



PARLIAMENT OF NEW SOUTH WALES

COMMITTEE ON THE OMBUDSMAN, THE POLICE
INTEGRITY COMMISSION AND THE
CRIME COMMISSION

REPORT ON THE FIRST MEETING WITH THE
INFORMATION COMMISSIONER AND THE
PRIVACY COMMISSIONER

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The motto of the coat of arms for the state of New South Wales is “Orta recens quam pura nites”. It is written in Latin and means “newly risen, how brightly you shine”

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Membership

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Terms of Reference

The Committee on the Office of the Ombudsman and the Police Integrity Commission is constituted under Part 4A of the *Ombudsman Act 1974*. The functions of the Committee are specified in the *Government Information (Information Commissioner) (GIPA) Act 2009* and the *Privacy and Personal Information Protection (PPIP) Act 1998* as follows:

- to monitor and review the exercise by the Commissioners of their functions;
- to report to both Houses on any matter appertaining to the Commissioners;
- to examine each annual report and other report of the Commissioners and report to both Houses on any matter appearing or arising out of any such report; and
- to recommend any changes to the functions of the Commissioners that the Committee thinks desirable.

Nothing in the legislation enables the Committee to:

- to investigate a matter relating to any particular conduct, or
- to reconsider any decision to investigate, not to investigate or to discontinue investigation of any particular matter, or
- to reconsider the findings, recommendations or other decisions of the Commissioners in relation to any particular matter.

Chair's Foreword

The general meetings between the Committee and the Information and Privacy Commissioners provide an opportunity for the Committee to review the work of the Information and Privacy Commission in carrying out its legislative functions and discuss issues of public interest that are relevant to the Committee's functions.

This was the first general meeting since the Information and Privacy Commission was established in January 2011 and provided a valuable opportunity for the Commissioners to discuss how they intend to execute their roles and functions. Following the merging of the Information Commission and the Privacy Commission, the Commissioners outlined to the Committee their ideas about the strategic direction for the new agency and the objectives they aim to achieve.

One of the key projects the Information and Privacy Commission is currently engaged with is the improving of information sharing between government agencies in New South Wales. This plan highlights the importance of using technology to store and disseminate data appropriately.

While technology can be used to benefit data storage and analysis, it also presents a range of challenges with regard to information security and privacy. Such challenges can be seen through the use of the internet and social media for fraud and cyber-bullying and the overt use of closed circuit television cameras in public places.

The Committee thanks the Commissioners for their time during the general meeting and appreciates the frank and comprehensive discussion that demonstrated to the Committee the intent and capacity of the Information and Privacy Commission.

The Hon. Catherine Cusack MLC
Chair

Glossary

CCTV	Closed circuit television
GIPA Act	Government Information (Private Access) Act 2009
IPC	Information and Privacy Commission
PIPP Act	Privacy and Personal Information Act 2008

Chapter One – Commentary

- 1.1 On 21 May 2012 the Committee conducted a general meeting with Ms Deirdre O'Donnell, in her dual capacity as Chief Executive Officer of the newly established Information and Privacy Commission (IPC) and as Information Commissioner, and the Privacy Commissioner, Dr Elizabeth Coombs.
- 1.2 In preparation for the general meeting, the Committee sent both Commissioners questions on notice based on the annual reports of the Office of the Information Commissioner for 2009-10 and 2010-11 and the annual report of the Office of the Privacy Commissioner for 2010-11. The answers the Committee received to these questions from the Commissioners have been replicated in Chapter Two of this report.
- 1.3 In addition to the written responses the Committee received from the Commissioners in reply to the Committee's questions, evidence was also obtained from the Commissioners during the general meeting. Much of the discussion during the general meeting centred on the role and functions of the Commission as it establishes itself. The Committee also heard evidence with respect to current issues of interest and challenges for the IPC, which are outlined in the commentary below.

THE INFORMATION AND PRIVACY COMMISSION

- 1.4 The IPC was established on 1 January 2011 and merges the previously separate agencies of the Office of the Information Commissioner and the Office of the Privacy Commissioner under the *Privacy and Government Information Legislation Amendment Act 2010*.
- 1.5 As an oversight agency, the IPC has responsibility for, amongst others, the following pieces of legislation and regulation:
- *Government Information (Public Access) Act 2009 (NSW)*(GIPA Act)
 - *Government Information (Public Access) Regulation 2009 (NSW)*(GIPA Regulation)
 - *Government Information (Information Commissioner) Act 2009 (NSW)*(GIIC Act)
- 1.6 As a relatively new agency, the Commission is actively seeking to refine its role and strategic direction and the Information Commissioner, Ms Deirdre O'Donnell, explained its purpose to the Committee as follows:

We were meant to be and we are meant to deliver a single office to administer legislation relating to privacy and access to information, in effect, a one stop shop and as a one stop shop we are meant to provide consistent information and advice for agencies and individuals, co-ordinated training for agencies and individuals, a common point of contact to help reduce referral fatigue – a very important benefit

to the public – and administrative and operational efficiencies through shared corporate services.¹

- 1.7 In the Committee's Further Questions on Notice submitted to the IPC following the general meeting, the Committee enquired about the strategic direction of the Commission. Ms O'Donnell told the Committee that since Dr Coombs' commencement in November 2011, they had together developed a strategic plan to set the overall direction for the IPC. She also noted that the IPC had:

At a more strategic level, developed new relationships with key stakeholders, especially senior executives of cluster agencies; and built on existing relationships with practitioners through the quarterly practitioner forum and other consultative mechanisms.²

- 1.8 The IPC undertook a planning exercise in March 2012 which identified seven priority areas for the agency to focus on: the merger of the two offices, relationships and stakeholder engagement, legislation and policy, systems, employees, clients and corporate governance. These areas have been incorporated into the agency's business plan and have measurable milestones which are reported against monthly.³

- 1.9 The Committee asked what determines the strategic direction of the IPC, with the reply being:

The strategic direction of the IPC is informed by the public interest considerations in our legislation, as explicitly outlined by the NSW Parliament in setting up the merged entity...In a very practical sense, the strategic plan makes sure that the IPC is focused on delivering outcomes such as one website, one contact number, coordinated advice and assistance to the public, and training to assist agency compliance with both access and privacy obligations. The plan also focuses on the fundamentals that ensure the office delivers on its purpose – staff engagement in contributing to the overall success of the IPC, and the successful implementation of key business systems.⁴

- 1.10 The Privacy Commissioner, Dr Coombs, highlighted the roles of the individual commissioners within the context of the IPC:

We have in common the fact that we both advocate for the public's right to information or for protection of personal information. We also have the responsibility to ensure compliance and I will speak further about the actual scope about who we are speaking about when we say who is to ensure compliance. We also investigate, conciliate and conduct inquiries into information access and privacy complaints. One of the things that people do not tend to know about our roles is that we both function independently [and] were set up as champions, so we cannot act in each other's role. We remain both separately responsible for our pieces of legislation.⁵

¹ Ms Deirdre O'Donnell, Information Commissioner, Information and Privacy Commission NSW, *Transcript of evidence*, 21 May 2012, p. 22

² *Answers to Further Questions*, 18 June 2012, p. 4, question 4.

³ *Answers to Further Questions*, 18 June 2012, p. 5, question 5.

⁴ *Answers to Further Questions*, 18 June 2012, p.5, question 6.

⁵ Ms O'Donnell, *Transcript of evidence*, 21 May 2012, p. 23.

1.11 Ms O'Donnell outlined the deliverables of the IPC:

In my first year, before Elizabeth joined us, we repositioned our communications team and our community liaison focus. We are progressively repositioning policy and our corporate services area. Those are four business streams, if you like, which share us. We have a business mandate – I hope it is not pretentious to say it, but our plan is to move to blue. We want to show that we are no longer green or orange; we are moving to blue.⁶

1.12 One of the key responsibilities of the Commission is to engage with stakeholders and to raise awareness amongst staff generally in all NSW public sector agencies that the regime has changed in New South Wales and to understand the requirements of the GIPA Act. Ms O'Donnell informed the Commission that training is an essential component of the agency's approach:

We will continue trying to change and innovate in our training. We will continue our high level approach to Chief Executive Officers and Directors-General. We are also talking at a governance level.⁷

1.13 Dr Coombs highlighted that the approach the Commissioners are taking toward educating agencies is:

...very much about corporate governance and corporate integrity that it is the responsibility of agencies to take these two issues, the right to information and the protection of people's personal information, very seriously. They need to be looking at how they do that in terms of their own governance arrangements. We want to ensure that there is a proactive preventive approach rather than that sort of reactive style that you sometimes see.⁸

1.14 The Committee questioned the Commissioners about the appropriateness of their resourcing and their ability to perform their jobs effectively. Dr Coombs outlined in her responses to the Questions on Notice, and again during the general meeting, that the increased workload has been managed by prioritising the core business functions and diverting resources from less urgent work.⁹

1.15 Ms O'Donnell emphasised during the general meeting that the whole office is "focused on how we can maximise our resources to ensure that we deliver the best service as the Information and Privacy Commission".¹⁰

1.16 Following questioning from the Committee on the issue of costs associated with the last annual report, Ms O'Donnell recognised the importance of reducing such costs.¹¹

⁶ Ms O'Donnell, *Transcript of evidence*, 21 May 2012, p. 32.

⁷ Ms O'Donnell, *Transcript of evidence*, 21 May 2012, p. 24.

⁸ Ms O'Donnell, *Transcript of evidence*, 21 May 2012, p. 25.

⁹ *Answers to Questions on Notice*, 30 April 2012, p. 4, question 4.

¹⁰ Ms Deirdre O'Donnell, *Transcript of evidence*, 21 May 2012, p. 32.

¹¹ Ms O'Donnell, *Transcript of evidence*, 21 May 2012, p. 33.

1.17 Dr Coombs agreed, telling the Committee that:

First, we recognise it is a fiscally tight environment so jumping up and down and asking for more resources is not necessarily going to be very effective. We are approaching that by trying to get agencies to realise that this is their issue as well as mine as a regulator.¹²

1.18 Ms O'Donnell had reference to the general meeting process, and noted the following in the context of the IPC:

We did not have strong corporate memory and we still do not have very good records management so this really gave us a good focus. I really valued the scrutiny of our Annual Reports. It showed us that, even though we are a small office, everything we write matters and needs to be justified.¹³

1.19 The Chair of the Committee noted that there is work to be done to properly develop best practice in the information and privacy environment.¹⁴ Dr Coombs commented:

In terms of where we go now with more resources, I really would like to focus not just upon doing what we need to do on the complaint handling side but also on strategic work, and actual suggestions and recommendations to government as to where we should take this area.¹⁵

INFORMATION SHARING

1.20 Ms O'Donnell explained to the Committee that the IPC has recently been involved in developing an information and communications technology strategy for New South Wales government agencies. Better information sharing has been highlighted as one of the deliverables of this strategy and Ms O'Donnell stated during the general meeting that the Commission will endeavour to ensure this is achieved.¹⁶

1.21 Ms O'Donnell outlined that NSW is the only state currently working on such an information sharing strategy and believes that information access commissioners in other states are likely to watch developments in NSW.¹⁷

1.22 During the general meeting the Committee discussed with the Commissioners the challenges resulting from changes to information technology and the way in which data is stored and released. Ms O'Donnell said:

The information and communication strategy [ICT] is now making it accountable. There will be a plan for the release of data. The thing that I take comfort from is that technology is moving so rapidly that if a bureaucrat says "I do not want you to" or "Maybe I will if I feel in a good mood today", technology is making that irrelevant. To

¹² Dr Elizabeth Coombs, Privacy Commissioner, Information and Privacy Commission NSW, *Transcript of evidence*, 21 May 2012, p. 32.

¹³ Ms O'Donnell, *Transcript of evidence*, 21 May 2012, p. 33.

¹⁴ The Hon Catherine Cusack MLC, Chair, *Transcript of evidence*, 21 May 2012, p. 34.

¹⁵ Dr Coombs, *Transcript of evidence*, 21 May 2012, p. 34.

¹⁶ Ms O'Donnell, *Transcript of evidence*, 21 May 2012, p. 27.

¹⁷ Ms O'Donnell, *Transcript of evidence*, 21 May 2012, p. 27.

use an analogy, in the early days of my role as Information Commissioner I found that people would say to me, "It is alright, you will get over it, just calm down", and then WikiLeaks happened. Suddenly the world saw a game changer. Suddenly everyone saw that cyberspace is uncontrollable. We have had all the excitement around privacy awareness week, which is completely analogous around Facebook, and people are seeing that technology is the game changer. No matter how hard you try to protect, that is the reality.¹⁸

- 1.23 Ms O'Donnell explained that the State Plan will seek to make sure that all the information that agencies can disseminate under the GIPA Act will be readily available to the public. She noted that this is already underway in the Commonwealth jurisdiction and in Queensland.¹⁹

CURRENT CHALLENGES

- 1.24 The Committee has observed that the main challenges in relation to privacy issues affecting the citizens of New South Wales relate to rapid changes in information technology. The Chair provided an example during the general meeting of personal details that are collected from patrons upon entry to certain clubs, with no assurances given as to what the information will be used for or how it will be stored.²⁰ Dr Coombs outlined to the Committee the types of questions people could ask about the use and security of their personal information but suggested that this is an issue that the Government may have an interest in addressing.²¹

- 1.25 Dr Coombs explained that the privacy implications have become much wider and affect more people since the growth in technology:

I think the issue is that when the Privacy Act came into existence it was a very different world. In 1998 we barely had email. I can remember back in 1996 it was coming and people were talking about it, but not everybody had access to it – not everybody had access to the internet. The analogy I am drawing here is that everything has moved on in a way that has seen exponential growth in technology and also too in people's expectations of what data they can ask of you and what you will provide. Sometimes you will be surprised what even people who are privacy conscious will hand over.²²

- 1.26 During the course of the general meeting Mr Anderson noted that there had also been an increase in identify theft and cyber bullying alongside the growth in social media. This increase in misuse of personal information has led to an increasing concern about this crime type and reluctance, from some, to give out their private information.²³

- 1.27 CCTV cameras are also likely to be affected by privacy and information guidelines. The Committee Chair noted that they have been topical recently:

¹⁸ Ms O'Donnell, *Transcript of evidence*, 21 May 2012, p. 27.

