8 May 2025

Professor McCormack & Associate Professor Snell
Tasmanian RTI Review

By email: tasrti.review@gmail.com

Dear Professor McCormack and Associate Professor Snell,

Review of Tasmania's Right to Information Framework

Thank you for your invitation to contribute to this important review of Tasmania's Right to Information (RTI) Framework, which examines the adequacy, effectiveness, and implementation of the Right to Information Act 2009 (RTI Act). The Vice Chancellor has requested that I respond to your invitation on his behalf.

Thank you also for your time to meet with me and Karina Groenewoud, Director Governance and Compliance, on 25 March 2025 to discuss this review, and the University's experience with the RTI Framework, engagement with the Tasmanian Ombudsman, and the University's approach to transparency in decision-making. I am pleased to make the following submission subsequent to that discussion.

Background

University structure and governance

Compared to the other public authorities subject to the RTI Act, the University is uniquely structured, governed and funded.

The University of Tasmania is a statutory corporation continued under the University of Tasmania Act 1992 (UTAS Act) with three primary functions:

- The creation of knowledge – research
- The dissemination of knowledge – teaching and learning
- Activities which promote the social, cultural, and economic welfare of the community and to make available for those purposes the resources of the University.

While established by an instrument of the Tasmanian Parliament, the University is independent of the government of the day with three important exceptions:

- Two members of Council are appointed by the Minister (for Education).
- The University must seek the approval of the Treasurer to borrow money.
- The University must provide its annual report to the Governor and then to the Minister who is required to table the report in both houses of the Tasmanian Parliament.

The UTAS Act provides the University with the powers it needs to perform its functions, independent of intervention by the Tasmanian Government, but importantly, subject to the requirements of its founding legislation together with some 270 other state and national legislative and regulatory obligations.

The University operates in a highly competitive sector, competing for research grant funding and student enrolment revenue. A large proportion of revenue comes from the Australian Government, with major non-government sources including domestic student contributions from

full fee-paying students, international student fees, industry research grant contributions, and investment revenue. The University is not underwritten by any level of government.

The University's journey with Right to Information legislation

The University was not included in the original RTI Act (2010). The object of the original Act, which remains the same today, is "…to improve democratic government in Tasmania by:

- increasing the accountability of the executive to the People of Tasmania
- increasing the ability of the people of Tasmania to participate in their governance
- 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."

The objective is to be pursued by giving the public the right to obtain information held by public authorities and ministers and to obtain information about the operations of Government. The object is directed to public entities that are part of or owned/controlled by the state, with the exception of local governments, however their differences are managed and accounted for.

In 2012, the University was added to the scope of the act by simple amendment to the definition of a public authority. No other amendments were made to accommodate the difference of the University from other public authorities. This difference is important in the application of the public interest test, particularly where related to intellectual property and business affairs. Should the University's competitive position be damaged and financial position eroded, its ability to serve the state through broad offerings across regional campuses would be diminished. There is no doubt this would have a negative impact on the economic prosperity of the state, research and not to mention on access to higher education. As the RTI Act does not reflect this difference, the external review decisions of the regulator have not considered it in relation to the application of the public interest test or otherwise.

The University of today is very much aligned with the principles of transparency in administration of public authorities and those that receive public funding; principles which underpin the object of the RTI Act as it relates to the University. In 2024 the University amended its Communications and Brand Policy to more clearly articulate expectations for transparency and accountability in operations and decision-making and build greater trust and understanding with internal and external communities. This is essential for us to be able to deliver on our mission to be a university for Tasmania and which makes a distinctive contribution from Tasmania to the world.

Our Communication and Transparency Procedure, introduced in 2024, articulates the expectations, accountabilities and responsibilities for consultation, communication of decisions and the publication of University information more broadly. The procedure introduced the requirement for publishing a range of information as routine and active disclosures including:

- The minutes of meetings of the University Council
- Meeting summaries of the university's academic governance body, Academic Senate
- A log of assessed disclosures made under the RTI Act and, where in the public interest, some or all of the disclosed information (applicant deidentified)
- Public submissions made by the University to external organisations.

University response to specific Terms of Reference

Term of reference 2: Any administrative and/or cultural challenges experienced in meeting the objects of the Act.

