Additionally, out of all the departmental and Ministerial applications determined in the last financial year, less than 20 per cent were not determined within a timeframe permitted under the Act. This is despite a 47 per cent increase in applications received by departments and Ministers since the 2020-21 financial year and no corresponding increase in staff resources.

These objective measures suggest that RTI delegates across the TSS are working to release as much information as possible to the community, as quickly as possible, despite an ever-increasing workload. However, public discussion around RTI never seems to acknowledge this.

Without addressing this public perception, finding suitably skilled people to be delegated the powers and functions under the RTI Act will become increasingly harder.

## **9.6 Community interface**

There is currently limited consistency in how each State Service agency engages with the public for the purposes of Right to Information.

If a community member seeks to access government information through the RTI process, they must navigate to each agency's relevant webpage. These webpages are all titled differently and contain different information.

They must then fill out an application form. The application forms for each agency are contained at Appendix 4. While the forms largely capture the same information in substance, they all differ slightly or significantly in form.

Once the form has been filled out, it must be sent to the relevant agency. As the agencies do not have consistent email addresses, this creates a minor inconvenience of figuring out what address to send the application to which could be easily avoided.

Once information responsive to an RTI request has been published, the experience for the public in accessing that information is inconsistent due to different disclosure log layouts and different alterations made to documents before they are published (i.e. putting a watermark across the page).

Engagement with external stakeholders should identify what information the community wants and needs, and then a recommendation should be made to agencies to amend their website content in accordance with that feedback.

## **9.7 Delegated officers**

The process for determining that a person has the skills and knowledge required to perform the functions and powers under the RTI Act varies. Some agencies require qualifications in law, some assess the person through the recruitment process, others require the person to

demonstrate on the job skills. One respondent highlighted the inconsistency by stating, 'it is not a well understood or consistently applied test'.

Ministerial delegations are only provided to senior (SES) officers in three agencies. Other agencies report no meaningful difference in how they determine who should be granted a delegation from a Minister as opposed to a principal officer. Notably, the RTI Act does not grant any extra functions or powers to a Minister as opposed to a Principal Officer, and accordingly does not require any difference in skill and knowledge for a delegation to be made.

There is no formal or consistent training provided to delegates. All agencies report that training is provided on the job by a more experienced RTI delegate. This creates a high risk where staff turnover may result in no suitably experienced delegates able to provide training or guidance.

There is no consistent policy on how many delegated RTI officers an agency should have based on the average amount of RTI applications received by that agency.

There is also no consistent approach to where delegated RTI officers should sit within an agency, and whether they should perform RTI functions fulltime or as one part of their duties.

Without a consistent approach to how people are identified as delegated officers, the risk of delegates making inconsistent decisions due to skill gaps is increased.

## **9.8 Training options**

Currently, there is limited formal training available for Right to Information delegates other than sessions run by the Tasmanian Training Consortium or Crown Law with facilitation from the Ombudsman, Solicitor-General or other suitably qualified people. These sessions are delivered at random and infrequent intervals due to resource constraints for training providers. The content of these sessions is usually centred around providing an overview of the RTI Act and its operation and they do not provide much guidance to RTI delegates on how to perform their duties.

The RTI working group is seeking to have the Ombudsman deliver further training sessions but there is acknowledgement that this can only be asked of the Ombudsman's office after it has made significant progress on its historic external review backlog.

Typically, new RTI delegates are provided training from current RTI delegates. This training is not standardised and is highly dependent on the particularities of each agency's RTI approach and indeed the skills of the teaching officer. The current lack of formal training and the need for additional training was highlighted by respondents throughout the surveys.

One case study of a new starter in an RTI team at an agency revealed the insufficiency of current RTI delegate onboarding.

### Case study

This employee commenced in the team with another new employee soon after the departure of the current RTI delegates. Upon starting, the onus was on that employee to find the appropriate resources (information disclosure and assessed disclosure policies, Ombudsman resources) to familiarise themselves with how assessed disclosure was to be undertaken while they interpreted the RTI Act.

There were existing RTI delegates in the department who were not based in the RTI team, but who had delegations for the purpose of meeting surge capacity requirements who were able to provide limited guidance on how assessed disclosure is traditionally performed in the department. However, due to these staff member's competing priorities, their capacity to provide support to the new starters was significantly diminished.

While the employee was able to attend two training sessions shortly after starting that were facilitated by the then Solicitor-General and the Ombudsman, and the former Australian Information Commissioner John McMillan respectively, these sessions were targeted at individuals who already had a familiarity with the provisions of the RTI Act and provided little assistance to those who were just starting as a delegate.

The employee resultingly felt high levels of insecurity in their decision making under the RTI Act, and this led to that employee needing additional time to learn before they were provided a delegation under the RTI Act.

Additionally, as the type of information held by each agency varies depending on the scope of their work, this also leads to a situation where RTI delegates across the State Service may have different familiarity with the provisions of the RTI Act. Some delegates may be regularly applying an exemption that a delegated officer in another agency has never turned their mind to. This may mean that all RTI delegates do not have the same foundational understanding of the RTI Act provisions when making assessments on information.

The Ombudsman's office is always available to RTI delegates to provide advice via phone or email, though they cannot provide specific advice due to their role under the RTI Act. However, this advice is not circulated broadly unless the Ombudsman's office chooses to include it in its regular newsletters, or the person seeking the advice shares it proactively.

In addition to there being insufficient training for RTI delegates, there is minimal training for other staff who play a critical role in the success of RTI requests. Most agencies reported that they provide training to staff about the RTI Act upon request, but there is no standard resource that staff can turn to when asked to perform a search in response to an RTI request or note a decision. As the majority of respondents identified that delays or other issues in being provided information are one of the biggest barriers to success, this indicates that more needs to be done to improve familiarity with the RTI Act across the whole of the TSS.

The need for more training and guidance was raised by the House of Assembly Standing Committee on Community Development, the Commission of Inquiry, the Tasmanian Law Reform Institute, and the Integrity Commission.

## 9.9 External review

There are longstanding external review cases sitting with the Ombudsman's office. This is a significant issue for government transparency as agency decisions are not being reviewed in a timely manner, and applicants are getting information which the Ombudsman determines they are entitled to several years after they originally made the request.

One respondent specifically mentioned the delay in external review processes when asked about improvements to the RTI process. This respondent said, '[an] issue is the delay in finalising external reviews, which often means that applicants have to wait years (as opposed to months) before they can access information'.

Most respondents indicated that they do not regularly perform reviews of decisions that are subject to an external review. This means that applicants who have requested a review will go years without resolving the matter, even though the original decision may not necessarily apply given the lapse of time (for example, where the exemption was due to a current investigation or court process being undertaken).

## 9.10 Personal information protection

Generally, there is no clear direction for officers within agencies on how requests for personal information should be handled and it is highly likely that the protection principles espoused in the PIP Act are not being strictly complied with as a result.

Even though the PIP Act and the RTI Act are intended to operate together, often requests for personal information end up with RTI delegates to action and the delegate is likely to defer to the RTI Act if there is any ambiguity or sensitivity with the application. Since the Royal Commission into Institutional Responses to Child Sexual Abuse, and the Tasmanian Commission of Inquiry, some agencies have seen an increase in the number of victim-survivors seeking their own personal information spanning decades, as well as information of family members.

Agencies who experience high volumes of requests for personal information report that it is often impossible to handle these requests as a purely personal information request due to sensitivities in the information or third-party information being included in the records.

One respondent from an agency which receives a high volume of requests for personal information also noted that there are 'statutory confidentiality provisions' which prevent the disclosure of some personal information, which makes it impossible to meet the PIP principles of granting access to personal information. Generally, the utility of the PIP Act is limited by the requirement in section 4 that other legislation should prevail when inconsistencies are encountered.

In addition to other statutes which dictate what personal information can and cannot be disclosed, parts of the PIP Act are duplicated in the RTI Act,<sup>30</sup> and the RTI Act creates its own obligations where personal information is concerned. The quagmire of legislative requirements around personal information creates a confusing statutory environment for delegated officers to navigate, and where there is ambiguity in which process to follow, officers are likely to revert to the process that they are most familiar with, and which has the most statutory rigour.

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<sup>30</sup> See *Right to Information Act 2009* s 18(5) and *Personal Information Protection Act 2004* s 3B for example.