¹⁹ Ms O'Donnell, *Transcript of evidence*, 21 May 2012, p. 28.

²⁰ The Hon Catherine Cusack MLC, *Transcript of evidence*, 21 May 2012, p. 28.

²¹ Dr Coombs, *Transcript of evidence*, 21 May 2012, p. 29.

²² Dr Coombs, *Transcript of evidence*, 21 May 2012, p. 29.

²³ Mr Kevin Anderson MP *Transcript of evidence*, 21 May 2012, p. 29.

There was some question with the student who died in Pitt Street, that police had used the CCTV cameras which were, I think, positioned to the public as being an anti-terrorism measure and seen as being part of a strategy for major crime. It was not envisaged I think by many people that someone stealing a packet of biscuits would be tracked all the way down using that infrastructure. Hence my question: Are there any guidelines or restrictions or would it be appropriate to have any in place for the police use of that facility?²⁴

1.28 In the Answers to Further Questions on Notice provided by the IPC, Ms O'Donnell explained that there is a whole of government Guideline entitled "NSW Government Policy Statement and Guidelines for the Establishment and Implementation of Closed Circuit Television in Public Places". The Guideline was developed in 2000 by what is now the Department of Attorney General and Justice and is aimed largely at local councils as the main users of CCTV.²⁵ It was noted that local councils are given the authority to use CCTV under the *Local Government Act 1993* for use as part of an integrated crime prevention strategy.

1.29 The Guideline also required compliance with the PPIP Act and requires that police are involved in the assessment and planning phase of CCTV schemes. NSW Police also have a policy on the use and development of CCTV.²⁶

1.30 There are no specific issues raised by the use of CCTV from a GIPA Act perspective as footage from CCTV is treated the same way as any other information.

1.31 In the IPC's Answers to Further Questions on Notice, Ms O'Donnell outlined that the main challenge for the IPC is to communicate the message that appropriate access to information and the protection of privacy are essential to good public administration.

...helping agencies understand that getting these right in the first instance can assist them to effectively deliver their business objectives, while reducing the amount of administrative work that arises from dealing with allegations of breaches, complaints and requests for review of access decisions.²⁷

1.32 The IPC detailed its plans to overcome these challenges by building strong relationships with stakeholders and being proactive in identifying risks and finding ways to overcome them.

CONSULTATION

1.33 During the general meeting the Committee noted that there was a Bill then before Parliament that sought to amend the *Health Records and Information Privacy Act 2002* regarding the disclosure of genetic information to relevant individuals. Dr Coombs informed the Committee that the IPC will work to

²⁴ The Hon Catherine Cusack MLC, *Transcript of evidence*, 21 May 2012, p. 31.

²⁵ *Answers to Further Questions*, p. 2, question 3.

²⁶ NSW Police Force, 'NSW Police Force Policy on the Development and Use of CCTV', viewed 9 October 2012,

<http://www.police.nsw.gov.au/about_us/policies__and__procedures/policies/nsw_police_policy_on_the_development_and_use_of_cctv>.

²⁷ *Answers to Further Questions*, p. 8, question 10.

develop appropriate guidelines as outlined in the Bill and that those guidelines would be largely based on consultation with relevant agencies.²⁸

- 1.34 Dr Coombs emphasised the importance of full and complete consultation in order to produce effective guidelines and noted that no time frame has yet been placed on the production of those guidelines. The IPC was discussing with the NSW Ministry of Health when resources would be available to work on this project.²⁹
- 1.35 Ms O'Donnell noted that as the Commissioners share a policy team in the office, she will ensure that the development of these guidelines is given priority.³⁰
- 1.36 In discussing the approach the IPC takes toward dealing with stakeholders, Dr Coombs underscored the importance of developing strategic alliances with agencies such as the State Records Authority, the Public Service Commission and the Department of Premier and Cabinet and ensuring they have a comprehensive understanding of information and privacy management.³¹
- 1.37 Ms O'Donnell mentioned that there are four main agencies (the Police Force, Transport NSW, NSW Health, and the Department of Education and Training) which most government information complaints and feedback relate to. The IPC is conscious to target these agencies to develop them in order to reduce the number of complaints the IPC receives.³²

PLANNING ROLE

- 1.38 Effective planning by the Government is dependent upon having access to information. The Chair and Ms O'Donnell discussed the volume of information that is collected and held by various government agencies and the importance of ensuring that this information is accurate.

Chair: The public can then question the data as well, because the data might not be correct.

Ms O'Donnell: Exactly.

Chair: That has always been an excuse as to why it cannot be released – it might not be right.³³

- 1.39 While it is important to have accurate information, data can be used more effectively when it is appropriately integrated. Such integration can raise issues of privacy, as evidenced by Mr Anderson's example of a US website that aggregated street addresses with resident voting records. Dr Coombs explained:

Data sites like these do not necessarily – and I will come back on that other issue – raise issues about privacy when data is at a sufficiently aggregated level. The point that we often discuss is that many of the access requests that agencies receive are

²⁸ Dr Coombs, *Transcript of evidence*, 21 May 2012, p. 23.

²⁹ *Answers to Further Questions*, p. 1, question 1.

³⁰ Ms O'Donnell, *Transcript of evidence*, 21 May 2012, p. 23.

³¹ Dr Coombs, *Transcript of evidence*, 21 May 2012, p. 25.

³² Ms O'Donnell, *Transcript of evidence*, 21 May 2012, p. 25.

³³ The Hon Catherine Cusack MLC, Chair, and Ms O'Donnell, *Transcript of evidence*, 21 May 2012, p. 27.

from people seeking their own personal information because they want to know what is held about them, and they want to ensure that it is accurate and up to date. There are certain times when Ms O'Donnell and I come from different perspectives, and the way we work through that is what is in the public interest, so that is the tipping point. Generally, people expect that privacy will have concerns about data going out. The point that I keep making is that, if it is at aggregate level, it is very valuable for planning and is not necessarily a privacy concern. When you start getting into personal information such as name, address, signature and voting – that most certainly would be something we would have some issues with.³⁴

CONCLUSION

- 1.40 At the conclusion of the general meeting, Dr Coombs highlighted to the Committee that the IPC would like to focus not only on complaint handling, but also strategic work which will inform recommendations to government.³⁵
- 1.41 Mr Anderson noted that the Committee may be in a position in the future to provide feedback to the IPC on its directions and strategic planning. The Chair emphasised the interest of the Committee members in the further development of information and privacy policy.³⁶
- 1.42 The Committee commends the work of the Commissioners in their achievements to date, and looks forward to the ongoing work of the IPC.

³⁴ Dr Coombs, *Transcript of evidence*, 21 May 2012, p. 28.

³⁵ Dr Coombs, *Transcript of evidence*, 21 May 2012, p. 34.

³⁶ Mr Kevin Anderson MP, *Transcript of evidence*, 21 May 2012, p. 34.

Chapter Two – Answers to Questions on Notice

RESPONSES TO QUESTIONS ON NOTICE BY THE INFORMATION AND PRIVACY COMMISSION

Office of the Privacy Commissioner

QUESTION ONE:

The Privacy Commissioner's Report notes that many agencies have responded positively to submissions and comments from your office on how they might improve both their methodologies and the outcomes of internal reviews. Can you outline in further detail an example of the methodological improvements that such an agency might make?

RESPONSE:

In summary the critical thing that agencies conducting internal reviews need to is to utilise a rigorous methodology that:

- 1 explicitly addresses the matters raised
- 2 collects and analyses relevant material and evidence including that provided by the parties involved
- 3 draws conclusions based upon the material examined
- 4 provides to the Office of the NSW Privacy Commissioner a copy of the draft report for comment prior to release
- 5 provides clear statement to the complainant of the findings and advises of the right of access to the Administrative Decisions Tribunal.

Background:

The author of the 2010/2011 Annual Report (acting Privacy Commissioner, Mr McAteer) noted a lack of rigor in a significant number of internal reviews submitted to his Office when he took up the position in late 2009. Often agencies conducted a 'desk top' review or evaluation of the allegation and the conduct that was the subject of the complaint.

In some instances however, where clear proactive lines of inquiry were open, and the conduct had a significant impact on the victim/applicant, rather than undertake a proactive investigation of the conduct, many agencies would do a minimal examination of the conduct and reach either premature or unsustainable conclusions.

The then acting Commissioner would raise these 'deficiencies' with the relevant agency (in applicable matters) as part of our statutory role in providing submissions under section 54 (2) of the *Privacy and Personal Information Protection Act 1998* (the PPIP Act). Over the period of

late 2009 to June 2011 the acting Privacy Commissioner was able to raise the standard of the investigations of the alleged privacy breaches, and as a result agencies produced more robust review reports with higher quality conclusions (based on available lines of inquiry, evidence and conclusions - when having regard to that evidence applied to the provisions of the PPIP Act). The general premise being that obvious straight forward lines of inquiry should be pursued in all matters, and further somewhat 'discretionary' lines of inquiry should be considered in the more serious matters, or matters where the weight of evidence leading to a certain outcome was mounting.

In many instances the acting Privacy Commissioner's submission suggested further specific action that the agency should consider prior to concluding their reviews.

QUESTION TWO:

In the report, it was noted that many complaints received from members of the public are in relation to surveillance at home and at work, access to medical records and the use of criminal records. As some of these are outside the scope of NSW Privacy laws, how and where do you refer clients with respect to such complaints?

RESPONSE:

The client service approach adopted by this Office is to ensure that the complainant is provided with information as to why the issue cannot be dealt with by the Office of the NSW Privacy Commissioner, which agency is (if there is one) the appropriate body to deal with their complaint and provided with information on how to contact that body.

Background:

All of the above examples are peripherally captured by NSW privacy laws in that they are 'privacy related matters' and concern 'the privacy of individuals' (as in section 36 of the PPIP Act). The limitations on the scope of NSW Privacy Laws on some of these examples relates to the fact that either the Commissioner does not have specific legislative responsibility for the issue (eg: workplace surveillance and the *Workplace Surveillance Act 2005 NSW* are the responsibility of the Attorney General not the Privacy Commissioner). The other limitation is that the Information Protection Principles (IPP's) under the PPIP Act, and the Health Privacy Principles (HPP's) under the *Health Records and Information Privacy Act 2002* relate specifically to the concept of data. One of the Commissioner's functions is to 'provide advice on matters relating to the protection of personal information and the privacy of individuals generally'. (s-36 (2) (g) PPIP Act).

On this basis and consistent with our client service rationale, we provide general procedural advice and information about the substantive issue which an enquirer raises, and where possible or appropriate we refer clients to other resources including in some instances agencies. For example, complaints concerning large private organisations are referred to the Federal Privacy Commissioner within the Office of the Australian Information Commissioner. Prior to any referral we would provide general information about the National Privacy Principles under the *Privacy Act 1988 (Cth)*. Likewise if the inquiry relates to a Commonwealth agency similar advice (and where necessary referral information) is provided citing the Information Privacy Principles.

Matters relating to workplace surveillance are usually addressed by general advice and referral to various printed resources on our website (eg: the 'Short Guide to the *Workplace*

Surveillance Act 2005' publication). More pressing matters and requests for intervention are referred to the Attorney's staff. General community surveillance matters are dealt with through the provision of information and advice about public and private spaces, the tort of nuisance, pursuing matters with local councils, and managing issues through dispute resolution forums either with Community Justice Centre's or very rarely invoking the residual 'privacy matters' jurisdiction under section 36 (2) (k) of the PPIP Act to attempt to resolve the matter by Alternate Dispute Resolution.

Criminal records inquiries are often dealt with by internal advice relating to privacy and the *Criminal Records Act 1991*, various resources and publications freely available, and NSW Police.

The issue of access to medical records comprises a significant volume of requests of the Office and one that is fully within the Commissioner's jurisdiction under the HRIP Act. This Office provides advice and information, where appropriate refers matters for internal review, and as necessary provides advice or commences preliminary inquiries and investigates matters concerning access by medical service providers in the private sector.

QUESTION THREE:

The report notes the increasing incidence of cyber crime and identity theft. What gaps do you identify under existing NSW privacy laws and what role do you envisage the Commission will play in the development of new legislation and policy to address this growing area of concern?