University RTI applications and process

Compared with Tasmanian Government Agencies, the University receives a relatively small number of applications each year. Table 1 shows the number of applications per year since 2020 and how many of those progressed to assessed disclosure.

Table 1: Right to Information Applications received and assessed by the University

Year	No. applications	No. Assessed disclosures
2020	9	8
2021	13	8
2022	16	11
2023	10	6
2024	20	14

Applications range from requests for personal information from past students and staff about themselves, requests from journalists for information related to topical issues, requests from elected representatives on behalf of themselves or their constituents, and requests from members of the public for reports or information about actions, decisions or university governance. Wherever possible, and consistent with our policy and procedure, information is released by way of active disclosure. Where, however, an application includes a request for information that is exempt from disclosure under the RTI Act, it is dealt with by way of the assessed disclosure provisions.

The Vice Chancellor is the Principal Officer under the RTI Act and has delegated the powers to assess and decide the disclosure of information under the Act to a number of RTI Officers, including all of the University's in house lawyers. The General Counsel/Executive Director Legal and Risk is the 'legal compliance owner' for the RTI Act and accountable for ensuring the University's compliance. The Director Governance and Compliance is responsible for the effective administration of applications and providing guidance and training to RTI Officers.

This model has been adopted to service the relatively small number of applications across a busy team. Given the volume, it is not feasible to employ a specialist Right to Information Officer and the in-house lawyers are best placed to act as RTI officers. The challenges this provides is that when a large application is received, it has a significant impact on operations of the team who are otherwise engaged in day to day as well as high risk legal work. This has created challenging resource constraints and at times diverts resourcing away from high risk legal work. It is conservatively estimated that a recent application with a very broad scope (after negotiation) took around 275 hours of staff time equating to approximately 15 per cent of one FTE annual salary. This estimate includes searching, document conversion, collating and cataloguing, the assessment and decision.

Cost and Resourcing

There is a significant cost to maintaining the resources, systems and expertise in a small team with many other workstreams. Every application is different, and decisions about the release of

information and the application of the RTI Act's exemptions after application of the public interest test, are far from straightforward.

Whilst the University only processes a relatively small number of applications each year, an individual application with a large scope can pose a significant administrative and resource burden. This is compounded by the difficulties in assessing whether the scope of an application constitutes an unreasonable diversion of resources, and the short timeframe in which to do that. The extent of an application may only become apparent well after the application has been accepted and progressed. This is partly the reflection of an Act that was established at a time when information was, in the main, stored and disseminated in consistent and accessible ways and did not contemplate the exponential growth in volume of written information that is generated and shared electronically today as organisations go about their business, nor the variety of forms, systems, platforms and technologies over which this information is generated and stored.

The University is improving its systems and processes for managing applications including how we quantify the cost of processing applications to aid in assessing whether an application will result in the unreasonable diversion of resources.

Engaging with the Ombudsman

Timely advice from the Ombudsman has not been readily available and by necessity, can only be general in nature. The resources provided by the Ombudsman to support decision-making are limited and some are outdated. The lack of guidance and clarity in the application of exemptions and the judgment needed in the application of the public interest test make consistency in decision-making challenging. This is evidenced by the decisions of Ombudsman external reviews in which even the most experienced of RTI officers in the public service often have decisions amended by the Ombudsman on external review. For a junior RTI Officer grappling with the Act for the first time, it is often a daunting task, knowing that the reputation of their organisation may be impacted by their decision, and support and guidance from the Ombudsman's office would be incredibly beneficial.

In relation to specific provisions in the RTI Act, some improvements would also support better administration of applications, especially in resource-constrained environments:

1. clarity and guidance in relation to what constitutes a vexatious application
2. clarity regarding what amounts to an unreasonable diversion of resources that reduces the resource requirement for the assessment of the scope itself
3. provision of more flexibility in statutory timeframes to accommodate more complex applications.

More recently, to aid in improving administration and consistent with our approach to transparency, the University has taken a more collaborative approach to applications with the applicant themselves. RTI Officers often engage with an applicant from the outset to support a better understanding of the request to facilitate active disclosure where possible, to clarify and negotiate the scope where necessary and to enable conversations about timeframes as the application progresses. This approach has been beneficial to the process and assisted somewhat in managing the workload associated with applications along with their other duties.