One delegate from an agency that often deals with requests for victim-survivor information drew a distinction between applications which have a subject matter that is in the public interest and applications which are for a personal purpose and suggested that these applications should be subject to different processes.

The complex interrelationships between information management legislation were noted by the House of Assembly Standing Committee on Community Development, the Commission of Inquiry, and the Tasmanian Law Reform Institute.

**Key observations:**

- 15. RTI teams are experiencing inadequate right to information delegate staffing despite significant increases in applications made.**
- 16. There is little consistency in the internal processes for handling RTI requests between agencies which leads to an inconsistent experience for applicants.**
- 17. RTI delegates, and by extension public authorities, ability to advance the object of the Right to Information Act 2009 are limited by proactive disclosure not being used as the primary method for releasing information.**
- 18. There is a negative public perception of the work undertaken by right to information delegates which reduces staff morale.**
- 19. There is a lack of a formal or consistent process for determining when a person has the requisite skills and knowledge to be delegated powers and functions under the Right to Information Act 2009.**
- 20. The community interfaces to RTI on agency websites contain different amounts and types of information which may make accessing RTI services harder for applicants.**
- 21. Limited training is provided to new RTI delegates, and this current training is primarily reliant on the existence of current skilled delegates within an agency and is potentially restrained by the subject matter of the agency's work.**
- 22. RTI performance is negatively impacted by the time taken for external reviews to be completed and a lack of mechanisms for agencies to resolve longstanding matters outside of the formal review process.**
- 23. It is difficult to handle requests for personal information due to confusing and contradictory statutory mechanisms.**

## 10. Key observations

1. *The purpose of the RTI Act is to proactively disclose information as much as possible, and use assessed disclosure only as a method of last resort. However, in practice, assessed disclosure is used as the default method.*
2. *While the RTI Act provides some guidance on processes itself and stipulates the creation and maintenance of guidelines and policies for the disclosure of information, discretion is still afforded in managing requests for information and this can result in an inconsistent experience for applicants.*
3. *Public authorities and Ministers may delegate their functions under the RTI Act to people they believe have the requisite skills and knowledge.*
4. *The number and constitution of delegated officers in each agency differs substantially.*
5. *There is no formal policy for what skills or knowledge a person is required to exhibit before they can be considered fit for a delegation by a principal officer or Minister.*
6. *A number of state jurisdictions maintain central information access portals with online application forms and payment systems. States and territories have a focus on encouragement to make informal requests for information prior to lodging an application.*
7. *Disclosure log practice varies across state jurisdictions - for example, the timing for the release of information ranges from 48 hours in Tasmania to 90 days in South Australia.*
8. *Internationally, practice standards that warrant further consideration in the Tasmanian context, include:*
  - *Public access is generally centralised through a whole-of-Government portal.*
  - *Potential applicants are encouraged to first seek information informally.*
  - *Lodging of applications and fee payment is increasingly available online.*
9. *Departments currently routinely disclose several data sets that are in the public interest*
10. *Disclosure logs, along with routine disclosures are generally consolidated in one location, along with search facilities of varying complexity.*
11. *The PIP Act and the RTI Act are intended to act in tandem to provide access to personal information as easily as possible while still ensuring relevant sensitivities are taken into account in the provision of information to the public.*

- 12. The interaction between the RTI Act and the PIP Act is not entirely clear.**
- 13. Without a clear distinction in the application process for RTI vs PIP Act requests, people who are seeking to access their personal information may mistakenly make an RTI request and pay the associated fee, rather than having this information free to them under the PIP Act.**
- 14. There is inconsistency in how agencies report on PIP requests.**
- 15. Delegated RTI officers are largely not given any training in handling PIP requests despite the fact that they are the officers most likely to receive personal information requests.**
- 16. RTI teams are experiencing inadequate right to information delegate staffing despite significant increases in applications made.**
- 17. There is little consistency in the internal processes for handling RTI requests between agencies which leads to an inconsistent experience for applicants.**
- 18. RTI delegates, and by extension public authorities, ability to advance the object of the Right to Information Act 2009 are limited by proactive disclosure not being used as the primary method for releasing information.**
- 19. There is a negative public perception of the work undertaken by right to information delegates which reduces staff morale.**
- 20. There is a lack of a formal or consistent process for determining when a person has the requisite skills and knowledge to be delegated powers and functions under the Right to Information Act 2009.**
- 21. The community interfaces to RTI on agency websites contain different amounts and types of information which may make accessing RTI services harder for applicants.**
- 22. Limited training is provided to new RTI delegates, and this current training is primarily reliant on the existence of current skilled delegates within an agency and is potentially restrained by the subject matter of the agency's work.**
- 23. RTI performance is negatively impacted by the time taken for external reviews to be completed and a lack of mechanisms for agencies to resolve longstanding matters outside of the formal review process.**
- 24. It is difficult to handle requests for personal information due to confusing and contradictory statutory mechanisms.**

## Proposed solutions

### 10.1 Resourcing

Making structural change is beyond the scope of the RTI Uplift Project due to the time and budget constraints of the project. It is also recognised that until an efficient system is embedded, additional resources may only constitute a 'band aid fix'.

However, in acknowledgement of the difficulty currently experienced by RTI teams due to resourcing, the project team will draw attention to the current insufficiency of resources and recommend that increases to resourcing be considered at the earliest possible opportunity when communicating with relevant internal stakeholders throughout the project.

Some delegates have expressed frustration over the differing levels of delegated officers primarily performing RTI assessments across agencies in respect of the number of applications received. It is important that resourcing recommendations recognise the difference in RTI workload between agencies and provide adequate officers to address the substantial number of requests received by certain agencies.

Recommendation 17.8 of the Commission of Inquiry's final report requires the Tasmanian Government to 'provide funding to government departments, agencies and the Ombudsman, as the case may be, to:

- a. ensure access to information requests are processed within statutory timeframes
- b. speed up external review of right to information decisions
- c. provide trauma-informed training to the Tasmanian State Service in relation to victim-survivor access to information (Recommendation 19.2).'

The Government has committed to implementing all recommendations made by the Commission of Inquiry and this implementation will happen separately to the RTI Uplift Project.

### 10.2 Standard policy and processes

The way that RTI requests are managed should be standardised. A model policy document which prescribes one standard process for handling RTI requests with limited flexibility for discretion as needed should be drafted in collaboration with other agencies and with consideration given to issues raised by applicants.

This model should then be adopted by each agency to meet their obligations under section 23 of the RTI Act.

While the assessments each delegate makes should remain discretionary, taking into account the provisions of the RTI Act and the decisions of the Ombudsman, the policy should regulate the more procedural aspects of RTI. The policy should provide a standard process for all agencies for the following matters:

- The timeframe, wording, and process for providing an acknowledgement to applications.
- The process for requesting a search of records.
- A preferred minimum award level required for delegates.
- The notification process.

- The preparation of documents for release to applicants and publication on the disclosure log.
- The regular review of decisions that are subject to external review.

### **10.3 Culture**

Agencies should consider whether information can and/or should be actively released as part of the initial assessment of an RTI request prior to its acceptance. Section 13(3) of the Act explicitly provides that assessed disclosure is a method of last resort. The assumption within agencies and Minister's offices that assessed disclosure must be used simply because the request for information was framed as a request for assessed disclosure should be actively challenged.

RTI should be client focussed and put giving members of the community access to the information they seek in the most convenient and fast way possible at the forefront. In some circumstances, this can be achieved by choosing to actively release information as opposed to triggering the application of exemption provisions by going through the assessed disclosure process.

More training should be provided to officers to assist them to understand the 'push model' concept and facilitate more proactive release of information.

### **10.4 Public perception**

The project team will use consultation with external stakeholders as an opportunity to promote the work of RTI delegates and their commitment to compliance with the RTI Act.

The project team will also promote the broader State Service's commitment to improving right to information services as evident by the project's existence and the significant engagement with the project demonstrated already.

### **10.5 Community interface**

While centralised systems changes are beyond the scope of the project due to budget and time constraints, interjurisdictional analysis demonstrates that central lodgement may be the best practice for providing applicants with ease of service.