RESPONSE:

Ideally the Commissioner will play a central role in the development of legislation and policy to address this area. The formal role of the Commission (and others) will however be determined by the Government.

Importantly, having regard to the digital economy, the cyber world and law enforcement, many of these matters are within the jurisdiction of the Commonwealth Government and its agencies (including law enforcement agencies). As a policy and client focused complaint driven organisation with national and international links, the NSW Privacy Commission will be well placed to bring experience and expertise to this process, drawing on its ongoing legacy since 1975.

Currently the Office works to raise awareness of privacy issues arising from internet usage through the Asia Pacific Privacy Authorities. It participates in raising awareness of 'privacy aware' internet practices by producing resources and participating in campaigns such as Privacy Awareness Week which is an initiative of the Asia Pacific Privacy Authorities.

QUESTION FOUR:

We note that under your core business activities from July 2010 to 30 June 2011 there has been a significant increase in complaints lodged and enquiries responded to. How is the Privacy Commission coping with this increase in workload? Are staff levels optimal for this work?

RESPONSE:

The Office of the Privacy Commission has coped with increases in workload by prioritising client service type 'core' functions, and diverting resources from less urgent policy and project work. New work practices were implemented in early 2011 to enable personal inquiries to be attended to in the first instance. (The Annual Report details how staff dedicated to work solely on privacy matters equated to six positions (including two part time positions) within the reporting period. The figure of six included the then Acting Commissioner (see answer to Q 8 below).

In essence staff levels are not sufficient to deal with all of the functions of the Commissioner especially having regard to the increased prominence of 'privacy' as a concept or 'notion' in the community, the increasing activity in national and international privacy law reform. Developments impacting on privacy and data sharing arrangements at Commonwealth and COAG levels, the increased requests for consideration of privacy exemptions by law enforcement agencies and other government entities in a climate of higher regulation and information gathering powers are all having an impact on the competing and higher demands on our resources.

Additionally there are some matters which remain outstanding from a compliance and guidance perspective (relating to Privacy Management Plans for the NSW sector, and Guidelines arising (in part) from the enactment of the recent FOI (GIPA regime). Steps are currently underway to provide a project position solution (late 11/12 Fin Year) in respect of this issue.

The very small complement of Privacy staff cope by efficient and diligent professionalism has dealt with a high volume of cases, projects and client service.

In more recent months, discussions with the Information Commissioner and CEO of the Information and Privacy Commission (IPC) has seen a commitment to additional resources being provided to the privacy component of the IPC and a pooling of staff resources in for example, the community education and communication area.

QUESTION FIVE:

In cases where complainants are unsatisfied with the outcome of their internal review, what proportion of these complaints proceed to the Administrative Decisions Tribunal?

RESPONSE:

The available figures can be viewed only as indicative as there is a lag time between internal review lodgement and Administrative Decisions Tribunal (ADT) lodgement.

The 2010/11 Annual Report shows that 167 Internal Reviews were lodged and in the same period 44 matters were lodged with the ADT. While flagging that it is likely that some

of these 44 matters arose before 2010/11 and may not relate to the 167 internal reviews of the 2010/11 period, this extrapolates to over 26% of matters being 'appealed' to the Tribunal. Currently (due to the fact that the Commissioner is essentially at 'arms length' from the Complainant in the Internal Review stage of the matter, we do not know or collect formal data on how many applicants are unsatisfied with their internal review outcome. In many instances however Complainants contact the office for advice following the completion of the review, and informal data would suggest a slightly higher than 25% 'dissatisfaction rate' following reviews.

QUESTION SIX:

What number of complainants specifically requested their complaints be investigated by the Privacy Commissioner rather than the government agency? How many of these requests were accepted.?

RESPONSE:

The number of complainants who specifically request the Privacy Commissioner investigate their complaint rather than the government agency is small. The reasons for this are varied.

The majority of complaints did not relate to NSW Government agencies (the report shows a total of 43 complaints for State and Local Government). The majority of complaints (53 or 56%) related to private organisations or other individuals or entities.

Of the 44% minority of complaints that related to government agencies, nearly all were declined on the basis that the complainant should proceed by way of internal review. The PPIP Act makes a provision that the availability of Internal Review is a specific ground to justify declining to deal with the matter as a complaint. Ordinarily, the only matters that would be taken up directly (where an internal review might be possible) are matters where the issue raises a systemic issue which impacts on a volume of citizens (eg: our recent investigation of a privacy complaint concerning NSW Police and Roads and Maritime Services relating to the security industry).

As a matter of course we would rarely if ever investigate a health privacy complaint (involving the public sector), because the HRIP Act provides that if the Privacy Commissioner deals with such a complaint, the complainant is prevented from going to the ADT (or seeking a further review). Resources are another reason for this approach, whereby our small staff can concentrate any investigation resources on private sector health, matters in our residual jurisdiction involving the private sector exempted from the Commonwealth regime, and systemic issues etc.

QUESTION SEVEN:

We note that the category with the highest number of Internal Reviews related to medical records. What in particular does the Privacy Commissioner consider contributes to this area having the greatest number of reviews? Is the Privacy Commissioner surprised at the number of reviews overall? Does the Privacy Commissioner consider this will increase considerably in the future?

RESPONSE:

This area has the greatest number of internal reviews due to the usage of these services relative to other public services and because of the higher degree of sensitivity of privacy issues arising from health information. Nearly all citizens of NSW will have business with the

NSW health sector. In addition health information relates to all persons, whereas for example student or employment information may not be (or no longer be) applicable to as many citizens. Likewise with driving records and many of the other categories etc. The low volume of credit matters is explained by the fact that such matters can only formally be dealt with by the Federal Privacy Commissioner.

For these reasons we are not surprised by these figures. However, the area will remain prominent due to the importance and 'higher sensitivity' of health information. As most of the matters (concerning public sector health) relate to disclosure, followed by access and accuracy, citizens will be more materially affected by the improper use of their health information and as such more likely to ventilate their grievance and access their rights. Another possible contributor is the level of understanding by medical practitioners of the rights of patients to access their health records.

This area will continue to grow (like most aspects of the current privacy regimes), but not necessarily at any significant rate. Private sector health matters relating to access may however increase in coming years significantly (and be in part dependent on the effectiveness or otherwise of the Commonwealth 'e-health' initiatives).

QUESTION EIGHT:

On page 14, details of your organisations structure indicate that the position of Principal Privacy Officer was vacant at the time of publication. Has this position since been filled?

RESPONSE:

Yes.

Background:

The substantive position holder and only prior holder of the position of Principal Privacy Officer (PPO) at the time of publication of the Annual Report was Mr McAteer. In June 2010 Mr McAteer was appointed Acting Privacy Commissioner a position he held until 6 November 2011. During this time Mr McAteer in effect performed both roles (as he had done from his appointment as PPO in October 2009 to June 2010 as the 'delegated Commissioner').

Following the appointment of the substantive Privacy Commissioner in November 2011, Mr McAteer took on the role of Deputy Privacy Commissioner, a substantially identical role to the PPO, and has filled it since that time. In essence this position was filled immediately after the commencement of the Privacy Commissioner in November 2011.

Office of the Information Commissioner 2010/2011

QUESTION ONE:

What impact has the merger between the Office of the Information Commissioner and Privacy NSW had on the running of the organisation, with particular regard for resource allocation, staffing, funding and overall business strategy?

From 1 January 2011, the purpose of the merged office was to focus on the deliverables outlined by the Parliament in creating the new Information and Privacy Commission.

Those deliverables were stated in all our key communications and shaped the way we approached business issues, including resource allocation, organisational structure, staff development, communications, policy development and our relationship with our oversight Committee, agencies and the public.

The IPC's 2010-11 Annual Report provides an overview of the key areas of focus for us in our first six months. The arrival of the new Privacy Commissioner, Dr Coombs, in November 2011, was a critical date after which many important business decisions that had an impact on the Privacy jurisdiction could be made.

In brief, the merger has affected every aspect of the operations of the IPC. In March 2012 we embarked on our first whole of IPC business planning exercise, and that will guide our operations going forward.

QUESTION TWO:

How has the merger of the two agencies impacted on the public perception of each agency?

RESPONSE:

My response to this question is informed by the public forums I addressed when I undertook a road show around regional and rural New South Wales as the new Information Commissioner in the second half of 2010. Many of the issues raised with me then by members of the public, government agencies and local councils, had both a privacy and an access dimension. Knowing that a merger of the two jurisdictions was planned by the Government was seen as having great public benefit to those I met with, since that reflected their own experience.

As an office we do not measure public perception of the two jurisdictions, so I have no data on which to base my comments. However, I do find that referring to parallel developments at the Commonwealth level, in Queensland, as well as in Canada and the UK, gives the public and agencies confidence that the NSW approach is in line with global developments.

QUESTION THREE:

Has there been a significant increase in the workload for the Information Commissioner now that the person who holds this position also holds the position as CEO of the Information and Privacy Commission?

In a practical sense, the addition of a new jurisdiction, along with the administrative and system impacts of that addition (ensuring the budget was transferred, and appropriate support was provided to the new staff) has added to my work as Information Commissioner. However I view the expenditure of time and effort in building solid foundations for the new agency to be an investment in the future. Once our business systems and processes are in place to ensure we deliver a timely and high quality service in accordance with the legislation we administer, then I expect the workload to be more balanced.

QUESTION FOUR:

With respect to the strategies and activities that have been undertaken to educate the people of NSW about the work of the Information and Privacy Commission, how are the outcomes being assessed?

In 2010, the Office of the Information Commissioner (OIC) undertook a roadshow throughout regional NSW to promote education and awareness of the GIPA Act reforms to agencies and the public. In 2010/2011 we conducted a similar exercise in the Sydney metropolitan area. We then reported on our evaluation of the outcomes of those roadshows. In addition, we regularly conduct presentations, seminars and workshops as part of our key education strategies and activities, and report on the effectiveness and outcomes of those strategies. These reports are available at: http://www.oic.nsw.gov.au/oic/oic_publications/other_reports.html.

A key theme from the feedback collected from agency participants was a request for more detailed information. This has resulted in our 2011/2012 focus on delivering topic-specific seminars for practitioners, whom we surveyed for the topics of most relevance to them.

The IPC seeks feedback on our core education activities and uses the evaluation of this feedback and other outcomes (such as attendance and follow up enquiries) to inform the direction of future activities and strategies.

Feedback on our seminars is analysed and a report will be proactively released after the last of our current series of seminars in June 2012. Feedback from the first seminar resulted in the IPC adjusting the activities and format of future seminars to better meet the learning objectives. We seek comments on seminar structure, facilities, activities, and overall satisfaction. Our average high satisfaction score is currently 85%.

QUESTION FIVE:

The annual report notes the Information Commissioner's powers with regard to monitoring and reporting on system inadequacies in the disclosure of government information. Could you provide an outline of some examples of inadequacies that have been identified?

We have found that inadequacies with agency systems can stem from a lack of resources, ineffective processes for dealing with GIPA requests, or, in some cases, confusion about the requirements of the GIPA Act.

Some of the key system issues we have identified in reviewing agency decisions and investigating agency conduct include:

- inadequate systems and processes that enable the agency to follow the steps required under the GIPA Act in handling and processing access applications. For example, not having automatic reminders of when action needs to be taken, such as acknowledging applications within 5 working days, transferring applications within 10 working days, etc, means some agencies are missing deadlines.
- Some agencies have not updated their systems and procedures to accord with the GIPA Act, and are still applying the decision-making practices and procedures they used under the FOI Act.

- Poor or outdated record-keeping systems which result in delays in locating requested information, putting pressure on staff who must locate information within the time-frame required under the GIPA Act, and the inability of agencies to supply accurate annual report statistics about release of information under the GIPA Act, as required under section 125 of the Act.

The OIC assessed agency decision-making trends in preparing its first report to Parliament under section 37 of the *Government Information (Information Commissioner) Act 2009* (NSW) (to be tabled in May). We looked at complaints received about agencies and reviews of agency decisions in the first year of operations under GIPA. We found that a high proportion of agencies had poor information management systems, processes and policies in place. The system inadequacies contributed to poor decision-making in respect of access applications and agency non-compliance with the GIPA Act.

In that period, of 154 reviews completed by the OIC, we made a recommendation regarding an agency's systems or processes in 16% (25) of these due to delays in providing information, failure to appropriately locate information or failure to publish or release information. Additionally, 28% of complaints received by the OIC over that time related to poor processes contributing to delays with processing, failure to locate information and failure to publish or release information.

Local councils

Local councils have experienced difficulties adapting systems and processes to enable them to meet their significant open access information obligations, especially the requirement to publish information about development applications (DAs) on their websites. DAs often contain personal information and for privacy reasons, agencies should redact some of this information prior to releasing or publishing the DA information. The OIC released a Guideline, following consultation with the Privacy Commissioner, to assist councils determine what personal information in DAs should not be published online. That Guideline can be found at: http://www.oic.nsw.gov.au/agdbasev7wr/assets/oic/m15000112/guideline_3_personal_info_councilwebsites_may11.pdf.

