



Tasmanian Council of Social Service Inc.

Independent Review of Tasmania's Right to Information Including the Office of The Ombudsman

MARCH 2025



INTEGRITY
COMPASSION
INFLUENCE

About TasCOSS

TasCOSS' vision is for one Tasmania, free of poverty and inequality where everyone has the same opportunity. Our mission is two-fold: to act as the peak body for the community services industry in Tasmania; and to challenge and change the systems, attitudes and behaviours that create poverty, inequality and exclusion.

Our membership includes individuals and organisations active in the provision of community services to Tasmanians on low incomes or living in vulnerable circumstances. TasCOSS represents the interests of our members and their service users to government, regulators, the media and the public. Through our advocacy and policy development, we draw attention to the causes of poverty and disadvantage, and promote the adoption of effective solutions to address these issues.

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Introduction

TasCOSS is pleased to provide comment on the Right to Information (RTI) system in Tasmania, including ideas about making the system work as envisaged. While TasCOSS does not have direct experience of the RTI system, based on what we know, we have significant concerns about its operation, which points to an overarching lack of government transparency and accountability in this state.

As the peak body for community services in Tasmania, we are aware of concerns raised by community organisations about difficulties experienced by those who are trying to access information through the RTI process.

Our comments below are further to earlier comments and recommendations made by TasCOSS, including in a joint letter to the Premier, Jeremy Rockliff MP calling for urgent action to fix Tasmania's RTI system.

The right to information is both an international human right and a cornerstone of Australian democratic government. An RTI system underpins a healthy democracy in two ways:

- (1) it acts as a deterrent against corruption and maladministration within the political and administrative systems, as those involved are aware of the high likelihood of being exposed; and
- (2) by empowering the public with independent access to information, it enables greater participation in the political process. This creates a mutually beneficial scenario where transparency and openness, exemplified by freedom of information, serve as tools to build trust between the political sphere and the public, fostering a healthier democratic environment.¹

Article 3 of the Tasmanian *Right to Information Act 2009 (Tas)* (the RTI Act) states that its object is to improve democratic government in Tasmania:

- (a) by increasing the accountability of the executive to the people of Tasmania; and
- (b) by increasing the ability of the people of Tasmania to participate in their governance; and
- (c) by acknowledging that information collected by public authorities is collected for and on behalf of the people of Tasmania and is the property of the State.²

¹ Romano M.-A. Lidberg, J., Paterson, M, Bradshaw, E. & Davidson, S. (2024). [The culture of implementing Freedom of Information in Australia](#), Office of the Victorian Information Commissioner, Ombudsman SA, Office of the Information Commissioner WA, Monash University, Melbourne, p.10.

² [Right to Information Act 2009 \(Tas\)](#)

Given the current state of Tasmania's RTI system, TasCOSS believes that the object of the RTI Act is not being fulfilled and is therefore unable to effectively build trust between government and the community. As noted in the Ombudsman's *Annual Report 2023-24*: "Tasmanians want, and deserve, an accountable and open government and a seeming lack of motivation to improve the RTI system is hindering that being achieved".³ This conclusion calls into question the efficacy of the Tasmanian Government's 'Transparency Agenda' which has been in place for over a decade.

³ Ombudsman Tasmania (2024). [Ombudsman Tasmania Annual Report 2023–24](#), Hobart, p.18.

Issues Evident in Tasmania's Right to Information System

Multiple Issues

In its Final Report, the Commission of Inquiry into the Tasmanian Government's Response to Child Sexual Abuse in Institutional Settings (the Commission of Inquiry) highlighted six issues with the RTI system in Tasmania, which combine to undermine its democratic intent:

- an administrative culture that limits the release of government information
- legislative and procedural complexity, particularly where the Right to Information Act and the Personal Information Protection Act overlap, hampering access to personal information
- lengthy delays in responding to applications
- inadequate and unenforceable review processes when the release of information is delayed, refused or extensively redacted
- under-resourced and decentralised assessment processes contributing to delays and inconsistent outcomes
- inconsistent approaches to fees and waivers for right to information requests.⁴

Below, we describe some of these issues in more detail and provide recommendations to make the RTI system in Tasmania more effective and thus supportive of a healthy democracy.