Recommendation 17.8 of the Commission of Inquiry's final report requires the Tasmanian Government to consider centralising management of access to information processes in a specialist unit or department, supported by access to information liaison officers located in government departments and agencies. Accordingly, this will not be further considered through this project but instead through the implementation of the Commission of Inquiry recommendations.

### **10.6 Delegated officers**

The model RTI policy will provide guidance to agencies on how to determine whether an officer has the requisite skills and knowledge to be delegated powers under the RTI Act.

It will make clear that there is no difference between the skills and knowledge required for obtaining a Ministerial delegation as opposed to a Principal Officer delegation as both entities have substantially the same powers and functions under the Act.

It will consider providing a recommend minimum award level an officer should be to independently perform RTI assessments, in consultation with agencies, and require that where an officer of a lower band is determined to have the required skills and knowledge, their work must be assessed by a higher award level delegate.

## 10.7 Training

A consistent training resource should be developed for incoming RTI delegates to ensure all delegates are receiving the same foundational training regardless of which agency they sit in.

An initial training resource is needed to protect against situations where training may be insufficient due to staff turnover under the current process of relying on supervision and guidance from existing delegates. This training resource will also combat single-point dependencies by ensuring all RTI delegates are familiar with *all* provisions under the RTI Act, rather than having significant experience with the ones that regularly come up based on the subject matter of that agency's core business, and relative unfamiliarity with the exemptions that do not come up.

It is envisaged that this resource will be in the form of a digital resource, either a training video or an interactive module.

This training should be completed as a prerequisite to being delegated functions and powers under the RTI Act. While this is a minimum requirement, principal officers and Ministers should retain the right to assess a person's ability through demonstrated work before a delegation is provided. The standardised policy should provide some guidance on what behaviours, qualifications and expertise should be demonstrated before a delegation can be provided. This should be determined in consultation with all agencies.

The training resource will be divided into separate modules to ensure that delegates can easily access teachings on specific exemptions as they need them, and to ensure that delegates use their time efficiently by not learning about exemptions that will never be needed (such as the exemption for closed council meetings for example).

In addition to the digital resource, frequent training sessions should be conducted for all current RTI delegates to brush up on their skills. This training should be run by a suitably qualified person such as the Ombudsman or an otherwise highly experienced RTI officer. This training can cover the basics of RTI but should predominantly inform delegates of new developments in the RTI space, such as salient points from recent Ombudsman decisions.

Where a delegate has received advice on a matter from the Ombudsman's office, this advice should be provided to all other delegates in a timely fashion.

Training should also be provided to divisional and business unit managers on how the RTI Act works, what it seeks to achieve, why this goal is so important, and what their responsibilities are when compiling information. There is currently a significant lack of knowledge in state service officers of how the RTI process works and what it means when they are assigned an RTI request to action. RTI delegates are well placed to provide this training, but this additional load could be removed from delegates by having a resource that could be provided to officers at the time a request is provided. It may also address responsiveness issues identified in the Minister's offices to have this resource deployed to them when requests for Minister's office information are received.

It would also be greatly appreciated if the Ombudsman's office published more guides and updated their current advice and guidance in accordance with their obligations under section 49 of the RTI Act.

## **10.8 External review**

Agencies should take more proactive action to address the backlog of external reviews.

As agency approaches to RTI assessments are constantly evolving through incorporating Ombudsman feedback, agencies may find that the decisions made by them in the past are different to how decisions are made today.

Additionally, some exemptions may only be relevant contemporaneously. For example, section 30(1)(a) exempts information which would be reasonable likely to prejudice an investigation, the enforcement or proper administration of the law in a particular instance, the fair trial of a person, or the impartial adjudication of a particular case. The circumstances referenced in this section may only apply for a limited time. Accordingly, if an exemption was applied because there was a risk in releasing the information at the time, it should be reviewed to see if that is still the case.

As a result of the above factors, it is likely that some decisions sitting with the Ombudsman's office for external review do not reflect the current, best practice of that agency's RTI team today.

Accordingly, RTI officers should review decisions subject to external review where information was exempted every twelve months after the external review was requested to determine whether they still assess the information as being exempt.

## **10.9 Personal information protection**

While beyond the scope of the RTI Uplift Project, a legislative review of the statutory mechanisms regulating the disclosure of personal information is recommended.

Reforms for information management legislation have been committed to by the Tasmanian Government in response to the Commission of Inquiry and the Confidence and Stability Agreement with the Jacquie Lambie Network. Accordingly, no further recommendations will be through this project.

## Proposed solutions table

Table 7: summary of proposed solutions to issues identified

Topic	Issue identified	Proposed solution	Key Observations
Inconsistent process	Internal processes for managing RTI requests differ substantially, creating an inconsistent experience for applicants.	<p>A model RTI policy will be produced which prescribes consistent internal processes for handling RTI applications.</p> <p>The processes included in the policy will be developed in consultation with agencies to ensure processes are creating efficiencies and not burdening agencies.</p> <p>The model policy will ensure that discretion to deal with agency specific and unusual circumstances as they arise is retained.</p>	2, 7, 9, 10, 14, 17, 23
Delegated officers	<p>There is no formal or standard process for determining that a person has the requisite skills and knowledge to undertake the powers and functions of the RTI Act.</p> <p>Delegations are provided to people on substantially different award levels.</p> <p>There are also differences in how delegations are managed for principal officers as opposed to Ministers between agencies.</p>	The model RTI policy will establish a best practice for delegating the powers and functions under the RTI Act.	3, 4, 5, 20
External review	The Ombudsman's office has a significant backlog of external reviews to undertake, and agencies could be doing more to engage with applicants to resolve these matters sooner.	The model policy will recommend regular reviews of matters that are subject to external review.	23
Training	There is no formal and consistent training available to new RTI delegates, with current training relying primarily on the passing of knowledge between existing delegates to new delegates. This poses a succession risk, particularly in agencies with smaller numbers of RTI delegates.	<p>A suite of training resources will be developed for all officers involved in actioning an RTI request.</p> <p>The delegate focussed training will cover the entirety of the RTI Act to reduce single point dependencies.</p>	15, 22

Topic	Issue identified	Proposed solution	Key Observations
	As different agencies tend to be subject to the same exemptions and not others, this also creates single point dependencies.		
Culture	<p>The successful performance of RTI is impacted by some officers who maintain an attitude against disclosing information and others who view assessed disclosure as the default method despite the RTI Act requiring that this not be the case.</p> <p>RTI appears to often not be treated as a priority by officers involved in actioning an RTI request even when the officer's core work would not be unreasonably affected by prioritising RTI. Alternatively, necessary negotiations are not being undertaken with the RTI delegate and applicant at the earliest opportunity to ensure statutory compliance when an RTI request does present an unreasonable imposition on core business.</p>	Training resources for non RTI experts will be developed which emphasise the importance of proactively releasing information to assist with government accountability.	1, 2, 18
Public perception	Some information sources promote negative publicity about the performance of the Tasmanian State Service's right to information service. This reduces RTI delegate morale and may impact the attractiveness of RTI positions.	The project will use external stakeholder engagement as a means to promote the successful work of RTI delegates, inform of the challenges RTI delegates face, and challenge simplistic readings of annual statistics.	19
Personal information protection	<p>The PIP Act sets out that there should be a clear process between requests for personal information and requests for assessed disclosure under the RTI Act. However, most requests for personal information are handled as RTI requests despite the fact that agencies report considering whether a request can be a PIP request first.</p> <p>Practically, while the PIP Act allows access to personal information without requiring a fee to be paid or minimum information to be provided in a form (as is required for RTI), it is often impossible for this access to be provided due to</p>	This will be addressed through other information access reform work that will be undertaken in response to the Commission of Inquiry.	11, 12, 13, 14, 15, 24

Topic	Issue identified	Proposed solution	Key Observations
	third party information being captured. However, these requests also do not fit well within the RTI process.		
Resourcing	Resourcing is a significant barrier to making timely and correct decisions under the RTI Act. The number of staff available to respond to RTI requests has not kept up with the increase in volume of RTI request over the years.	This will be considered through the response to the Commission of Inquiry.	4, 16
Community interface	<p>The information provided to applicants on agency RTI webpages varies significantly.</p> <p>There is limited consistency in the substance and form of right to information applications.</p>	This will be considered through the response to the Commission of Inquiry.	6, 7, 8, 9, 10, 21

## Conclusion

The Tasmanian right to information framework has been subject to a significant increase in use and scrutiny over the last several years. These increases, in addition to comments made by victim-survivors in the Commission of Inquiry around difficulty accessing government information, both demand and present an opportunity for the Tasmanian State Service's right to information processes be reviewed and improved.