Also, many of the documents accompanying a DA are subject to copyright (eg architectural plans, engineers' reports, landscape plans, etc). The OIC obtained legal opinion on the effect of copyright law on the disclosure requirements under the GIPA Act, and advised agencies that they should not publish online or provide copies of documents to which copyright is attached without the permission of the copyright holder. See:

http://www.oic.nsw.gov.au/agdbasev7wr/assets/oic/m15000112/knowledge_update_copyright_and%20compliance_april2011.pdf, and

http://www.oic.nsw.gov.au/agdbasev7wr/assets/oic/m15000112/knowledge_update_copyright_fags_may2011.pdf.

This advice has presented difficulties for local councils. Many local councils have invested in online DA tracking systems to comply with their open access obligations under the GIPA Act, which need to be changed to take into account privacy and copyright considerations. Other councils have been publishing all DA information, as this is easier than making decisions about what to publish, and due to the cost and inconvenience of using redaction software. Other councils are not publishing any DA information online due to the cost of

uploading, updating and maintaining this information on their websites. We continue to work with local councils to assist with these challenging issues.

QUESTION SIX:

As a part of the Policy & Good Practice team's plans for 2011-2012, engaging with disadvantaged and vulnerable communities has been identified as a priority. What are some of the groups that have been included in this engagement?

RESPONSE:

As an office we recognise that people from vulnerable and disadvantaged communities may find it difficult to access government-held information because they may not know where to look or whom to ask.

To help raise awareness of right to information and privacy laws, the IPC has identified a number of key projects for 2011-2012 in the area of community engagement.

In consultation and negotiation with various Aboriginal communities, we have developed a draft Aboriginal Action Plan. This draft plan is now ready for further community consultation and feedback before review and implementation. Our target for this consultative process is July 2012. Another project underway is a Disability Action Plan and toolkit, which will be launched early in 2013 following consultation and negotiation by our Community Liaison Officer with groups from the disability sector, to ensure our resources are appropriately targeted and accessible.

QUESTION SEVEN:

In conducting community consultations, what have been some of the consistent themes and areas of feedback provided to the Commission?

RESPONSE:

We regularly receive informal feedback from government agencies and the public on a range of information access issues. We have also released two consultation papers to obtain the views of agencies and the public. The first concerned the question of what personal information contained in development applications should be published on the websites of local councils. That generated 70 responses overall: see

<http://www.oic.nsw.gov.au/agdbasev7wr/assets/oic/m15000112/consultation%20report%20-%20untangling%20the%20web.pdf>

The second consultation exercise involves the fees and charges provisions for accessing information under the GIPA Act. This consultation is currently in progress and responses are being reviewed: see

[http://www.oic.nsw.gov.au/agdbasev7wr/assets/oic/m15000112/consultation paper two fees and charges oct2011.pdf](http://www.oic.nsw.gov.au/agdbasev7wr/assets/oic/m15000112/consultation%20paper%20fees%20and%20charges%20oct2011.pdf)

Some of the consistent themes from members of the public (including community groups, organisations and the media requesting government information) have been:

- Some agencies are not providing adequate assistance to the public to access government information, including
 - o not adequately explaining the process for making an application

- o referring applicants to the OIC to explain how requests may be made to their own agency
- o failing to keep applicants up to date with the processing stages of their application (for example, not acknowledging the application or notifying applicants of the decision).
- Some agencies require applicants to make formal access requests for government information, when providing the information informally would be more appropriate. This is particularly the case with personal information.
- Charging regimes are complicated and inconsistent.
- Agencies could improve communication with applicants, for example, calling an applicant to assist them narrow their search to avoid excessive processing charges or obtaining outstanding information required to process the request. Instead, some agencies issue a formal notice to the applicant that the application is not valid and require the applicant to submit a new application.

Consistent themes from agencies include:

- Agencies have difficulty applying the principles-based approach of the GIPA Act which requires them to balance interests (contrasted with the former FOI approach where that Act defined exemptions and circumstances when the agency could refuse or grant access).
- Agencies would like to continue to receive more targeted guidance from the Information Commissioner on interpreting the GIPA Act.
- Local councils are challenged in reconciling their disclosure obligations under the GIPA Act with privacy and copyright obligations.

Consultation with Aboriginal communities

The most significant targeted community consultation that has occurred has been with Aboriginal communities, and consistent feedback was the IPC's current lack of Aboriginal-specific resources.

During NAIDOC events and at many other events the IPC attended, a survey was conducted with various Aboriginal communities asking the best way to get information out to the community about the IPC and what it can do. In total 169 surveys were completed. The highest answer given was radio, followed closely by brochures and posters. Although only a small number of people indicated a preference for using the internet as a resource, 75% of people surveyed did indicate that they used the internet so we do plan to develop an Aboriginal-specific page on our website.

Many people also suggested that the IPC conduct an artwork competition to gain original Aboriginal artwork for brochures or posters. The community said that they felt this was the fairest way to choose an artist to do the artwork. It was suggested that the competition be state-wide and the community be invited to submit work. We are now considering undertaking the competition in partnership with like agencies as a shared initiative, and that members of various Aboriginal communities be invited to sit on the judging panel.

In creating Aboriginal resources, the IPC is committed to ensuring respect of Aboriginal culture. This is why the IPC will develop resources in partnership with various Aboriginal communities. The resources need to reflect cultural values and respect customs of

Aboriginal peoples. When resources are being developed we are committed to ensuring that our images reflect all Aboriginal people of NSW, that they do not expose confidential or sensitive information, and that they do not reinforce negative stereotypes of Aboriginal peoples.

The IPC also commits to making sure that people we work in partnership with to develop resources are given appropriate acknowledgement for their artwork, contribution and roles in assisting us.

Feedback and questions raised through this community consultation showed that more specific information would be useful, such as how to access personal records, housing records or policies from Housing, DOCs, Aboriginal organisations or Health.

Our survey and discussions will be used to help further inform the IPC's Aboriginal Action Plan. The IPC is keen to work in partnership with other organisations to ensure that Aboriginal organisations and workers in remote and rural areas have information about key issues, rights and resources so they can help build capacity in their local communities.

QUESTION EIGHT:

There were three major investigations in response to complaints that involved the Barangaroo Delivery Authority, Macquarie University and the NSW Police Force. Were there any themes in common to each of these three major investigations in relation to access to information and/or privacy?

The three investigations undertaken by the OIC concerned quite different agencies. However, a number of common themes can be identified:

- Right to Information Officers are not receiving sufficient management support to encourage and facilitate agency compliance with the GIPA Act.
- Agencies have difficulty transitioning from the former FOI Act to the proactive disclosure model introduced by the GIPA Act. For example, all three agencies had difficulty meeting their open access obligations under GIPA. NSW Police also continued to apply exemptions which existed under the FOI Act rather than applying the public interest test under GIPA.
- Agencies have difficulty putting effect to the objects of the GIPA Act to disclose as much information as possible in the public interest. For example, the investigation into the Barangaroo Delivery Authority found that the Authority not only failed to fully comply with its open access provisions under section 6 of the GIPA Act in relation to redacted commercially sensitive information, but also failed to consider releasing the redacted information once it became less commercially sensitive. Following consultations with the OIC, the Authority made an undertaking to conduct ongoing reviews of redactions to ensure only appropriate information was redacted and that information would be released once it became less commercially sensitive.

QUESTION NINE:

The annual report highlights the Information and Privacy Commission's approach to managing poor agency decisions. Can you provide examples of any common themes and the strategies the Information and Privacy Commission will undertake to assist government agencies with their compliance requirements?

Common themes around poor agency decisions include:

- A number of agencies have difficulty balancing privacy principles and access principles, and tend to apply one principle as overriding the other rather than balancing the interests.
- Agencies have difficulty applying the public interest test under section 13 of the GIPA Act, leading to errors in decision-making, with access to information being incorrectly refused (70% of decisions brought to the OIC for review were about an agency's decision to refuse access). In particular, agencies take into account considerations against disclosure which should not apply. A small number of agencies treated the considerations against disclosure as exemptions similar to those that used to apply under the FOI Act, rather than weighing the public interest considerations for and against disclosure.
- Agencies had difficulty applying the public interest test to promote the objects of GIPA. Section 15 of the GIPA Act requires agencies to apply the public interest considerations against disclosure so as to promote the objects of the GIPA Act. Accordingly, agencies are obliged to accommodate access where appropriate. However, a number of agencies refused access without considering ways in which to mitigate the strength of public interest considerations against disclosure. For example, where the information sought is included in a record that contains the personal information of a third party, and the agency determines that release of that personal information is a relevant consideration against disclosure, the agency has the option of redacting the personal information in order to accommodate access to the remainder of the information. However, some agencies failed to consider this option and simply refused access entirely.
- A number of agencies failed to consult third parties who may have been expected to have concerns about the release of the information requested (section 54 of the GIPA Act). The purpose of consultation is to ascertain whether the person has a relevant objection to release of information that concerns them, and their reasons for any objection. The third party's views are relevant to the assessment of public interest considerations as they may add to or lessen the strength of a public interest consideration against disclosure. By failing to consult, agencies did not take sufficient measures to appropriately assess the public interest considerations.
- There has been quite a number of cases where agencies failed to conduct reasonable searches for requested information, leading to an incorrect decision that the information was not held.

- Agencies have been charging for activities in addition to those permitted under section 64(2) of the GIPA Act, one example being the time taken to remove staples from documents to take photocopies because the agency concerned does not maintain electronic copies of documents.

The IPC will continue to assist agencies to improve their practices by:

- Preparing and delivering targeted advice and training on issues agencies have particular difficulty with. For example, we are identifying key overlap issues between access and privacy which agencies commonly have difficulty with, and will prepare new guidance materials. We have already commenced this by releasing two Guidelines on interpreting the personal information provisions of the GIPA Act, and consulting with third parties: see

[http://www.oic.nsw.gov.au/agdbasev7wr/assets/oic/m15000112/guideline 4 personalinfopublicinterestest dec11.pdf](http://www.oic.nsw.gov.au/agdbasev7wr/assets/oic/m15000112/guideline%204%20personal%20information%20public%20interest%20test%20dec11.pdf), and

[http://www.oic.nsw.gov.au/agdbasev7wr/assets/oic/m15000112/guideline 5 final.pdf](http://www.oic.nsw.gov.au/agdbasev7wr/assets/oic/m15000112/guideline%205%20final.pdf)

- Obtaining feedback from agencies informally on aspects of the GIPA Act that are causing concern.
- Addressing forums to consult with practitioners and receive feedback (eg, supporting the quarterly FOI/Privacy Practitioners' Forum, and the regular meetings of the Local Government Managers' Australia).
- Providing guidance to agencies on a case-by-case basis in review reports, and publishing those reports online for the benefit of a wider audience.
- Visiting agencies, either at their request or during the course of an investigation, to examine their processes and identify and help address problematic issues.

QUESTION TEN:

How well are government agencies responding to the timelines and disclosure requirements under the GIPA Act? How often are extensions on these timelines applied for? How many of these are granted? What percentage of matters do these account for?

Information and statistics on agency decision-making, including timelines, are derived from agencies reporting annually in accordance with section 125 of the GIPA Act on their obligations under the Act.

Section 125 requires agencies to submit annual reports no later than four months after the end of each reporting year. For most agencies, the reporting year ends on 30 June, making the GIPA reporting deadline 31 October. For universities and the Department of Education, the reporting year ends on 31 December, making 30 April the deadline for GIPA Act statistics.

In the 2010-2011 reporting period, only 43% of agencies submitted a copy of their annual report information to the Commissioner. The OIC is still receiving annual reports that were due in April and October 2011. Additionally, not all agencies provided the required statistical information as required under the GIPA Regulation. Accordingly, the OIC is not able to report on trends across all agencies.

Of the reports received:

- 96% of applications were decided within the statutory 20 working day decision period provided by section 57(1) of the GIPA Act or within a valid extension of time (up to 15 working days, making a total of 35 working days) granted under section 57(2). These figures are based on the responses from 67 agencies that submitted statistical information under Schedule 2 to the GIPA Regulation. Please note agencies are asked to report on the number of applications decided within the statutory timeframe (20 working days), including valid extensions and not just on meeting the 20 working days timeframe. Accordingly, we are unable to report statistics on the number of applications which required a valid extension.
- 4% of applications were decided outside of the statutory timeframe, taking more than 35 working days to decide the application.
- In the majority of cases (82%), agencies released the information requested. This figure is based on the 67 agencies who submitted statistical information under Schedule 2 of the GIPA Regulation.
- The decision that the information was not held by the agency was the second most common decision made by agencies. A large proportion of these decisions related to requests made from lawyers and not-for-profit organisations, which includes welfare centres and legal centres who commonly request information on behalf of vulnerable individuals.

QUESTION ELEVEN:

The Committee notes that page 18 of the annual report indicates that a number of Equal Employment Opportunity targets have not been met. What is being done to assist the Information and Privacy Commission to meet these targets in the future?

The IPC has recently made an application for funding under the Elsa Dixon Aboriginal Employment Program (EDAEP) through State Training Services, Department of Education and Communities, for the temporary secondment of an Aboriginal worker to support the Community Liaison Officer in the implementation of the IPC's Aboriginal Action Plan. The EDAEP cannot be used to fill existing vacancies or fund positions within the organisation. Funding support of 65% is only provided to support the creation of new positions, identified or targeted for an Aboriginal person at or above Clerk Grade 3/4 or salary equivalent.