Reluctance to Disclose Information

An overarching issue with RTI processes in Tasmania is a general reluctance across the Tasmanian Government to disclose information, which has been observed by multiple organisations applying to access information, as well as by the Ombudsman and the Government itself.

The Tasmanian Department of Premier and Cabinet observed in 2023 that, "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*".⁵ The Commission of Inquiry Final Report, released in August 2023, also observed that victim-survivors of child sexual abuse and their lawyers, as well as journalists, experienced the process

⁴ Commission of Inquiry (2023). [Full Report, Commission of Inquiry into the Tasmanian Government's Response to Child Sexual Abuse in Institutional Settings](#), Chapter 17, Volume 7, p.182.

⁵ DPAC (2023). [Right to Information Uplift Project – Discussion Paper](#), Version 4.1, Department of Premier and Cabinet (DPAC), Government of Tasmania, Hobart, p.2.

of accessing information held by public authorities in Tasmania as “frustratingly slow, complex, and obstructive”.⁶

In a recent report about the RTI system in Tasmania, the Environmental Defenders Office (EDO) noted that “applications under the RTI Act for environmental information not otherwise publicly available are routinely refused in whole or in part.”⁷ The EDO noted that this reluctance has significant implications for upholding the right to information in Tasmania: “...public authorities are failing to give effect to the objects of the RTI obligations by providing access to information”.⁸

Similarly, the Tasmanian Ombudsman Richard Connock has observed that the Tasmanian culture of a reluctance to disclose information is inconsistent with the intent of RTI Act: “the express object of the Act is clear in relation to its pro-disclosure focus... Too often, sadly, adherence to this object is not evident in practice and a closed, and at times obstructive, approach is taken...”.⁹ Specifically, the Ombudsman noted in their most recent Annual Report that, “complaints about delays in people accessing their own information from the Department for Education, Children and Young People and the Department of Health continue in their frequency...”.¹⁰

TasCOSS believes the culture of reluctance observed by the Tasmanian Ombudsman and others in relation to RTI is further demonstration of the need for significant cultural change within Tasmanian institutions, to promote accountability and transparency of government processes and decision-making.

We also believe developing and promoting a culture of transparency (with a presumption in favour of disclosure where possible) may also address issues of delay and capacity to respond to RTI applications and reviews of decisions (discussed further below).

⁶ Commission of Inquiry (2023). [Full Report, Commission of Inquiry into the Tasmanian Government's Response to Child Sexual Abuse in Institutional Settings](#), Hobart, p.181.

⁷ Environmental Defenders Office (2023). [Transparent failure: Lutruwita/Tasmania's ineffective right to information system and how to fix it](#), Hobart, p.9.

⁸ Environmental Defenders Office (2023). [Transparent failure: Lutruwita/Tasmania's ineffective right to information system and how to fix it](#), Hobart, p.4.

⁹ Ombudsman Tasmania (2022). [Ombudsman Tasmania Annual Report 2021-22](#), Ombudsman Tasmania, Hobart, p.30.

¹⁰ Ombudsman Tasmania (2024). [Ombudsman Tasmania Annual Report 2023-24](#), Ombudsman Tasmania, Hobart, p.18.

Inadequate Resourcing of RTI Functions Leading to Excessive Delays

Considering the delays and backlogs in the system, it is apparent that RTI functions in Tasmania are inadequately funded and resourced, both within public authorities and the Ombudsman's Office, which is responsible for external review of decisions on RTI applications. Firstly, the Ombudsman has drawn attention to inadequate staffing resources for RTI functions in government departments, leading to lengthy delays and backlogs for responding to RTI applications in the first instance.¹¹ Similarly, the Department of Premier and Cabinet has identified that "inadequate right to information delegate staffing despite significant increases in applications made" is one of the main issues facing the RTI system in Tasmania.¹² The number of applications has increased over several years; taking just one two-year period as an example, the number of RTI applications increased from 1,389 applications in 2020-21 to 2,165 applications in 2022-23.¹³