The Right to Information Uplift Project has been established as the next phase of the Tasmanian Government's Transparency Agenda to assist with addressing these concerns, with \$500,000 provided in funding over two financial years to improve RTI processes across the Tasmanian State Service.

Through a survey conducted with the officers who are delegated powers and functions under the *Right to Information Act 2009*, it was identified that the success of right to information in Tasmania is being limited by resourcing issues, inconsistent processes across agencies, a lack of dedicated training for RTI delegates or other officers involved in servicing an RTI request, difficulty in obtaining engagement from other officers involved in the process within necessary timeframes, and attitudes against proactive disclosure that are held by some officers within agencies.

In response to these issues, the RTI Uplift Project aims to introduce more consistent processes for right to information, a dedicated training resource for new delegates and other officers involved in the RTI process and by promoting opportunities for increased disclosure.

The survey also indicated that the long-term success of RTI will depend on future structural changes such as employing more RTI delegates to keep up with the demand on RTI service and looking at how the application lodgement process can be centralised to reduce ambiguity for applicants and double handling of applications lodged with the wrong public authority.

The RTI Uplift Project will introduce measures to improve processes, systems, skills, and behaviours alongside other important reform work that the government is undertaking in the information access space.

# Appendix 1 – Survey results

## Survey 1 Results - Business Processes

**Question 1. Which Tasmanian State Service agencies do you represent? Please provide which department you work in and also advise of any state authorities that your department assists with respect to their obligations under the Right to Information Act 2009 (RTI Act).?**

- Department of Justice, plus boards, tribunal and other public authorities administered by DoJ - e.g Tasmanian Planning Commission - and Ministers to which DoJ report
- Department for Education, Children and Young People
- Department Police Fire Emergency Management
- NRE Tas (employer), the EPA, Tasmanian Dairy Industry Authority
- Department of State Growth. Through SLAs, we provide some RTI support (not decision-making) to TMAG, Tourism Tasmania, and Macquarie Point Development Corporation
- Department of Premier and Cabinet and Brand Tasmania
- Department of Health
- Homes Tasmania
- Department of Treasury and Finance

**Question 2. How many officers within your department are currently delegated the powers and functions of a Minister or principal officer under section 24 of the RTI Act? (Answer reflected in table 1.1 below)**

**Question 3. What Tasmanian State Service Award classification is each delegate within your agency? (Answer reflected in table 1.1 below)**

**Question 4. Of those delegated officers, how many officers regularly (the officer will dedicate time to RTI at least once per week for any amount of time) perform functions under the RTI Act? (Answer reflected in table 1.1 below)**

**Question 5. Do you have a dedicated team and/or team member whose sole responsibility is to perform functions under the RTI Act? (Answer reflected in table 1.1 below)**

*Table 1.1 -Aggregated responses to questions 2, 3 , 4 and 5*

Respondent	Number of delegated RTI officers	Delegate TSS Award classification	Regularly perform RTI functions (per week)	Dedicated RTI Team
1	4	SES Band 8 Band 7 Band 4	1	Yes
2	18	Band 7 Band 8 SES	6	Yes

3	50	Band 4 SES	2	Yes
4	7	Band 7 Band 6	2	Yes
5	8	Band 5 Band 6 Band 7 Band 8 SES	7	No
6	3	Band 6 Band 8	3	No
7	2	Band 6 SES	2	Yes
8	10	Band 4 Band 6 Band 7 Band 8 Band 9 SES	4	No
9	2	Band 8	1	No

**Question 6. How does your agency determine that an officer has demonstrated the requisite skills and knowledge to be delegated functions and powers under the RTI Act?**

- Through work performed in making decisions
- Appropriate senior enough band has a working knowledge of the Act
- It is not a well understood or consistently applied test
- We generally insist that RTI officers have a law degree, and they receive peer to peer training
- Either through a selection process or job performance, the person has demonstrated appropriate analytical and communication skills. Training and guidance provided on job
- Following a period of supervision and training, an assessment is made that an officer demonstrates the requisite skills and knowledge. The period of supervision and training will vary depending on the pre-existing knowledge and skills of the officer (eg law degree etc)
- Desired qualifications in Law, experience with RTI and PIP, continuous training

- Through assessing the experience and knowledge of the officer. If a new officer was recruited, the recruitment process would be used to assess and confirm the requisite skills and knowledge
- A mixture of formal and on the job training (including shadowing of RTI delegates), as well as consideration of the person's educational background and work experience.

**Question 7. Is there a difference in process between how your agency determines who should have a Ministerial delegation as opposed to a principal officer delegation?**

- No
- Slight differences in the process as the Minister does not have visibility of who holds a principal officer delegation
- Only the Secretary holds Ministerial delegation
- The SES has the Ministerial delegation - Same process
- Not in process. There may be some difference in the issues considered when determining delegations
- There is no difference, noting that that Band 4 does not have a delegation, so decisions are made by the Band 7
- This is dictated largely by the Minister and Secretary.

**Question 8. What training does your agency provide to new RTI delegates?**

- There is no formal training. Training is provided "on the job" by the Band 7 for the Band 4.
- In house training usually one on one and have organised for Ombudsman training
- On the job - minimal formal training opportunities exist. So, it is reading the guidelines, Act etc and then guidance/review/increasing complexity/ mentoring, etc
- We have a manual, some informal written instructions, and (when I started) we were given access to some experienced RTI officers to teach us the way
- On-the-job training: attendance at formal training provided by the Ombudsman
- In-house power point presentation and training sessions to go through the presentation and the RTI Act. Ongoing regular weekly meetings to discuss management of RTI applications, and ongoing supervision of delegates. Delegates also attend external training sessions offered by the Ombudsman, Crown Law and TTC.
- Onboarding - new delegates are provided with copies of the policies and procedures, templates, precedent decision etc
- [Agency] is a new agency, and incumbent staff have been given delegation to make decisions under the RTI Act. If a person who did not have the requisite skills and knowledge was appointed to an RTI role, the person would be

required to undertake specific training if it were available. We would provide training in how to use the various information management systems in [agency] (eg CM10, Housing Management System). We would access the information published on the website of the Office of the Ombudsman. We would also seek out support from other agencies, particularly those with stand-alone RTI units or very experienced RTI officers

- Access to formal external training (eg sessions run by the Ombudsman's office or Crown Law), in house training conducted by [agency] RTI delegates and on the job training/ shadowing of RTI delegates.

**Question 9. What resources do you have to train new employees in RTI (i.e induction module, policies)?**

- There is an RTI policy which is based on the requirements on the RTI Act and provides no practical guidance. There is no other material available
- Policy and procedures and an internal manual. We have also used Ombudsman presentation
- Agency guide, Act, Ombudsman Manual and Guidelines
- All employees are expected to have a basic understanding of the principles of the RTI Act. We have an on-line training module, an RTI module in the induction program, regular training sessions are offered across the Agency, and bespoke sessions are provided to business units on request. The Legal Services team has an open-door policy with respect to queries at any time about any release of information issues (not just assessed disclosure specifically), and we incorporate RTI considerations, where relevant, into other internal advice we provide. The Legal Services Team has a procedure manual, with links to templates for a range of steps in the process
- In-house power point presentation specific to RTI Act and delegate's responsibilities. [agency's] RTI Policy and Procedures document. RTI process checklist. Current templates and files. Ombudsman's website - manual, decisions
- Homes Tasmania does not have any specific resources to train new employees
- Internal policies and procedures, and sharing of knowledge by RTI delegates.

**Question 10. Have all RTI delegates within your team received the same training? If no, why not?**

- Yes, but other than limited external, any advice/training is provided by the Band 7
- Some legal officers have not due to having law degree and/or have had training from past positions
- No - training across government is inconsistently run. It does not factor in staff turnover, etc
- Yes

- All delegates in the Legal Services team will, over time, receive the same training. Individual training status may vary depending on length of time with the team
- All RTI delegates have received training and attend external training when available. The amount of ongoing training varies depending upon each delegate's existing skills and experience
- No, out of the two RTI team members, one has been in Dept since 2016 and the other came from another jurisdiction, both have been working in RTI / PIP space for more than a decade each
- Probably not. The two RTI delegates have come into [agency] from different agencies, so it's unlikely that they have had the same training
- All delegates will receive a similar style and amount of training, however the exact training will depend on the delegate providing the training as we do not have a formal training package due to the small size of our agency and small number of delegates. The Secretary has oversight of when a proposed delegate has received sufficient training and is deemed suitable to receive a delegation.