If we are successful in receiving this funding, we will use the support services and networks of DAGJ's Norimbah unit and adopt DAGJ's Aboriginal Employment Strategy to provide a culturally appropriate workplace and adequate development and guidance for an Aboriginal employee.

ANSWERS TO QUESTIONS ON NOTICE

Our intention is that the Aboriginal Liaison Officer will become a member of DAGJ's Aboriginal Staff Network, and have a relationship established with an Aboriginal mentor within the Department. That person will contribute to the implementation of the IPC's Aboriginal Action plan by helping to develop and maintain effective relationships with Aboriginal communities and participating in the development of Aboriginal-specific resources. The Aboriginal Liaison Officer will also assist in community capacity building and skilling of Aboriginal people to raise awareness in their own communities about how to access government information and protect their privacy.

We expect to hear if we have been successful in receiving this funding in July 2012.

Turning now to the designated EEO groups and the targets, the IPC's current results are as follows:

EEO Group	Target	Target People	Result 2010-11
Women	50%	16	85%
Aboriginal and Torres Strait Islander people	2%	1	0%
People whose first language was not English	20%	7	18.4%
People with a disability	12%	4	3.7%
People with a disability requiring work adjustments	7%	2	3.7%

Given that the full complement of staff will be 33 once the IPC has filled its establishment positions, we have these aims:

- in current recruitment processes, we are alert to any potential to recruit people from the target groups;
- we are keen to actively recruit people with a disability, and plan to liaise with disability employment groups and agencies to assist with this aim.

QUESTION TWELVE:

On page 17 of the report, under the section on Recruitment and Selection, it is noted that the Information and Privacy Commission is in the process of updating internal position descriptions to comply with NSW Government capability frameworks. Can you provide the Committee with an update on this work?

There are currently 33 positions in the IPC staff establishment. Of these, 29 are eligible for conversion to the capability framework. Twenty-two are currently in the capability framework and seven remain to be updated with the assistance of a contractor.

QUESTION THIRTEEN:

Under the section on professional development, one of the courses specifically developed for the Information and Privacy Commission relates to working effectively with interpreters. How often is the use of interpreters required? What percentage of the Information and Privacy Commission's work requires interpreters?

RESPONSE:

Since the formation of the IPC, the service of an interpreter has been used on three occasions. Whilst this is minimal, since July 1998, it has been NSW Government policy that NSW Government agencies fund the provision of language services (that is, interpreters and translated materials) when dealing with clients, in order to provide all clients with access to Government services. For that reason it is important that IPC staff know how to provide and make best use of the services of interpreters and translators when requested or required. This training is currently offered three times per year, if numbers warrant.

The IPC has a generic privacy notice, which has been translated into the 23 most common NSW community languages, and a brochure "Your rights to government information in NSW" translated into 39 community languages. The IPC is currently arranging for the brochure "A guide to protecting your privacy in NSW" to be translated into 12 emerging community languages. In 2012/2013 we will look into producing emerging languages in an audio format, as people may not be literate in their own language. Audio versions could then be downloadable from the IPC site and played on community radio.

QUESTION FOURTEEN:

In the 2010/11 financial year, the Information and Privacy Commission contracted a number of external consultants. Could you provide the Committee with some information about the process the IPC employs in relation to executing these contracts, including information about the tender selection process, the tasks contracted for and the total costs associated with each individual contract?

While the 2011 Annual Report included a reference to commissioning of services from consultants and contractors, in fact only contractors were procured to assist with a range of administrative and project support activities.

Contractors included Deloitte, providing specialist taxation advice and service; the Internal Audit Bureau, assisting with the conversion of position descriptions to the capability framework; Curo Consulting, providing support with recruitment activities; and O'Connor Marsden & Associates Pty Ltd, who assisted with the development of an audit and risk framework for the IPC to fulfil Treasury requirements.

The amount spent on contractors in 2010/11 was approximately \$115,000.

QUESTION FIFTEEN:

Parliament has recently heard of a matter which took the Information and Privacy Commission six to eight weeks to assign a case officer. What impact do these timeframes have on customer experience at the Commission? What resourcing would the Commission require to reduce these timeframes?

The office has been experiencing a substantial delay in its review and complaint handling functions in respect of the GIPA Act over recent months.

ANSWERS TO QUESTIONS ON NOTICE

It is important for the Committee to note that no such delay exists with Privacy matters. The delay in allocating cases has arisen because the volume of matters has exceeded available staff. The original estimate of staff to deal with reviews and complaints, based on the best available data when the office was being set up in 2009-10, in fact has been quite inadequate, and we have been working hard to match our staff complement to demand.

We have also been significantly impacted by the absence of a case management system and a records management system. Once we have these systems in place, this should significantly improve the efficiency and effectiveness of our operations.

The Casework team, when fully staffed, consists of one Review Officer, four Review & Investigation Officers, one Senior Review & Investigation Officer, one Principal Review Officer and one Manager. Of that group, three staff have received promotions elsewhere (including to other IPC positions), one is on higher duties secondment to another agency and one is on maternity leave. We are presently undertaking recruitment activities to fill these vacant positions, some of which have been filled in a temporary basis to date, as well as exploring opportunities for secondments into the office and making other short-term contractor arrangements. To support these efforts we have just commenced recruitment for an Executive Director to enhance our management capacity.

The IPC has adopted a 'triage' process for new files. New files are reviewed by the Senior Review & Investigation Officer for jurisdiction and to identify the issues and level of complexity in the case. Where possible, straightforward cases are dealt with straight away by that officer. We have recently introduced a new role to assist with the early resolution of straightforward matters. Where a file may be particularly time-sensitive, it will be prioritised. However, the majority of cases will be dealt with in the order they are received.

Parties are updated on the progress of their file at regular intervals. We have also publish information on the number of open cases on hand by the month received on our website, at: <http://www.oic.nsw.gov.au/oic/review/reviewbyinformationcommissioner.html>.

In 2011, we received an average of 38 requests for assistance each month and closed an average of 29 files each month. That has clearly contributed to the backlog and to the present delays. The delays of course have a significant impact on customer experience. Our practice is to ensure we update the public and agencies about timeframes, and that we publish information on our case handling performance (as referred to above).

It is worth mentioning that there have been some very quick turnarounds as well, which have received positive comment.

Timeliness is a critical factor, and addressing the backlog and the causes of the delays remains my highest priority as Information Commissioner. I expect that the current round of recruitment activity will greatly assist us in meeting our published service standards. Of equal importance is the requirement to get our business systems in place and functioning effectively.

QUESTION SIXTEEN:

At the time of the publication of the 2010-2011 Annual Report, two valid access applications had been received by the Information and Privacy Commission. Has the Information and Privacy Commissioner received any access applications since the Annual Report was published? If so, how many?

The IPC has received six formal access applications since the 2010-2011 Annual Report. The OIC decided the applications within 20 working days in 5 of these applications. The remaining application was decided within 27 working days, and was therefore a deemed refusal.

Four of the applications (including the deemed refusal) resulted in a decision that the OIC did not hold the information, and the applications were transferred to a more appropriate agency. Two applications resulted in a decision that the information was not held by the OIC, but were not transferred because it was unlikely that any other agency would hold the information requested.

QUESTION SEVENTEEN:

Can you outline examples of administrative support and services the Information and Privacy Commission receives from the Department of Attorney General and Justice?

RESPONSE:

The IPC pays the Department of Attorney General and Justice to provide us with a range of corporate services, including the following:

Financial Services

- General ledger maintenance
- Budget coordination – including Treasury "TOES" system data entry
- Accounts payable, bank management and journal processing
- Preparation of source data for Business Activity Statements
- Monitoring of balance sheet accounts, monthly reconciliations
- Preparation of draft Annual Financial Statements, including advice about policy and standard (AAS) changes.

Human Resources

- Payroll
- Recruitment
- Workforce management
- Online attendance system
- Health and Safety Administration.

Information Technology Services

- Provision of network infrastructure, network maintenance
- Telephony services, including maintenance

- Management of corporate I.T. related accounts including telephony and photocopier charges
- Helpdesk services.

Asset Management Services

- The DAGJ Facilities Management team manages all aspects of office and accommodation including minor upgrades and refurbishments, repairs and maintenance, engineering, security services and lease management.
- The Asset Management Branch helpdesk is the first point of contact for urgent maintenance requests during business hours.
- IPC liaises with DAGJ Asset Management services when necessary in relation to lease negotiations and for disposal of assets and equipment.

IPC also funds a Senior Policy Officer position in the Legislation and Policy Division of the Department of Attorney General and Justice. This unusual arrangement is a legacy of the arrangements put in place for the establishment of the Office of the Information Commissioner in 2009. That position holder is responsible for dealing with legislative amendments to the GIPA and PPIPA Acts. The person also works on other legislative projects not associated with the IPC.

A high priority for the IPC is to set in place a clear service level agreement with DAGJ for the key administrative and support services we receive and pay for, to ensure that our business needs are met, that service problems are addressed in a timely manner, and that we are receiving value for money in light of the amount we pay to the Department.

Office of the Information Commissioner 2009/10

QUESTION ONE:

In order to help reinforce cultural change, 'strategic goal three' listed in your annual report relates to the building of key links with NSW stakeholders. These stakeholders include the Ombudsman, Auditor General and State Records. How have these relationships developed since 2009? What opportunities to strengthen these relationships exist for the future?

RESPONSE:

Where we have a clear shared interest in good public administration and a public sector culture of accountability and transparency, it is beneficial for the IPC to reinforce the messages of these other accountability or integrity agencies and to ensure that our messages are consistent and mutually reinforcing. Broadly speaking, we share the aim of improving public confidence in the way government agencies provide services by providing efficient and effective oversight of our specific jurisdictions.

We have open and constructive relationships with all these bodies that I believe have been beneficial for the IPC as a new, small oversight agency. We have regular meeting with the Audit Office about common system issues and trends we might identify in the course of our complaints or reviews; we have sent staff to Audit Office and Ombudsman training courses to improve skills and build their networks; and we continue to reinforce the vital

importance of adherence to good record keeping practices across all the agencies we deal with, in accordance with State Records obligations. In every respect I believe these relationships are strong and beneficial for the IPC as it fulfils its role of administering privacy and access legislation.

QUESTION TWO:

What are some of the ongoing challenges to creating cultural change with respect to the proactive release of government information?

Three key challenges we have identified are as follows:

- The need for agencies to adopt or vary their processes and approach to ensure greater disclosure of government information and hence compliance with the GIPA Act and its objects.
- Appropriate support at the senior management level to encourage staff compliance with the GIPA Act,
- To ensure agencies understand the benefits of a proactive approach to releasing information.

QUESTION THREE:

In 2009-10 the OIC conducted research and development into case management and reporting systems to help agencies comply with the GIPA legislation. The aim behind this was to address a number of key operational requirements such as dealing with applications and achieving consistency across agencies. Has this consistency been achieved? How is this measured? In what areas might there be improvement? Which agencies struggle the most with compliance requirements? What is being done to support these agencies?

Prior to 1 July 2010, when the GIPA Act came into effect, the OIC rolled out its 'GIPA reporting tool' to agencies, providing training and employing a support person in our office to assist in responding to requests for help. The very first results of the operation of this tool will be made available in the Information Commissioner's inaugural report to Parliament on the first year of operation under GIPA (due in May 2012).

Many of the questions raised by the Committee are not yet able to be answered because the system is very new, having only operated for a year during the course of which the government changed and many departmental rearrangements occurred which impacted on the data-gathering process.

The provision of this reporting tool, however, was seen as one of the key benefits to agencies to smooth the introduction of the new right to information regime, as it was meant to significantly simplify and streamline reporting requirements. Its performance and whether it meets its objectives are thus key issues to be evaluated.

Earlier this calendar year I initiated a short sharp review of the system to see whether it was in fact meeting its aims. It is a significant cost to the office, so I wished to be sure we were spending our money wisely and well. At the time of this response to the Committee's questions on notice, I have received a draft report that indicates the fundamentals of the system are sound, but that it can be made more user-friendly and deliver better quality data. There remains much work to be done in analysing current annual report data;

assessing the strengths of the system that has been developed; and promoting its benefits across the sector to ensure that its aims are met.

QUESTION FOUR:

One of the measures of success outlined in the report included "stakeholders value our service". What has been the response to your service and how is this measured? What has been some of the criticisms put to the Commission in regards to its service? Have you received any positive feedback?

The two main criticisms the OIC faces are that external reviews take too long and that our recommendations are not enforceable.

The OIC does not yet have a set way to measure response to our service. However, we are open to feedback and try to make it easy for this to be provided to us. We receive feedback through a number of sources, such as directly (either in person, on the phone or by email), or through more formal channels such as practitioner forums. However, we are able to measure response to the training we provide through evaluation forms filled in by participants. The average satisfaction score is currently 85%.

We receive a good amount of positive feedback. Despite the backlog, the casework team closes many files quickly and has helped to resolve many matters informally or with outcomes that both parties are happy with. Current experience is that parties take the time to provide positive feedback for around half of the cases; about 10-15% of applicants let us know they are unhappy; with the remainder not providing any feedback. While some parties may be disappointed with the outcome of a review, they advise us they are generally happy with our service, particularly the giving of reasons for our findings.