Secondly, the external review function provided by the Tasmanian Ombudsman is also under resourced. While additional funding for 2021-2024 has allowed the Ombudsman's Office to make progress in addressing a significant backlog of challenges to RTI decisions and thus reduce the length of wait times by 49% during 2023-24, there are ongoing resourcing issues with this function. In the Ombudsman's *Annual Report 2023-24* it was noted that, "the historical backlog of external review applications awaiting finalisation remains an issue and I acknowledge and again express my regret in relation to this. It remains a barrier to timely review and detrimentally impacts the RTI scheme."¹⁴

This has significant implications for the full functioning of democracy in Tasmania because people's democratic right to information held by government authorities is, in effect, not readily obtainable or useful, either because it has been heavily redacted or because it is released so much longer after it has been requested that it is no longer relevant. It also has a significant impact on Tasmanians who are trying to access their own information, for example to apply for redress (as well as the community organisations – such as community legal centres – who are supporting them). Clearly, there is an ongoing need to adequately resource public authorities and the Tasmanian Ombudsman's Office to fulfill their obligations under the RTI Act in a timely fashion.

¹¹ Ombudsman Tasmania (2024). [Ombudsman Tasmania Annual Report 2023–24](#), Ombudsman Tasmania, Hobart.

¹² DPAC (2023). [Right to Information Uplift Project – Discussion Paper](#), Version 4.1, Department of Premier and Cabinet (DPAC), Government of Tasmania, Hobart, p.2.

¹³ DOJ (2024). [Right to Information Annual Report on the administration of the Right to Information Act 2009 for the period 1 July 2022 – 30 June 2023](#), Department of Justice, Government of Tasmania, Hobart.

¹⁴ Ombudsman Tasmania (2024). [Ombudsman Tasmania Annual Report 2023–24](#), Hobart, p.18.

Issues with Record Management

The Final Report of the Commission of Inquiry emphasised the critical importance of robust records management systems for ensuring RTI processes work as intended: “for an access to information scheme to support the principles of open and transparent government, good records of government activities need to be created in the first place, and subsequently managed, retained and disposed of in a systematic way.”¹⁵

Unfortunately, the current state of records in public authorities in Tasmania poses a particular barrier to the effective release of information. During the Inquiry, the Commissioners heard evidence of Tasmanian Government records being “kept across multiple systems in various locations in a mix of digital and hard copy formats, which impedes identifying and accessing relevant documents”.¹⁶ By way of example, records requested by the Commissioners relating to out-of-home care and youth justice could not be readily provided by the then Department of Communities because many records were handwritten on paper, inadequately catalogued or stored in mislabelled boxes across multiple locations.¹⁷

The need for a comprehensive and searchable electronic records management system extends beyond contemporary records to include historical records of public authorities. As such, the task to update the records management system is two-fold: to ideally digitise or at least catalogue and centralise the storage of decades of paper-based historical records, and to also ensure all new records are stored in digital, searchable and shareable formats. In order to achieve this significant task, the Tasmanian Government needs to provide resources and training to public authorities and records offices, as well as to community sector organisations which deliver government-funded services to Tasmanians, such as out-of-home care, disability services and housing support.

¹⁵ Commission of Inquiry (2023). [Full Report, Commission of Inquiry into the Tasmanian Government’s Response to Child Sexual Abuse in Institutional Settings](#), Chapter 17, Volume 7, p.176.

¹⁶ Commission of Inquiry (2023). [Full Report, Commission of Inquiry into the Tasmanian Government’s Response to Child Sexual Abuse in Institutional Settings](#), Chapter 17, Volume 7, p.176.

¹⁷ Commission of Inquiry (2023). [Full Report, Commission of Inquiry into the Tasmanian Government’s Response to Child Sexual Abuse in Institutional Settings](#), Chapter 17, Volume 7.

Resources and Capacity for Responding to RTI Applications

Another significant issue facing the RTI system in Tasmania is a general lack of training and upskilling for three groups of staff in the government sphere, including:

- RTI delegates in public authorities;
- public servants who make records and assist RTI delegates with locating and understanding information requested by RTI applications; and
- people working in the community services industry who deliver Tasmanian Government-funded services and thus generate records which may fall under the jurisdiction of the RTI Act.