**Question 11. What training is provided to, non-RTI delegate, officers in your agency, if any?**

- When requested, the Band 7 will provide an overview of the Act to a division, with some emphasis on exemptions applicable to information in the decision
- Have provided training to administrative officers to assist in running of inbox. Have organised for general information sessions within agency
- Very little - awareness of the Act only
- We have a training package that we deliver upon request to divisions who have to respond to RTI requests
- Currently no training is provided to non RTI officers in [agency]. When RTI officers seek information from other areas of the Agency, the RTI officers will provide written instructions regarding what is required and meet with relevant officers and outline the requirements
- Training to various units when requested and by the end of 2023, road trip training will be provided throughout the State
- All staff receive training in how to use the information management systems (CM10, HMS) so they should be able to identify records relevant to RTI requests. Other than that, no RTI training is provided to non-RTI delegates
- All employees are made aware of the RTI legislation and how that applies to [agency] as part of their induction, and general information is available on our website and intranet. No formal training is provided to non RTI delegates (unless they are interested in becoming a delegate).

**Question 12. How does your agency identify information for routine disclosure?**

- There is routine disclosure information on the [agency] website which has been identified as being relatively frequently requested

- Divisions within the agency decide throughout the year
- Some legislation / policy provides guidance, but it is an increasing awareness and culture that is building – slowly
- Usually when a several RTIs are received seeking similar information, a decision is taken at the Executive Level to disclose the information instead.
- [agency] routinely publishes extensive information on its various websites. In addition, we monitor RTI assessed disclosure applications for regular themes, or information suitable for routine disclosure. For example, we used to receive regular assessed disclosure applications for information related to international trade missions; this information is now routinely published after each mission
- DPAC coordinates the whole of government routine disclosures, so is familiar with identifying information for routine disclosure. If information is routinely requested through the RTI application process, it is recommended for routine disclosure
- We have online information that is routinely disclosed quarterly, this is in line with directions from DPAC
- We follow the procedure implemented by the former Agency of Communities Tasmania
- This depends on the nature of the information – [agency] regularly discloses information on our website that is of interest to the general public. The Secretary is responsible for identifying and approving any information that is routinely disclosed.

**Question 13. When your agency receives an RTI request, do you consider whether the information can be actively disclosed first?**



**Question 14. How do you determine whether information can be actively disclosed?**

- Most of the information dealt with is the subject of confidentiality provisions in statutes and cannot be released as an active disclosure
- I don't but sometimes a delegated officer does, and it is usually something straightforward like statistics
- Staff experienced in RTI legislation and principles are able to guide this process, but culturally it is not a priority historically - it is slowly increasing in awareness and consideration

- In consultation with the division head
- A delegate will first consider the scope of the request and whether or not, on its face, it seems likely the information sought would need to be assessed. The business unit is then asked whether it would consider supplying the information actively. The delegate will discuss any concerns the business unit may raise regarding release in order to reach a considered view as to whether assessment is necessary. Some applicants refuse active disclosure
- Depending upon whether consideration of any exemptions under RTI Act need to be applied. If information can be released without consideration of exemptions, it can be considered for active disclosure
- Depends on the request
- Generally speaking, data about [agency's] services and programs that can be actively disclosed is released through the Housing dashboard (monthly online report). If information is not personal information or confidential for another reason (Cabinet in confidence), it may be actively disclosed on request. A high proportion of RTI requests are for personal files (eg tenancy files), which are not actively disclosed
- Through an analysis of the type of information requested, including discussions with relevant internal stakeholders and the Secretary.

**Question 15. Does your agency provide an acknowledgement letter or email to an applicant once they have submitted an application for assessed disclosure?**

● Yes	8
● No	1
● Other	0



No – [agency] does not provide an acknowledgement letter or email to the application once an application is submitted for assessed disclosure.

**Question 16. If you answered yes to question 15, in what timeframe does your agency typically acknowledge an application?**

- Nil
- Usually, same day
- As soon as payment is received or ASAP
- On the day it is received, or the first working day if it comes after normal working hours.
- Within 2 working days of receipt.
- Within 5 working days and no later than 10 working days

- Automatic response advising that the application has been received and within 48 hours, an acceptance will be provided
- Typically, within a day or two.
- Within 1-2 days of receipt of the application.

**Question 17. If you answered yes to question 15, can you please provide below what information is included in your acknowledgement?**

- Nil response
- I acknowledge receipt of your application made under the Right to Information Act 2009. You will receive a response in relation to your application shortly
- Acknowledgement; agency RTI reference number; payment receipt; any clarifying questions
- RTI is assigned a number, timeframes are explained, possibility of need for refinement, etc
- The application has been received. If accepted and information is released, that information may be published on the Department's website (with a link to the relevant web page). Any queries regarding progress should be directed to the RTI mailbox
- Acknowledgement of request, details of request, RTI delegated officer contact details, whether application accepted/transferred, fee waived/ack of payment, time in which response will be provided, that information may be published online within 48 hours of being released
- I acknowledge receipt of your application under the Right to Information Act 2009 (the Act). Please include the above reference code in all correspondence as this will streamline our ability to respond to you.

Having paid the application fee in accordance with section 16(1) of the Act, I have made the decision to accept the fee payment. Having made a fee decision as well as having read your request for information with no current identifiable need to negotiate your request in accordance with section 15 of the Act, I confirm I am able to accept your application effective today. The due date for me to notify you of a decision in relation to this application, and any relevant information I'm able to provide you, is ##.

However, due to an increase in the number of applications we've received prior to this one, and due to the larger than normal volume of information we are needing to assess, in accordance with section 15(4)(a) of the Act I am requesting from you to consider granting an extension of the due date to ##.

Please note, if you grant the extension this date is negotiable should any urgency arise in relation to this application

Further to this, if we are able to collate and assess the information prior to the requested extension date, we will provide the information to you as soon as the assessment and RTI Decision are finalised. If you have any questions, please email or call me on the number provided below. Please confirm your decision in relation to the extension request as soon as you are able to.

- Reference to the name of the applicant, application (or not) of the fee payment, advice about whether the application has been accepted or when

that advice is anticipated to be provided, due date for the response and contact details for RTI officer

- A courtesy email is sent to acknowledge receipt of the request, and it is advised that we are performing preliminary research in regard to the request and will advise whether or not the request is accepted for assessed disclosure under the RTI Act as soon as possible.

**Question 18. What is your process for requesting a division undertake a search for information responsive to an RTI request? Do you (tick all that apply):**

*Table 1.3 – RTI request processes*

<b>What is your process for requesting a division undertake a search for information responsive to an RTI request?</b>	
<b>Method</b>	<b>No.</b>
Send a letter or email with instructions on how to perform a search for information	4
Advise the searching officer it is an offence to knowingly withhold information	2
Request the search at officer level	5
Request the search at SES level	2
Receive information in hard copy	2
Receive information in electronic copy	8
Advise the searching officer that information may be released on the disclosure log	2
Advise what constitutes a 'business record' or 'information' for the purposes of the RTI Act	3
Request that the searching officer advise whether the volume of records found would be substantially and unreasonably divert resources	5
Provide a search records/declaration for the searching officer to fill out	2
Advise that duplicates should not be provided	1
Request that information be provided in chronological order	2
Request that the searching officer identify sensitive information to the RTI team?	5
Other	3

**Other comments:**

- the RTI delegate performs all searches. Typically the delegate will first consult with relevant divisions/ branches to understand the nature of the request and information sought/ relevant background to assist with the searches.
- Provide a document schedule template for completion; request that information that may require 3rd party consultation be flagged ASAP; offer to discuss any queries or concerns, especially with regard to scope and whether specific information is in scope or not.
- Email with copy of application or direction and request info