We have received positive feedback on our customer service, in particular the work of the Information and Assistance Officers in responding to calls through the 1800 INFOCOM number. In addition, agencies have responded positively to the general and targeted policy advice and assistance provided by the Policy Team.

QUESTION FIVE:

The report indicates that your office was developing a case management system, an electronic document management system and a telephony system. What is the current status of the development of these systems? What processes audit and monitor the effectiveness of these systems? Are there any plans for the development of any other systems for the Commission?

RESPONSE:

Our program of system implementations is expected to be completed before the end of 2012. The three core business systems are in varying stages of development, as follows:

- a) The IPC recently concluded a request for tender to procure a commercial off-the-shelf case management system. Department of Finance and Service was contracted to prepare the tender on our behalf, and State and Federal contract suppliers were invited to respond. The tender process did not result in a suitable product being selected and NSW Procurement is currently providing assistance with alternative procurement options.
- b) The electronic document and records management system (EDRMS) was delivered by DAGJ in July of 2011. However, the IPC was not able to transition to the new

system as the data migration did not proceed as planned. After extensive negotiations with DAGJ, a new project has commenced to resume the data migration.

- c) The telephony call centre system was delivered by DAGJ in February of 2011 to manage the OIC enquiry line. A supplementary project is currently underway to deliver reporting and administrator functionality, staff training and additional queues to manage the IPC and Privacy enquiry lines.

The IPC established an internal ICT Steering Committee in 2011 to oversee the development of the systems and to ensure they meet the operational objectives of the IPC strategic plan. The effectiveness of the systems is monitored through regular internal reporting, monthly meetings with service providers and feedback from staff and stakeholders. Further work is planned to identify the audit activities and critical business processes that underpin the core systems and to rate the risk and compliance areas, particularly in the area of records management.

There are no plans at present to develop any other systems, although future development may be considered if the business needs change.

QUESTION SIX:

The 2009-10 annual report notes that legal advice was obtained from Deacons/Norton Rose on draft templates for contractual clauses and on the preparation of materials on statutory timeframes listed under the GIPA Act. Why was this legal advice sought from an external source rather than through the Crown Solicitors Office? What were the costs associated with this advice?

RESPONSE:

There is a reference on page 16 of the 2009-2010 Annual Report to the use of the Crown Solicitors Office for three legal advices, and Deacons/Norton Rose for an additional two advices.

OIC accounting records reveal Legal Services Costs of \$14,331 at Note 2 (b). An examination of the ledgers undertaken in response to this question indicates that this amount is for three invoices only, all being from the CSO. It appears that the cost of the Deacons/Norton Rose services may have been met by another agency, presumably DAGJ.

None of the original staff are still with the Office, and no information is held on file as to why this decision was made. However it appears that the office did not in fact bear the costs of the Deacons/Norton Rose advice in any case.

QUESTION SEVEN:

The cost of producing the annual report for 2009-10 was \$8,080. This was due to the cost of consultancy fees for both design and printing. In 2010-11 the cost of publication significantly increased to \$17,289. Whilst the annual report now covers both the Office of the Information Commissioner and the Office of the Privacy Commissioner, could you explain the increase in publication costs? Also, please describe what role the Commission staff members undertake with respect to the writing and production of this report. What work is undertaken by external contractors?

RESPONSE:

The annual report for 2009-10 was for the Office of the Information Commissioner only. The annual report for 2010-11 included the annual reports of the Office of the Information Commissioner and the Office of the Privacy Commissioner, as well as an overview of the first six months of the new Information and Privacy Commission.

The key differences accounting for the 114 per cent increase in costs were as follows:

- the number of pages increased from 60 to 88, representing a 46% increase in size over the earlier report;
- the late presentation of the audited financials, which were delayed well into October for clarification. This meant that 15 bound colour photocopies of the annual report had to be produced in order to meet the deadline for tabling in the NSW Parliament, at a cost of \$874.50;
- a cost of \$1,518 was incurred for the use of a professional photographer, who shot pictures of staff and the executive team for the 2010-11 annual report;
- a professional proof reader checked the final draft report, at a cost of \$325;
- a one-off cost was incurred for the development of four cover design concepts, totalling \$3,125.

The content of the 2010-11 IPC annual report was all written by IPC staff and co-ordinated by the IPC's Senior Communications Officer. The only external contractors used were the design studio, the photographer and the proof-reader.

QUESTION EIGHT:

The financial performance of the OIC listed administration fees of \$774,444. Whilst the 2009-10 financial year was the set up year for the OIC and \$366,000 was allocated to fund corporate support services, please provide a more detailed account of this total expense given that the following year's administration expenditure was \$297,546. This amount, as compared against the 2009-10 figure, is approximately \$110,898 lower even without the additional expense of corporate support services.

RESPONSE:

As noted, \$366,000 of the total related to the provision of corporate services by DAGJ to OIC, across Finance, Information Services, Human Resources, Asset Management and Communications areas.

The general ledger transaction report for the applicable OIC account in 2009-10 shows that some expenses other than corporate support were included with this amount and not correctly posted, such as insurance, stores, telephones, rates, rents. The amount involved was \$390,489. This means that at least \$390,489 was incorrectly reported in the notes to the 2009-2010 financial statements.

In relation to the 2010-2011 year, administration fees were reported as \$297,546. The anticipated and agreed fees for 2010-2011 were \$320,000.

Examination of the financial ledgers reveals that quarter 3 and quarter 4 charges for DAGJ information services at \$12,773 each quarter were posted to a different fund type in the ledgers. That accounts for a variance of \$25,546, which should have been reported in notes for this item in the 2010-2011 financial statements.

Key issues for the IPC are in the quality, accuracy and verifiability of financial information that is managed and reported on our behalf by the Department. With the assistance of the IPC's Audit and Risk Committee and our internal auditors, we are focusing on the quality assurance processes and the checks and balances in place to ensure that we can be confident that relevant Treasury standards are met and that we are provided with, and in turn report on the basis of accurate data.

QUESTION NINE:

In the financial performance statement for 2009-10, \$5,904 is listed as the cost attached to the use of telephones by the Office of the Information Commissioner. In the 2010-11 financial performance statement, these costs have increased to \$34,461. Whilst the 2010-11 financial performance statement reports on the telephone expenses for two merged offices, please account for reasons why this figure has increased so substantially.

RESPONSE:

OIC's telephone costs for 2009-2010 were \$5,904. These charges related to seven months' services, commencing from December 2009. Annualising the seven month amount equates to approximately \$10,000 for a 12 month period.

IPC Telephone costs for 2010-2011 were \$34,461. The one new element, which was initiated in November 2010, was White Pages listings. These amounted to \$25,000 of the total telephone charges for that year. The difference is thus accounted for by including White Pages in the charges for this line item.

QUESTION TEN:

In the financial performance statement for 2009-10, the costs allocated for miscellaneous expenses are \$19,177. In the 2010-11 financial performance statement these costs have increased to \$127,457. Whilst the 2010-11 financial performance statement includes the miscellaneous expenses for two merged offices, please account for reasons why this figure has increased substantially.

RESPONSE:

The reason for the significant variation between the two years was an extraordinary item identified by the auditors in their examination of the accounts in October 2011. A make-good provision required under the office accommodation lease had been overlooked. An amount of \$86,941.20 was calculated as the provision and this was adjusted prior to the accounts being

signed off. This was a one-off adjustment accounting for the majority of the \$127,457 reported for 2011.

Chapter Three – Answers to Further Questions on Notice

Following the General Meeting, the Committee wrote to the Information and Privacy Commissioners with a number of follow-up questions arising from their evidence. The Committee's questions and Commissioners' answers are set out below.

QUESTION ONE:

On page "OMBUDSMAN AND POLICE INTEGRITY COMMITTEE 24" of the transcript, Mr Evans MP asked: 'Has a time line been placed on this (the publication of guidelines with respect to disclosure of genetic information)?'

RESPONSE:

The Office of the NSW Privacy Commissioner and the NSW Ministry of Health will jointly undertake the development and publication of guidelines on the disclosure of genetic information. At present we are discussing with NSW Health when resources will be available to commence this project.

QUESTION TWO:

On page "OMBUDSMAN AND POLICE INTEGRITY COMMITTEE 28" of the transcript, the Chair asked: 'Does anyone have the capacity (to review private sector privacy issues)? Is it governed by any privacy legislation?'

RESPONSE:

This issue relates to hotels and clubs requesting personal information as a condition of entry (specifically fingerprints and drivers' licences for scanning).

There is privacy legislation that covers the private sector and its handling of privacy matters:

- A. The National Privacy Principles (NPPs) in the Commonwealth *Privacy Act 1988* apply to the private sector but not to 'small business'. Section 60 of that Act defines a small business as one that turns over less than \$3m per annum. So whether a hotel or club is required to comply with the restrictions on dealings with personal information in the NPPs will depend on whether they are a small business for the purpose of that Act. However, a company engaged by a hotel or club to process personal information from fingerscans or drivers' licences may fall outside the definition of a small business if they are seen to 'provide a benefit, service or advantage' involving the collection or disclosure of personal information. This means that these data processing companies may be required to comply with the NPPs. The Office of the Australian Information Commissioner (OAIC) has issued an information sheet for clubs and hotels which provides more detailed information about how the NPPs will apply in this context. It is available at <http://www.privacy.gov.au/materials/types/infosheets/view/7074>

Individuals who believe that clubs and pubs have improperly collected, used, disclosed or stored their personal information may make a complaint to the OAIC,

which may decide to investigate the conduct in question. The contact number for the OAIC is 1300 363 992.

- B. More generally on the coverage of the private sector in NSW, the *NSW Health Records and Information Privacy Act 2002* covers private sector health providers as well as every organisation that collects, holds and uses health information in NSW except small business operators (ie those which turn over less than \$3m per annum) that are not health service providers.
- C. In addition, the long title to the *Privacy and Personal Information Protection Act 1998* states that it 'provide[s] for the protection of personal information, and for the protection of the privacy of individuals generally... ' among other things. In addition, the general functions of the NSW Privacy Commissioner which are set out in Division 2 section 36 of that Act include powers to 'conduct research and collect and collate information, about any matter relating to the protection of personal information and the privacy of individuals', and to 'prepare reports and publish reports and recommendations about any matter (including developments in technology) that concern the need for, or the desirability of, legislative, administrative or other action in the interest of the privacy of individuals'. The ability of successive Privacy Commissioners to fulfil these general functions has been limited by the resources available to the Office to date.

QUESTION THREE:

On page "OMBUDSMAN AND POLICE INTEGRITY COMMITTEE 31" of the transcript, the Chair asked: 'Are there any guidelines or restrictions or would it be appropriate to have any in place for the police use of that facility [CCTV]?'

RESPONSE:

Generally speaking, police do not fund, operate or control CCTV. When police conduct video surveillance, it is usually covert surveillance done under a warrant pursuant to the *Surveillance Devices Act 2007* (NSW).

The use of CCTV by the public or private sector is largely unregulated by statute. However, as far as the public sector is concerned, a whole of government guideline exists: "NSW Government Policy Statement and Guidelines for the Establishment and Implementation of Closed Circuit Television in Public Places". That Guideline was developed in 2000 by the Crime Prevention Unit of the (now) Department of Attorney General and Justice.

(see [http://www.lawlink.nsw.gov.au/lawlink/cpd/ll_cpd.nsf/vwfiles/cctv.pdf/\\$file/cctv.pdf](http://www.lawlink.nsw.gov.au/lawlink/cpd/ll_cpd.nsf/vwfiles/cctv.pdf/$file/cctv.pdf)).

That Guideline is principally aimed at local councils as major users of CCTV, and states that CCTV should only be used as part of an integrated crime prevention strategy. The Guideline states at p 5:

Local councils are democratically organised, are close and accountable to local communities, and generally have the capacity to co-ordinate local activities in crime prevention and the promotion of community safety. It must be recognised that ownership brings with it accountability, responsibility for securing funding, responsibility to consult with and inform the community as interested parties, and responsibility for design, management, running costs, evaluation and audit activities.

The authority of local councils to use CCTV is derived from s 24 of the *Local Government Act 1993* (NSW).

The Guideline requires compliance with the PPIP Act, and refers to the role played by police. One of the Guiding Principles of the Guideline refers to police involvement in CCTV schemes:

Police Involvement in Public Area CCTV Schemes

While the NSW Police Service should not fund or operate public area CCTV schemes, it should be closely involved in the assessment and planning phase, including risk analysis and evaluation. The Standard Operating Procedures for the scheme should incorporate protocols covering communication and liaison between the scheme operators and the police.

Police also have a specific policy on the development and use of CCTV: see http://www.police.nsw.gov.au/about_us/policies_and_procedures/policies/nsw_police_policy_on_the_development_and_use_of_cctv

That policy endorses the Guideline, and states what police will and will not do regarding CCTV.

The NSWPF will:

- Contribute to the assessment and planning phases, including initial research, risk analysis, setting objectives, camera placement and operational issues in a Program;
- Through Local Area Command, determine the level of response to incidents identified by CCTV, according to available resources and existing priorities;
- Contribute to the development of comprehensive Codes of Practice, Protocols and Police Standing Operating Procedures that clearly set out the operational aspects for a CCTV Program in a local area and are consistent with the Government Guidelines. This would include practice principles encompassing, but not limited to:
 - o nature and level of involvement of the Police in management and operation of the CCTV Program;
 - o roles and responsibilities of all agencies involved;
 - o communication methods between police and the scheme owner/ managers;
 - o the scope of police response to reported incidents, routine and urgent, including early identification of potential incidents to facilitate timely police responses.
- Contribute to training programs for police and owner/ managers' staff in CCTV operations;
- Participate in the monitoring and evaluation of the program.