Term of reference 3: The intersection with any other relevant legislative frameworks (including, but not limited to, the Public Interest Disclosures Act 2002 and the Personal Information Protection Act 2004)

Our RTI Officers, who are in the main University lawyers, understand the obligations of related legislation in the assessment of RTI applications and ensure they are appropriately managed.

It is worth noting that by virtue of being an RTI Officer, and their contact details becoming publicly available, some staff have become vulnerable to harassment by applicants. The University has, on more than one occasion, had to place a redirect on calls from applicants to our Safe and Fair Communities Unit due to inappropriate behaviour. Mobile phone numbers, especially of junior officers, are rarely released because of this.

Term of reference 4: The performance, resourcing and efficacy of the Office of Ombudsman in undertaking its functions and duties under the RTI Act

The RTI Act does require the Ombudsman to provide some support to decision makers through the provision of guidelines for disclosure of information and a manual related to the operation of the RTI Act, however support for developing capability of public authorities and their RTI Officers it is not an underlying objective of the Act.

The current model may work better for large, State Government agencies with an extensive history of assessing RTI applications and networks across agencies, however, it has not served the University well. As a unique type of public authority, even peer to peer learning is difficult to access. The University's RTI team has benefitted from connecting with individual RTI officers from other agencies, but these arrangements are dependent on relationships between individuals rather than being systemically embedded. The resources provided on the Ombudsman's website are minimal, aged and not particularly user friendly. The limited training session that our officers were able to join, however, was incredibly beneficial and we would welcome and encourage more direct training opportunities.

The Ombudsman Office's resourcing challenges are well known. We suggest that a model that seeks to build capability in the system would improve the quality of decision making, improve the applicant experience and reduce the number of external reviews as well as the number of revised decisions from external reviews. We consider this would benefit public authorities and the Ombudsman, and ultimately better support the object of the RTI Act.

A capability building model could include:

- An updated, user-friendly Manual and guidelines.
- Online training modules for RTI Officer and interpretation of the RTI Act.
- A user friendly database of best practice examples/decisions in relation to the various exemptions and the application of the public interest test.
- An RTI hotline.

Term of Reference 5: Any other identified barriers to, or constraints on, the effective capacity of the RTI framework in Tasmania.

In your letter you note the recommendation of the Environmental Defender's Report 2023 that "The RTI Act be amended to remove the requirement that the Ombudsman provide a "preliminary decision" to public authorities and Ministers where a decision is adverse to them and invite their input.". The University would object to removal of this provision. To do so, in the absence of any avenue of repeal or review of the Ombudsman's decision would remove procedural fairness, particularly given the application of exemptions and the public interest relies on an individual's judgement and perception.

Transparency and accountability are essential to a healthy democracy and the RTI Act is one mechanism for underpinning that principle. The RTI Act as it is currently drafted is, however, a blunt instrument. All of the obligations to comply lie with public authorities and there is no expectation, guidance or obligation on applicants in how they use the Act, or how they represent or use the information disclosed to them in a way that is consistent with the intent of the Act. As a result, the Act is easily and often weaponised by applicants who are able to take information out of context and use it for their own and sometimes adversarial purposes, something that could have a negative impact on transparency as it is conceivable that it could drive unintended behaviours.

Of significant concern to the University is the lack of recourse for public authorities where individuals repeatedly submit extensive requests for information. As noted above, provisions regarding unreasonable diversion of resources and vexatious applications lack clarity and tend to focus on individual rather than cumulative applications. The consideration of provisions to enable a public authority to at least challenge repeat applicants, would be welcomed, for example, provisions that enable the Ombudsman, at the request of a public authority, to engage with an applicant to understand their information requirements and how they can be met, and ultimately require the Ombudsman to determine whether the overall volume of requests is reasonable.

Thank you again for the opportunity to comment on this matter. Please contact me by email at [redacted] or by phone on [redacted] if you would like to discuss any aspect of this submission or the University's experience of the RTI Act.

Yours faithfully

Susannah Windsor
Acting General Counsel and Executive Director Audit & Risk