**Question 19. How many working days does your agency allow for the searching of business records?**

- No period for providing a response is provided. If no response is received within a reasonable timeframe a follow-up is sent
- 10 working days
- No standard timeframe - depends on the application
- 10 working days
- 5 working days - this deadline is negotiable
- 5 working days
- Depends on the request, and the area that has been requested
- 10 working days
- Depends on the nature of the request

**Question 20. Does your agency have decision/refusal/acceptance/transfer letter templates for RTI delegates to use when corresponding with an applicant?**

- No
- Delegates do not correspond with the applicant. That is up to myself and the admin officer who assists in the management of the RTI inbox. We have some template letters, but they are rarely used. I draft all correspondence for the delegate to review
- Yes

**Question 21. Does your agency have a senior executive officer and ministerial office notification process?**

- All agencies responded yes to this question

**Question 22. If you answered yes to question 19, can you please describe what your notification process is?**

- The Minister's office is advised when a decision is to be released which might be used as the basis for a subsequent article in the media
- One day notification period for Executive and minister's office to view the Delegate's decision (via email) before it goes to the applicant
- Briefing Note for notation - depends on the subject matter
- Exec Group and MO is advised 24 hours before an RTI decision is delivered. Decision letter and information is provided with that notification

- Decisions are noted by: business area Deputy Secretary; Deputy Secretary Business Services (senior manager of Legal Services); Secretary; Agency Comms team; relevant Ministerial offices
- Decision notice with copy of decision for noting provided to the Executive and Minister's Office through the CM Workflow process
- Senior Officers and Ministers Officer advised that an RTI request has been received and once decision is made, a copy of the decision is provided to Senior Officers and Minister's Office
- The Manager Office of the CEO advises the CEO and Min's Office by that an RTI request has been received. The general nature of the request is outlined in the email plus date that a response is required to be provided. The CEO and Minister's Office are not advised about applications for personal files
- They are notified of the receipt of an RTI request, and when a decision has been made.

**Question 23. Does your agency regularly publish information (non-personal or commercially sensitive) on its disclosure log within 48 hours of the decision being released? If no, why not?**

- Yes
- Yes, if the delegate has decided it is in the public interest
- No - this again is a cultural change, and we are getting better at identifying the information that it applies to and meeting the timeframes. A work in progress
- Yes
- Yes, where we determine that the information released is likely to be of interest to the general public. Not all information released that is non-person or non-commercially sensitive will be of interest to the general public. We generally avoid publishing information that has been heavily redacted - the information disclosed in such circumstances is often not likely to be of interest to the general public, and attention will instead be focused on what has been withheld
- Yes
- No, this is completed monthly
- Not yet, but we will. We are still developing [agency's] website structure and content
- Yes

**Question 24. How is information prepared before it is released to the applicant and published on your agency's disclosure log?**

- The redacted text published with no overlay text. Sometimes additional text is redacted - e.g., personal details of the applicant

- Information is numbered in accordance with the schedule provided and exemptions clearly described on the relevant pages
- Most results are collated as a PDF documents and where exemptions are applied the section is noted and further explanation is provided in the decision letter
- Watermark, sometimes re-redacted if further personal information needs to be removed (for example, if the applicant appears in the information)
- The information is published in pdf form with a notation at the top of the first page stating the information was released in response to an RTI request for [general topic]. A 'released under RTI' watermark is applied to each page. Redactions including overlay text are included as per release to the applicant
- Information is prepared with any redactions in grey with overlay text, and pages are numbered with the relevant item number from the schedule of documents
- Information is sent to the applicant with the decision notice. The disclosure log, if meeting the broader public interest test, is deidentified and posted on the agency's website
- Information will be published as pdf. Redactions will be shown with advice on what exemptions have been used. The name of the applicant and date provided will be included
- a watermark is used

**Question 25. Does your agency regularly review or reconsider decisions that are with the Ombudsman's office for external review?**

● Yes	3
● No	3
● Other	3



Other comments (3) provided below:

- Usually only when the Ombudsman's Office lets us know the matter is on the immediate agenda
- This is the new approach
- Not applicable to [agency] at this stage.

**Question 26. Are RTI delegates in your agency familiar with the personal information protection principles contained in the Personal Information Protection Act 2004 (PIP Act)?**

● Yes	8
● No	1



**Question 27. Do RTI delegates in your agency receive any training on the PIP Act?**

● Yes	2
● No	5
● Other	2



Other (2) comments provided below:

- Inconsistently - some receive specific training
- Some current delegates have attended training run by Crown Law; otherwise, training is on-the-job or internally run

**Question 28. If a request for information is made by a person seeking their own personal information, does your agency first seek to release the information without treating the request as an application for assessed disclosure**

● Yes	5
● No	1
● Other	3



Other comments (3) provided below:

- Doesn't come up much for our agencies
- It would depend on the nature of the request
- This is not a typical request for [agency] (due to the nature of the agency) and would be considered on a case by case basis.

**Question 29. What, if any, are the biggest challenges facing your RTI team right now?**

- The Agency has historically made about 60-65 decision a year, but currently makes about 300. The decisions are also becoming more complex
- Under resourced due to volume of applications that cannot be treated as PIPs due to the content of the files
- Staff resourcing is a challenge - staff numbers have not kept pace with the increase in applications as well as the nature of the information requested and the corresponding time it takes to process applications (e.g., reviewing body worn camera video footage)
- A pro-disclosure culture is trailing behind the legislation and the government's 'transparency agenda'. There is a residual culture that instinctively reverts to non-disclosure despite no apparent risk - e.g., a default position of non-disclosure that the Act is trying to overcome
- Resistance to the RTI process from Senior Management. All natural incentives for them are against release
- Constant public criticism that delegates are lazy, incompetent, or corrupt is very demoralising when those delegates are doing their best to make good decisions in line with the Act. It is also apt to deter people from wanting to be delegates. Applicants with a specific political agenda, where we know that it will not matter what response is provided, it will not affect what those applicants say publicly, up to misrepresenting the decision and/or information, or even lying. It is disheartening to hear criticism about 'lack of transparency' when for those of us who have worked in this space since before the current government know that nothing has changed in terms of how assessed disclosure is handled, including how information is assessed. Volume and complexity of applications. Inadequate timeframes for consultation and assessment. Achieving internal traction in business units/Ministerial offices for searches/feedback - everyone is very busy and under-resourced and assessed disclosure is an onerous additional task. This is also relevant when considering processes - additional documentation requirements are likely to be resisted as adding work without value, and it is already hard enough to get searches completed promptly
- Staff resourcing. Responding to RTI requests in a timely way while also completing multiple competing work priorities in other areas of responsibility is difficult. Obtaining information from agency and Ministerial offices in a timely way has been an issue particularly in the last 12 months. Complexity of RTI requests made to [agency] and Ministers make complying with statutory time frames challenging

- 1. Sheer volume of requests / information that is reviewed. 2. Lack of appropriately qualified applicants to fill vacant positions. 3. Degree of uncertainty emanating from Decision made by Ombudsman (contradictions between decisions)
- Recruiting to vacant positions that have responsibility for RTI administration (among other things). Requests for data that are time consuming to respond to, eg, request for data on 2, 3, 4 AND 5 bedroom houses in four (or whatever) local government areas that are (a) under-occupied, (b) fire damaged, (c) under maintenance AND (d) need repair due to mould. Reports need to be written and extracted from information systems, which can take time. Time required to review personal files and redact exempt information. We also have some vexatious applicants

**Question 30. Please provide any further information on your agency's RTI processes that you think may be useful.**

- Most of the applications the Department receives are from people seeking information about themselves - e.g., injured workers, people who have been in contact with the criminal justice system. There are statutory provisions governing confidentiality which prevent active disclosure. As always, there are a few dedicated resources to deal with RTI requested, both delegated officers, but also people to conduct searches and collate information from existing records
- The churn of processing a large number of applications hinders the opportunity to review and update policies and processes. The lack of training opportunities is also a problem, but OT staff are very helpful in doing what they can to help. The RTI Working Group could be a conduit to more consistent practices across government
- We do not require officers to complete a stat dec in connection with their search, as we feel this promotes an antagonistic relationship between those officers and delegates. We try to promote a collaborative approach that brings people along with us on the assessment journey - while the delegates make the final decision, reasonable concerns about disclosure need to be properly considered, and where those concerns do not trigger an exemption, the officers expressing those concerns need to understand why, as it is better for everyone if they accept the decision, rather than being disgruntled about it