The NSWPF will NOT:

- Fund nor operate CCTV equipment;
- Routinely monitor CCTV cameras. The Police role is to respond to incidents identified by control room operators.
- Monitor- control for specific incidents can be transferred to police in emergency situations, to
- assess incidents and determine appropriate response.
- Be involved in a scheme that does not comply with the Government Guidelines.

In addition, police have a voluntary register for businesses that use CCTV from which they can obtain footage to use in investigations: see http://www.police.nsw.gov.au/services/additional_services/register_my_business_cctv_details

Privacy aspects

It is understandable that there is a degree of community concern about the use of CCTV. To the extent that it deals with personal information (which is not always clear cut), its use is regulated by the IPPs in the PPIP Act, unless an exemption or exception applies.

The main concerns from a privacy perspective are that CCTV be overt, and afford people the opportunity to give meaningful consent. If the IPPs apply, the information must be collected for a lawful purpose directly related to the function or activity of the agency, and the information obtained be stored, used and disclosed in accordance with the IPPs. The Privacy Commissioner has made submissions to the ADT on the use of CCTV by local councils.

With regard to police, if their involvement with CCTV were for law enforcement purposes, the PPIP Act would not apply, as this would fall within the section 27 exemption.

Information access aspects

There are no specific issues from a GIPA Act perspective. Information obtained from CCTV footage is treated the same as any other information.

Further Questions On Notice

Planning

QUESTION FOUR:

The Committee understands that the Information Commissioner and the Privacy Commissioner undertook important business decisions following the commencement of Dr Coombs in November 2011. Could you outline the kinds of business decisions that were made?

- Initiated a process to select potential members of the Information and Privacy Advisory Committee.
- Initiated the development of a new position description for a Senior Officer position within the office establishment. Previously the highest level below the Commissioners was a Clerk Grade 11/12. This new role, titled Executive Director, will report to both Commissioners, and have two managers reporting to them: the Manager Communications and Stakeholder Engagement, and the Manager Programs. They will also take on the function of Chief Audit Executive, which is an important compliance obligation under Treasury's Audit and Risk Framework. The creation of this position allows for either Commissioner to be deputised for in the event of absence from the office, since neither Commissioner can act as the other.
- Developed a strategic plan. The one the office developed in 2011 was an interim plan in recognition of the fact that the new Privacy Commissioner would be key to the setting of the overall direction of the IPC.
- Finalised decisions about organisational structure and deployment of resources to ensure the Parliament's intention for the IPC became central to service delivery.

- At a more strategic level, developed new relationships with key stakeholders, especially senior executives of cluster agencies; and built on existing relationships with practitioners through the quarterly practitioner forum and other consultative mechanisms.

QUESTION FIVE:

In response to the questions on notice regarding the 2010/2011 annual report, the Information Commissioner outlined that in March 2012 the organisation embarked on a whole of IPC business planning exercise to guide future operations. Can you please tell the Committee about the outcomes of this task?

RESPONSE:

The plan developed in March 2012 identified seven priority areas that the work of the office would focus on. These are as follows:

- IPC entity (focused on the merger of the two offices)
- Relationships and stakeholder engagement
- Legislation and policy
- Systems
- Our people
- Our clients
- Corporate governance.

The planning exercise was a very constructive one, led by the two Commissioners, with the aim of reinforcing the service imperative of the IPC for both government agencies and members of the public, harnessing the skills and abilities of every member of the IPC team. Performance against the milestones in the plan is measured each month. All staff members are involved in ensuring the plan is a success.

The model we adopted is one that has been used by the NSW Audit Office, and is well suited to an independent accountability agency focused on service delivery. A report on the plan and our performance against it will be provided in the 2011/12 Annual Report of the IPC.

QUESTION SIX:

Following on from this, can you explain to the Committee what informs the strategic direction of the Information and Privacy Commission? What processes does the Commission undertake when preparing its strategic plan?

RESPONSE:

The strategic direction of the IPC is informed by the public interest considerations in our legislation, as explicitly outlined by the NSW Parliament in setting up the merged entity. The Commissioners want to ensure a number of key outcomes result, such as:

- Good service delivery and outcomes for our clients

ANSWERS TO FURTHER QUESTIONS ON NOTICE

- More efficient and effective use of resources
- Minimising duplication
- Strengthening opportunities to deliver against the IPC's objectives
- Identifying and planning to address any gaps in current service provision, and
- Strengthening relationships with all key stakeholders to help ensure the Commissioners deliver against their legislative mandates, with a specific focus on central agencies that can assist promote the rights and obligations under the legislation in a coordinated way across the sector, while also ensuring that privacy and access issues, where relevant, are identified early in any major policy developments.

In a very practical sense, the strategic plan makes sure that the IPC is focused on delivering outcomes such as one website, one contact number, coordinated advice and assistance to the public, and training to assist agency compliance with both access and privacy obligations. The plan also focuses on the fundamentals that ensure the office delivers on its purpose - staff engagement in contributing to the overall success of the IPC, and the successful implementation of key business systems.

QUESTION SEVEN:

The Committee notes the Privacy Commissioner's comments that much of the reform with respect to privacy and data sharing arrangements falls within the powers of the Commonwealth. Given this, are you aware of any planned national meetings, symposia, or inquiries which the Privacy Commissioner might attend and contribute to? Are you aware of what mode of consultation the Commonwealth might be planning in this regard?

RESPONSE:

There is a range of mechanisms available for the NSW Privacy Commissioner to engage and influence developments in this area:

- A. The NSW Privacy Commissioner and the Federal Privacy Commissioner (whose functions sit within the Office of the Australian Information Commissioner (OAIC)) have established effective working arrangements that are collaborative and complementary. A recent example is the response to the NSW Roads and Maritime Services' advice to certain members of the public concerning the provision of personal data to car park operators. Enhancing strategic collaboration with the OAIC will be a focus for 2012 as it will contribute to providing better service delivery and outcomes for the people of NSW.
- B. The NSW Privacy Commissioner is a member of the Asia Pacific Privacy Association (APPA) which meets twice each year and which shares information and undertakes joint initiatives on matters concerning privacy. Recent combined efforts have concerned privacy issues raised about Google's privacy policies and practices. In addition, APPA works collaboratively on campaigns such as the annual Privacy Awareness Week, deciding upon the theme and sharing resources to maximise the effectiveness of the campaigns.

- C. The NSW Privacy Commissioner is also a member of the Privacy Authorities Australia, a body that meets twice a year to jointly examine issues, for example those arising from the National Reform Agenda and the COAG processes that impact on privacy. This has been a very effective forum.
- D. Within NSW, the Privacy Commissioner has established working relationships within the NSW State Government sector, with central agencies and with agency heads, since her appointment. The outcomes sought include better understanding of the NSW Government's position on matters impacting on privacy, with a focus on how to
- assist NSW public sector agencies deal with privacy issues identified within the business operations, and
 - best assist agencies addressing national reform initiatives and developing initiatives to identify and address privacy issues that may arise.

Compliance

QUESTION EIGHT:

In the answers to the questions on notice, the Information Commissioner also mentioned that many agencies have poor information management systems, and that this is a lead contributor to agency non-compliance. How difficult is it to upgrade, change or improve these systems? Do you think the main issue here the existing IT infrastructure, or the costs associated with new systems, or just general resistance to change?

RESPONSE:

There is no simple answer to this question, in my view. It is a complex interplay of elements, including those identified in this question.

Many issues are being raised under this heading for those agencies undergoing integration. One cluster, as noted in the recent Commission of Audit report, has 6 payroll systems, and similar difficulties occur in financial and HR systems and records management areas. In these circumstances it is difficult for the agency head and managers to receive timely and accurate information and to identify and track information. This situation is not due to resistance to change but the realities of integrating systems, which takes both time and money.

A key development that will assist with the challenges agencies face has been the development of the NSW ICT Strategy 2012, launched in May 2012, and the lead role being played by the Department of Finance and Services in ensuring a sector-wide focus on better service delivery outcomes. The strategy focuses on:

- Putting citizens first
- Leveraging industry best practice
- Increasing productivity.

ANSWERS TO FURTHER QUESTIONS ON NOTICE

As Information Commissioner, I am strongly supportive of any initiatives that will deliver better services to the people of NSW through more efficient and effective use of ICT.

The key enablers of access to government information under the GIPA Act are good records management, appropriate IT systems, and a culture of openness. Good information management is vital not just to the success of GIPA, but to better service delivery across the board for public sector agencies, allowing greater innovation through the use of government data, and enhancing collaboration with the community. NSW is at the start of a key transformational process in its approach to ICT strategy that, if successful, will lead to greatly improved outcomes for the whole community.

QUESTION NINE:

While the targets based on the data outlined by the Information Commission appear to be sufficient, do you think agencies currently have enough time under the guidelines to respond to requests for information?

RESPONSE:

Timelines are proving challenging for those agencies that have high volumes of interactions with the public. They are also challenging for agencies that receive large and complex requests. It will be important for the Office of the Information Commissioner to monitor agency performance against timelines; to benchmark NSW Government performance against that of other comparable jurisdictions; and to work with agencies that have specific challenges to see whether these result from administrative processes, or whether a more proactive approach to releasing information may assist.

Once we have more comprehensive data from agencies, and have built up a picture of trends and patterns across the sector, we will be in a better position to comment.

QUESTION TEN

Can you tell the Committee what key challenges you have identified in relation to the acquittal of your statutory roles? How does the Information and Privacy Commission plan to overcome these challenges?

RESPONSE:

Key challenges:

- communicating the message that good management of access to information and protection of privacy are tenets of good public sector administration
- helping agencies understand that getting these right in the first instance can assist them to effectively deliver their business objectives, while reducing the amount of administrative work that arises from dealing with allegations of breaches, complaints and requests for review of access decisions
- fulfilling the Commissioners' mandates under the legislation we administer within existing constraints.

How we plan to overcome these:

REPORT ON THE FIRST MEETING WITH THE INFORMATION AND PRIVACY COMMISSION
ANSWERS TO FURTHER QUESTIONS ON NOTICE

- building strong relationships and partnerships across government at both senior and officer levels so that agencies themselves help promote the objects of our legislation while making their operations and corporate governance more effective and efficient
- working collaboratively with other watchdog or regulatory agencies both within NSW and across the country on successful solutions to common problems
- being proactive in identifying risks and investing in addressing these as a priority (for example, as may become evident in terms of agency systems and processes, or patterns of behaviour evident from complaints)
- finding constructive ways to assist agencies efficiently comply with both access to information and privacy legislation.

Chapter Four – Transcript of proceedings

NOTE: The general meeting with the Information and Privacy Commissioners was held at Parliament House, Macquarie Street, Sydney, on 21 May 2012.

CHAIR: Before the proceedings commence, may I remind everyone to switch off their mobile phones as they can interfere with Hansard recording equipment. If your phone is on silent, please switch it off completely. I now declare open the hearing in relation to the review of the Office of the Information Commissioner annual report 2009-2010 and the Information Privacy Commissioner annual report 2010-11. It is a function of the Committee on the Office of Ombudsman and the Police Integrity to examine each annual report and other reports of the Privacy Commissioner and Information Commissioner and report to both Houses of Parliament in accordance with section 44A (1) (c) of the Privacy and Personal Information Protection Act 1998 and section 44 (1) (c) of the Government Information Commissioner Act 2009. The Committee welcomes the Information Commissioner and the Privacy Commissioner.

DEIRDRE ANNE O'DONNELL, Information Commissioner, Information and Privacy Commission New South Wales, level 11, 1 Castlereagh Street, Sydney, 2000, and

ELIZABETH MARY COOMBS, Privacy Commissioner, Information and Privacy Commission New South Wales, level 11, 1 Castlereagh Street, Sydney, 2000, sworn and examined:

CHAIR: Commissioners, the Committee has received the detailed responses from both of you in relation to its questions on notice relating to the Office of the Information Commissioner annual report 2009-2010 and the Information Privacy Commission annual report 2010-2011. Do you wish these responses to form part of your evidence today and to be made public?

Ms O'DONNELL: Yes please.

Dr COOMBS: Yes.

CHAIR: Commissioner O'Donnell, would you like to make an opening statement before the commencement of questions?

Ms O'DONNELL: If I may, thank you. It is a very short one. Commissioner Coombs, the Privacy Commissioner and I have decided to give a short one page statement each. We are here as members of the Information and Privacy Commission as well as separate champions. I will commence and then I will hand over to Dr Coombs. I wanted to say I am really pleased to be here wearing my two hats, the Information Commissioner with responsibility for the administration of the New South Wales right to information legislation and as the head of the Information and Privacy Commission, which is a new merged entity from 1 January last year. I am very pleased to be here beside my colleague, Dr Elizabeth Coombs.