The Ombudsman has repeatedly raised concerns about the very high rate of mistakes made by RTI delegates in applying the RTI Act in their responses to applications, especially in relation to information exempted from release. In 2023-24, 80% of those decisions were overturned, either in full or part, by the Ombudsman's Office.¹⁸ If those decisions had been correct in the first instance, applicants would likely have benefited from receiving more of their requested information and also from receiving the information sooner.

In its latest Annual Report, the Ombudsman noted that, although the Right to Information Uplift Project run by the Department of Premier and Cabinet is apparently underway, the planned rollout of training across public authorities had not yet occurred, such that "the issue of limited training opportunities for RTI decision makers, particularly new delegates, remains ongoing."¹⁹ In recent years, the Ombudsman has tried to fill some of these training gaps in the public authorities but has understandably prioritised addressing the backlog of external review requests.

¹⁸ Ombudsman Tasmania (2024). [Ombudsman Tasmania Annual Report 2023–24](#), Hobart.

¹⁹ Ombudsman Tasmania (2024). [Ombudsman Tasmania Annual Report 2023–24](#), Hobart, p.18

Conclusion

Evidently, the Tasmanian RTI system is not working as envisaged and has been effectively hamstrung in its efforts to operationalise Tasmanians' right to information, given that fact that Tasmanians are more likely to have their RTI applications refused than citizens anywhere else in the country.²⁰

The frequent inability of Tasmanians to access information held by public authorities in a fulsome and timely manner, including information about their own experiences in institutional settings, denies individuals the opportunity to hold the Tasmanian Government to account for its failures. More broadly, the current state of the RTI system also poses risks to the health of Tasmania's democracy because it too often allows the Tasmanian Government to avoid transparency about its policies and practices, as well as facing accountability for its impact on the Tasmanian community.

In light of this, TasCOSS reiterates below three of our earlier recommendations, and proposes another three recommendations, to make the Tasmanian RTI system more effective as a tool of democracy.

²⁰ Environmental Defenders Office (2023). [Transparent failure: Lutruwita/Tasmania's ineffective right to information system and how to fix it](#), Hobart.

Recommendations

Previous Recommendations

TasCOSS draws your attention to the recommendations made in our joint letter to the Premier in August 2023. We note, of course, that the first of our recommendations is now being progressed in the form of the independent review you are undertaking. However, our other three recommendations are yet to be delivered in full by the Tasmanian Government and include:

Recommendation one

Reforming the RTI Act to ensure there is a clear presumption in favour of the public disclosure of information, deadlines on external review of RTI decisions by the Tasmanian Ombudsman's office, options to appeal RTI decisions to the Tasmanian Civil and Administrative Tribunal, and regular independent review of the operation and implementation of the Act.

Recommendation two

Providing ongoing RTI Act training to public authorities by a suitably qualified independent body with a particular focus on the RTI Act's exemptions and the correct application of the public interest test.

Recommendation three

Providing additional resources to the RTI jurisdiction of the Tasmanian Ombudsman's Office to arrest and reverse the growing backlog of external review applications.

Additional Recommendations

Further to these recommendations, and in light of the findings and recommendations of the Commission of Inquiry into the Government's Response to Child Sexual Abuse in Institutional Settings, TasCOSS also calls for reforms to be made to the RTI system by:

Recommendation four

Implementing in full, by 2026, Recommendation 17.8 of the Commission of Inquiry, with a particular focus on ensuring the RTI process in Tasmania is effective, responsive and trauma informed.

Recommendation five

Ensuring public authorities are sufficiently resourced to ensure RTI processes are completed in an accurate and timely fashion, including by adequately staffing RTI functions and providing ongoing training to delegates and other officers delivered by a qualified independent body.

Recommendation six

Ensuring terminology in the RTI Act and RTI processes for public authorities and relevant community sector organisations are fit-for-purpose in view of the Tasmanian Government's ongoing transition to electronic systems for managing contemporary and historical public records.