## Survey 2 Results – Delegate’s experience

**Question 1. What training did you receive when you commenced with your respective right to information team?**

- None
- One on one training by a senior RTI delegate within the Department
- No official training. I was given some supervision from existing delegates while I made decisions, but this was very minimal and not adequate enough
- Mike Cain - Information Session/RTI Training
- Training from previous delegates
- A manual, informal process notes (with templates) and peer support
- There wasn't specific training as such - it was more learn as you go. However, there were plenty of resources to assist with learning such as templates, looking through previous decisions and going back through the RTI inbox
- on the job training, trained by colleagues and manager
- I received the Departmental RTI training (online module and attending a presentation, both are standard for all new employees). I was given the Ombudsman's manual as well as the Department's internal process guidelines and I then received hands on experience assessing applications, with supervision
- No formal training, taught/learnt with each process
- Mentoring from experienced RTI delegates. Existing templates and files. Ombudsman website. I had previous experience of RTI Act and legal knowledge and skills

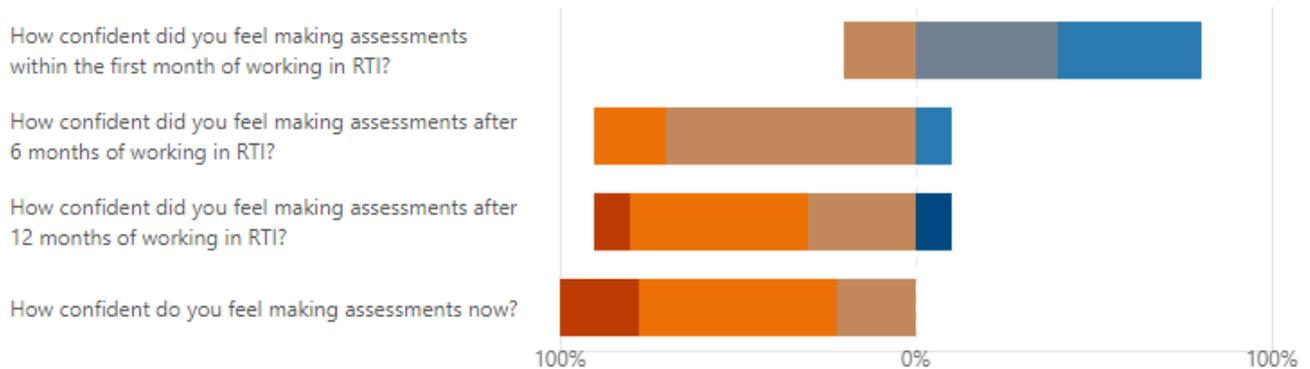
**Question 2. How long have you been working as an RTI delegate?**

● less than 1 year	1
● between 1 and 2 years	2
● more than 2 years	7



**Question 3. The following questions are designed to experience your confidence in making assessments under the Right to Information Act 2009 at different stages of experience?**

■ Very confident   
 ■ Confident   
 ■ Somewhat confident   
 ■ Somewhat not confident   
 ■ Extremely not confident  
■ Not applicable to me



**Question 4. Do you believe that you have the resources you need to make effective decisions under the Right to Information Act 2009 in your agency?**



Additional comments provided below:

- I would answer the two limbs of "effective decisions" differently. I have a lot of support to make decisions that I believe are the correct and preferable decision. But often do not have the resources to make these within the required timeframe, for a variety of reasons - e.g. volume of information, staffing levels (within our team and in the business units which are searching for information)
- I believe that in most instances the correct and preferable decision is made however, not always made within the statutory timeframe

**Question 5. What further resources do you believe would be helpful to you in making effective decisions?**

- More RTI officers. Better systems to access information. Better understanding from Departmental officers about what information is subject to the RTI Act
- More RTI officers/delegates to effectively make decisions within the constraints of the Act
- Better training and more delegated RTI officers to lighten the load
- More Ombudsman’s Decisions to refer to
- An updated Ombudsman Manual would be appreciated

- A wider variety of templates/examples to ensure reasons given are adequate
- employ more RTI delegates
- Additional staff resourcing to adequately address the volume of requests we receive, or longer timeframes within the Act, as often the delays are outside of our team's control
- Support and understanding from executive to apply advice from the ombudsman's office. Additional time.
- Enough delegated officers to cover 12 months, allowing for personal and recreation leave of staff. Coverage of staff losses so that the statutory timeframes can be met, given competing priorities of the work area. Sufficient resourcing in Ministerial offices to enable timely provision of information

**Question 6. Is your manager responsive enough to allow you to make effective decisions under the *Right to Information Act 2009*?**



**Question 7. How could your manager better support you to make effective decisions under the *Right to Information Act 2009*?**

- I am the manager
- My manager has the ability to provide advice in a timely manner. However due to the information being received outside of the statutory timeframes, sometimes when seeking advice this can not always be achieved as I do not know the contents of the information or able to assess all of the documentation in time
- It would be helpful if they could action RTI decisions sooner
- More support from the SES for the RTI process would help - my manager is the meat in the sandwich
- Coverage of RTI delegate absences

**Question 8. Is the Minister's office responsive enough to allow you make effective decisions under the *Right to Information Act 2009* when performing as a Ministerial delegate?**

- Three responses indicated yes; the Ministers office is responsive enough to allow delegates to make effective decisions

- Three responses indicated no; Ministers office is not responsive enough to allow delegates to make effective decisions
- Not a Ministerial delegate

**Question 9. How the Ministerial offices better support you to make effective decisions?**

- More effective record keeping. Better understanding from Ministerial staff about what information is subject to the RTI Act
- They do not provide information within a reasonable time and do not provide any evidence of what search was undertaken. I am never confident that they've done a sufficient search
- If they understood the process of delegates undertaking Ministerial decisions a bit better but I understand that this can be difficult to get used to if you're not receiving regular Ministerial applications
- By prioritising RTI applications, as the timeframes pass very quickly
- Providing all relevant information for assessment within a reasonable timeframe
- Improved resourcing of Ministerial offices to enable provision of information to occur in a timely manner

**Question 10. Are Senior Executive Service (SES) Officers responsive enough to allow you to make effective decisions under the Right to Information Act 2009?**

• Yes	4
• No	0
• Other	5



Additional comments provided below:

- That varies – WILDLY. Some are wonderful, some are obstructive and difficult to deal with
- Timeliness can be an issue

**Question 11. How could Senior Executive Service (SES) Officers better support you to make effective decisions under the *Right to Information Act 2009*?**

- Enforce stricter timeframes for Business units to supply information to RTI delegate for assessment. SES officers to review/approve responses in timely manner, noting, all responses need to be reviewed by at least 3 SES officers before it is sent
- Prioritise RTI responses (obviously challenging given other competing priorities)

Additional comments included criticism of timeliness and knowledge of the requirements of the RTI Act.

**Question 12. What do you consider to be the biggest barrier in getting decisions released to applicants on time?**

- The majority of decisions are released within 20 working days, applicants are not focussed on time limits and are content to wait, as long as they are kept informed of progress
- Having the information provided by different outputs in a timely manner. Have capacity to assess the information i.e., often have several outstanding applications at a time that need to be assessed
- Not being given information on time by business areas. SES and Ministerial office staff not noting decisions on time
- The volume of applications received by our department
- Divisional resources in getting information to the RTI team
- Divisions providing data dumps of every single document that references the general topic of the RTI rather than the specific scope. Similarly, not removing duplicates. Or Divisions providing information to the RTI team late
- volume of applications to number of RTI delegate ratio. Negotiation of scope occurring too late in the process - eg business unit not immediately notifying RTI team that scope not manageable. Being held up in the review/approval/notification process. Work involved in writing statement of reasons for decision
- The current timeframes aren't long enough for the process involved. Much of the process is outside of our team's control e.g. the business area undertaking the search. Because of the short timeframes there only needs to be one hiccup (e.g. staff absence, misinterpretation of process/request, consultation taking slightly longer) and we are late. So we either need additional resources on a departmental level or longer timeframes
- People locating and providing the information for assessment within a reasonable time, inadequate timeframes.
- Resourcing of RTI and complexity of RTI requests

**Question 13. How likely would you be to recommend working as an RTI delegate to a friend?**

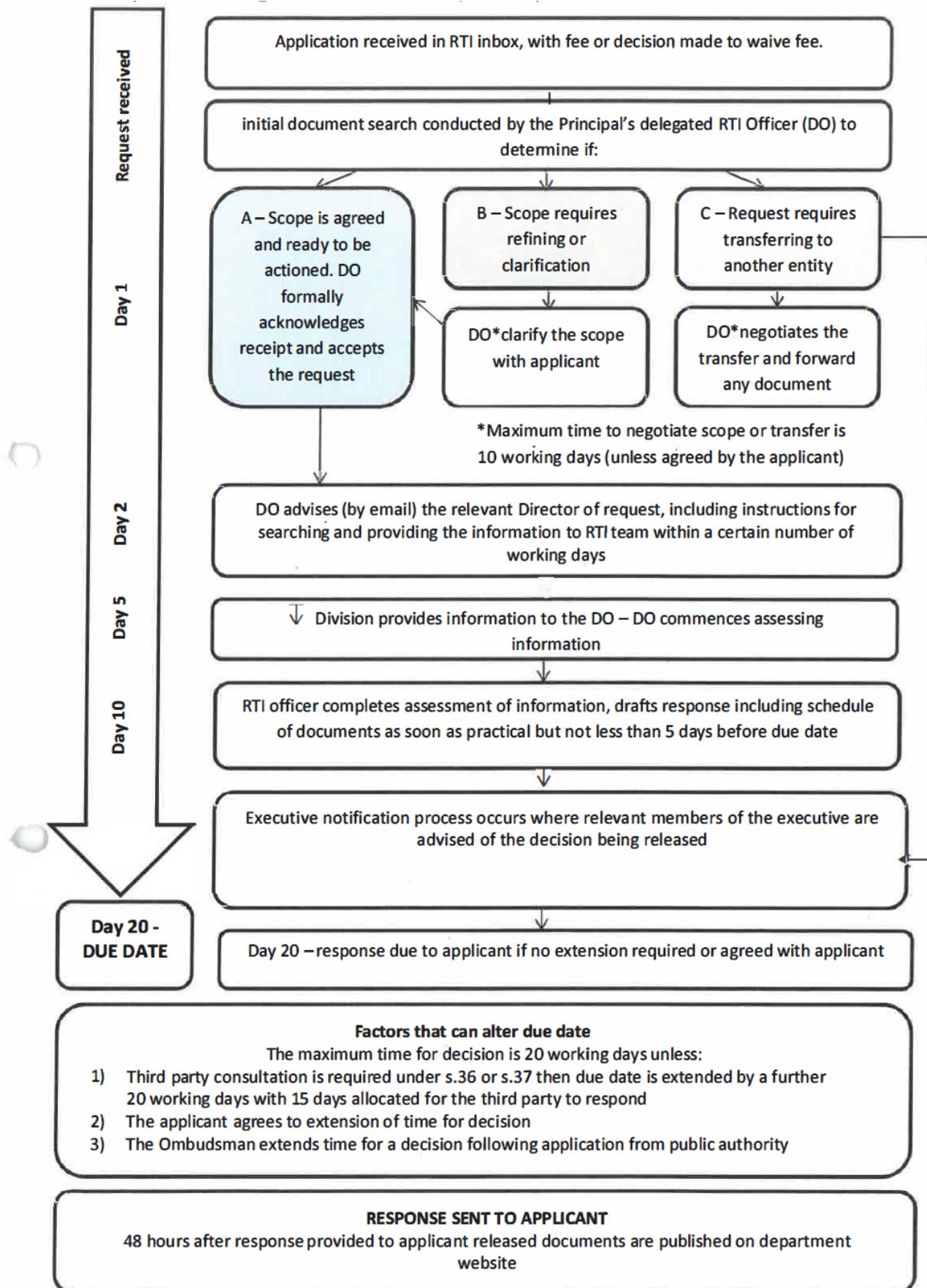


**Question 14. If you could make any improvements to the RTI process, what would they be?**

- I think that the RTI process is guided by the RTI Act. In that sense, there is little room for improvement within the Act's framework without amending the Act itself. Another issue is the delay in finalizing external reviews, which often means that applicants have to wait years (as opposed to months) before they can access information (assuming that the Ombudsman significantly varies a public authority's decision to exempt information from disclosure)
- Better resourced i.e. more officers in a hierarchy level to enable the smooth process of receiving and accepting applications and making a decision. More resources and training, particularly ministerial office staff need to be better trained
- More resources. Ministerial office staff need to be better trained
- Extension of timeframe
- Reduce the ability of third-party businesses to frustrate the process
- More resources and training
- Allowing more time to make decisions. SES officers to take an active role in the management of information and promotion of proactive release of information
- Longer timeframes. The RTI application process also isn't well suited for all requests for information. There should be alternate pathways for release of some classes of information e.g., the example used of victim-survivors
- Perhaps having a central liaison officer who assists victim survivors navigate the system, so they don't need to go through RTI?

- Streamlined process to improve consistency between Department
- More RTI delegates and fewer competing priorities
- More resourcing in bottleneck areas, such as Ministerial offices

## Appendix 2 – RTI process map



## Appendix 3 - Right to information application forms for each department

Click image below to open in Adobe

### *Right to Information Act 2009*

## Application for Assessed Disclosure

Applicant's details:			
Name:	<input type="text"/>	Title:	<input type="text"/>
Postal address:			
<input type="text"/>			
Daytime contact information:			
Telephone:	<input type="text"/>	<input type="text"/>	<input type="text"/>
	Business	Home	Mobile
Email:	<input type="text"/>		
Public authority or Minister applied to			
<input type="text"/>			
General topic of information applied for: (one sentence summary of information requested)			
<input type="text"/>			
Description of efforts made prior to this application to obtain this information:			
<input type="text"/>			

Department of Premier and Cabinet



# Appendix 4 - Personal information application forms

Click image below to open in Adobe

Department of Health



## Personal Information Protection Act 2004

### Application for Personal Information

#### When to use this form

You should use this form when you are seeking access to personal information that you believe is held by the Department of Health (DoH) or Tasmanian Health Service (THS).

If you are applying for access to information that is not personal information, you should contact DoH or THS to discuss the information you are seeking.

If you are applying for access to someone else's personal information on their behalf, you will need to have the consent of that person. Consent must be in writing and supported by evidence of the person's identity.

#### Where you should send this form

A number of operational units within DoH and THS hold personal information. The fastest way to access personal information is to contact the unit that holds your information.

If you are applying for your **Tasmanian Health Service records** (including District Hospitals, Community Health Centres, Mental Health, Alcohol & Drug and Correctional Health records) please contact the relevant service below:

Service	Contact Information
THS- Southern Region Release of Information Officer Health Information Management Services Royal Hobart Hospital	GPO Box 1061 5/25 Argyle Street HOBART TAS 7000 Phone: (03) 6166 8898 Email: <a href="mailto:himshio@ths.tas.gov.au">himshio@ths.tas.gov.au</a>
Release of Information Officer Health Information Management Services Launceston General Hospital	Level 2, 274-280 Charles Street LAUNCESTON TAS 7250 Phone: (03) 6777 6556 Email: <a href="mailto:lgh.patientroi@ths.tas.gov.au">lgh.patientroi@ths.tas.gov.au</a>
Release of Information Officer Health Information Management System North West Regional Hospital	Ground Floor, Brickport Road BURNIE TAS 7320 Phone: (03) 6493 6126 Email: <a href="mailto:nw.patientroi@ths.tas.gov.au">nw.patientroi@ths.tas.gov.au</a>
Release of Information Officer Health Information Management Mersey Community Hospital	Bass Highway Latrobe PO Box 21 LATROBE TAS 7307 Phone: (03) 6478 5246 or (03) 6478 5131 Email: <a href="mailto:nw.patientroi@ths.tas.gov.au">nw.patientroi@ths.tas.gov.au</a>
Release of Information Officer Statewide Mental Health Services (including Alcohol and Drug Services, Forensic Mental Health, Correctional Primary Health Service)	GPO Box 125 HOBART TAS 7001 Phone: (03) 6166 0826 Email: <a href="mailto:smhs.records@ths.tas.gov.au">smhs.records@ths.tas.gov.au</a>