Our joint appearance is an important visible symbol of the fact that the merging of our two offices into the Information and Privacy Commission is a shared and collaborative arrangement in which the two champions have equal rights and responsibilities in respect of their specific legislation. The setting up of the Information and Privacy Commission was in

response to a review by the New South Wales Law Reform Commission. The merged office was decided upon in recognition of the fact that issues around privacy and access to information naturally overlap and that they both have a bearing on the way government deals with information. Our two jurisdictions are both concerned with transparency and holding government accountable, and may be at tension and we may at times need to strike a balance between competing interests. That is why we are here today.

That leads me to the other dimension of my role, that of the head of the Information and Privacy Commission and I just wanted to recap what the Parliament decided that the Information and Privacy Commission should deliver, to reaffirm that at the start. The Parliament made very clear what the Information and Privacy Commission was meant to be and to do. We were meant to be and we are meant to deliver a single office to administer legislation relating to privacy and access to information, in effect, a one stop shop and as a one stop shop we are meant to provide consistent information and advice for agencies and individuals, co-ordinated training for agencies and individuals, a common point of contact to help reduce referral fatigue—a very important benefit to the public—and administrative and operational efficiencies through shared corporate services.

The Parliament has made clear it wants us to be a pro-active independent agency. It wants us to make managing government information easier for the public. It wants us to promote cultural change within agencies and it wants us to work collaboratively with agencies to have a policy development role. This is our first hearing. I really look forward to hearing from you, the Committee, the sort of information you would like me to provide as Information Commissioner or as the head of the Information and Privacy Commission and I look forward to building a constructive and open relationship for the future. My fellow commissioner, Dr Coombs, will now deliver her opening statement.

Dr COOMBS: The statement that Deirdre has made is the approach of the two of us. We really do appreciate this opportunity to meet with you, to listen to the issues that you need us to be conscious of and to address those. Just by way of background, as you heard, we were established as the Information and Privacy Commission in January 2011 bringing together those two roles. We have in common the fact that we both advocate for the public's right to information or for protection of personal information. We also have the responsibility to ensure compliance and I will speak further about the actual scope about who we are speaking about when we say who is to ensure compliance. We also investigate, conciliate and conduct inquiries into information access and privacy complaints. One of the things that people do not tend to know about our roles is that we both function independently set up as champions, so we cannot act in each other's role. We remain both separately responsible for our pieces of legislation.

My position is part time, with the Information Commissioner being a full time position and it takes on the responsibilities as being Chief Executive Officer, so managing the budget and the human resources parts of the Information and Privacy Commission and as you know, of course we report to the Committee here. We are both appointed and removed in the same manner and we both have a right of appearance in proceedings before the Administrative Decisions Tribunal. The legislation that the Information and Privacy Commission is responsible for is in the Government Information Public Access Act 2009, the regulations which go with that Act, as well as the second piece of legislation, the Government Information (Information Commissioner) Act 2009. I have responsibility for two main pieces of legislation which are the Privacy and Personal Information Protection Act 1998 and the regulations which sit

underneath that, as well as Privacy Codes of Practice, some of the general ones there, and the Health Records and Information Privacy Act 2002 and the regulations which sit underneath that, and the Code of Practice 2005 that accompanies that piece of legislation.

Our legislation applies to bodies whose accounts are subject to the New South Wales Auditor-General, such as obviously New South Wales government agencies but also and in addition local councils and universities. The Government Information (Public Access) Act in addition applies also to Ministers and their staff whereas the Health Records and Information Privacy Act governs the handling of health information in both New South Wales public and private hospitals and the private sector as well, doctors and healthcare organisations as well as those other organisations who have any type of health information such as universities that undertake research or gymnasium that records information about people's health or injuries. There is a financial cut-off to ensure it is complementary to the Federal legislation. One of the important things which we would like to speak to you about is that the legislation also provides for an information and privacy advisory committee, which advises the two commissioners on matters relevant to their role, functions and their legislation. Thank you.

CHAIR: Thank you very much. That is much appreciated. We will now move to questions.

Mr LEE EVANS: The Committee notes that the bill before Parliament seeks to amend the Health Records and Information Privacy Act 2002 with respect to disclosure of genetic information to relevant individuals. The Committee understands that you have been tasked to providing the guidelines. What process will you undertake to prepare these guidelines?

Dr COOMBS: The guidelines very much need to be based upon consultation with the agencies affected and that is a process which we will be setting in place over the coming months to actually ensure that reflects those issues. We have been consulted by NSW Health on that legislation prior to it going through, so we are familiar with it. Guidelines tend to be somewhat slow in the production but that is because of the consultation that you need to ensure that you do it correctly and fulsomely to make sure that you have the best side of matters which can be quite sensitive to some parts of the community but also to ensure that they are written in a way that actually assist people to really understand the purpose and the aims and what is expected of them, that we will take some time to actually produce those.

Ms O'DONNELL: I have no role in that as the Information Commissioner but we have a shared policy team so part of my role as the chief executive officer is it would be appropriate to make sure that I give Dr Coombs access to the policy team and to have that as a priority. Another thing that we have actually jointly set up recently that may or may not be of assistance is we have a very important stakeholder group in the State Government, which are the practitioners, the right to information and privacy practitioners, and we deal with that group every quarter. We come here to Parliament and meet maybe 60 to 100 of them and we talk about current issues. Within that group we have actually now set up, in fact informing both of us, a consultative group of key practitioners and they are available to assist us road test significant issues on which we need to have consultative processes. I would imagine that would also be one of the groups that we could call on as necessary to assist in the development of these guidelines. As Elizabeth said, we are very concerned to make sure that our mini-champions if you like in government agencies are as well supported as possible by the practitioners, by the practitioners group and by the commissioners themselves.

Dr COOMBS: Those guidelines will become publicly available via our website and as many means as we have to make them available to people so in terms of the work that we do representing the Information Privacy Commission we make a very strong effort to get out to agencies to actually discuss the materials and the issues that they have. So with the actual preparation of the guidelines, there will be a corresponding communication strategy to ensure that we actually distribute it in a way and communicate what is in it as well as we can.

Mr LEE EVANS: Has a time line been placed on this?

Dr COOMBS: Not that I am conscious of at the moment. I am very happy to take that aspect on notice.

Mr PAUL LYNCH: Commissioner O'Donnell, in both the annual report and your answers to questions you talked about agencies still dealing with freedom of information rather than Government Information (Public Access) Act?

Ms O'DONNELL: Yes.

Mr PAUL LYNCH: I guess there are two parts to my question. Has that perhaps improved over time and how do you get them to actually work out what the new legislation actually says?

Ms O'DONNELL: It is such an important aspect of my role and there are still people who apply the freedom of information language, particularly the language of exemptions and the freedom of information mentality. One of the things with Elizabeth joining is that as commissioners we have actually instituted a round of addressing executives of large cluster agencies about our respective roles and responsibilities to try and refresh at the top level of the organisation the fact that this is a new regime in New South Wales and this is a new mode of operating and that we both take very seriously our verb of assist. We have an assist role, both of us, in our legislation. We talk about the cultural dimensions and how important they are from the Government Information (Public Access) Act. The key word in Government Information (Public Access) Act is proactive release so it is not, "Let me tell you how many ways I can't do it", it is "This is how I'm going to do it proactively" and that I think is going to probably be the key challenge for me in my term as Information Commissioner, to keep having that conversation and focus on proactive.

In terms of the agencies that still cling to their cherished freedom of information regime, we have to find—and I particularly have to find—new and innovative ways of changing that conversation and assisting them. One thing that I think we have done quite well is our outreach program through our education and promotion where we have done some good training. I do not know whether anyone here came. Recently we were here in Parliament House for some staff members, where we talk about the public interest test and we try and help people understand that the public interest test is the centre of Government Information (Public Access) Act and that is your default. Your default is that the information is available and there have to be very strong public interest reasons why the information should not be. We will continue trying to change and innovate in our training. We will continue our high level approach to chief executive officers and directors-general. We are also talking at a governance level. We have ordered a risk-type agency heads—perhaps Elizabeth might want to add to that.

Dr COOMBS: I will just take up that point about the approach we are taking with agencies. Agencies tend to see whether it is access to information or privacy in the past at least anyway as something that is over there that the practitioners deal with. The line and the approach which Deirdre and I are advocating, particularly when we go out to the agencies—and we have done such a lot of it since I joined in November—is that this is very much about corporate governance and corporate integrity, that it is the responsibility of agencies to take these two issues, the right to information and the protection of people's personal information, very seriously. They need to be looking at how they do that in terms of their own governance arrangements. We want to ensure that there is a proactive preventive approach rather than that sort of reactive style that you sometimes see.

Once someone has complained you could be in for quite a long process, which takes a lot of administrative time and resources and generally it can drag, particularly if it goes before the Administrative Decisions Tribunal, so agencies can have those issues going on for quite some months and possibly even longer. We are saying to agencies and we are establishing strategic alliances with bodies such as the State Records Authority, the Public Service Commission, the Department of Premier and Cabinet that this is an aspect of proper information management where people look after the access to information as well as the protection of personal data, as I said earlier. We are saying to agencies: You might want to consider what you are doing in terms of induction programs, when new staff join you or when you are actually having refresher programs with staff inside your agencies.

But in addition, have you thought about your internal audit program. What is the work plan there? Are there aspects of how you are managing your databases that should be looked through and put on a schedule for an internal audit program and to try to get those matters on their agenda because particularly from my side of the Information Privacy Commission, privacy, I need to be able to ensure that we are getting to the operators, the people who collect the information, who are in a position where they disclose it, not the practitioners who undertake, for example, internal reviews to see whether a complaint is legitimate or not. We are trying to get agencies to take up this issue and we are encouraging them to look at their mechanisms. What are their policies, codes of conduct and guides for staff?

Are they speaking about these matters at executive meetings and do senior staff talk to staff throughout the agency to ensure that it becomes live and not simply something that is nodded to. It must become part of the fabric and processes of an organisation. Having worked in administrative positions in the New South Wales public sector for about 25 years, I know how important it is to get things into policies, procedure manuals and guidelines. It is also very important that heads of agencies, executives and senior managers all demonstrate those behaviours and when something comes up in written advice or discussion that they flag that information. Information should be or could be put on the website for proactive release when people do presentations. We are talking about sharing data. Of course, we must establish whether we have consent and appropriate security mechanisms to ensure that data is shared appropriately.

Ms O'DONNELL: It is a big question.

Mr PAUL LYNCH: It is an existential question.

Ms O'DONNELL: Yes, it is.

Mr PAUL LYNCH: You talked about some agencies being more difficult than others or being mired in the past. Which agencies are recalcitrant?

Ms O'DONNELL: Our website has information about a review we did of the Police Force. We have four big customers with regard to freedom of information complaints and feedback to my staff. They include the Police Force, Transport NSW—anything to do with MyRoads—NSW Health and the Department of Education and Training. They are the big four groups and we need to ensure that we target them strategically and work with them because we want to minimise complaints to our office. We want the first point of contact with the agency to be the point at which the issue is resolved, as we do with all good customer service in government. With the Police Force we analysed a pattern of complaints over time, we did a compliance audit and we then conducted a targeted training program that addressed the specific shortcomings we observed in the volume of complaints we received. We got feedback and did an interactive training session that was at least useful. It was helpful, but it has not changed things.

One of the realities when you are a watchdog is that staff change but the manual stays the same. That tells me I must ensure I have a ceremonial burning of the old manual or create a replacement. I need to do something for those people who love their manual. So far we have taken a more proactive approach, but that is a genuine question for me now and I will take advice from my staff. How do we help those people? As Dr Coombs said, it involves the frontline people who must deal with these things every day. We want to make their lives as easy as possible. If the old freedom of information manual is perceived as making their lives easy, I need to do something to replace that. I think that is where I have come to in my thinking. It is all well and good to engage chief executive officers—all chief executive officers want open, transparent and accountable agencies—but it is up to us to help those on the frontline who are being bombarded with administrative challenges.

CHAIR: Did you just say that all chief executive officers want open and transparent government?

Ms O'DONNELL: I did, because I believe it.

Mr PAUL LYNCH: You still think you are in Opposition.

Ms O'DONNELL: I honestly believe that. I cannot say whether it happens, but it is what I believe.

CHAIR: Your clients are the general community, but often people inside government cannot get information.

Ms O'DONNELL: Yes.

CHAIR: Do you deal with internal issues?

Ms O'DONNELL: We do. To be honest, it shocked me when I first came to New South Wales and did my initial road show to find what was happening with certain agencies. For example, a local council that needed information from a regulator to fulfil a reporting obligation in law said, "Great, we can use GIPA." That is not an ideal position; in fact, it is awful. I have not heard that for the past 12 months, but I heard it a lot in my very early days. The

obvious question I asked is, "What is wrong with this picture?" We are all government, we are all public servants and we are all meant to be serving the public. The information and communications technology strategy and the open government plan at least give us a framework and a commitment to some of those key deliverables that will promote openness, transparency and good information management, which are the two sides of our coin. That is what I am hoping to see.

CHAIR: Many of us have been hoping to get access to the resource allocation formula in NSW Health, which is the basis upon which people will move to activity-based funding. I come from an area in which the perception is that we are massively underfunded in the health arena. We are looking forward to transparency from the Government and the release of that information. However, much of the correspondence requesting that information seems to get lost. This has been going on for a very long time. The Government's commitment to transparency was very strong; it said that the fact that something was embarrassing was no excuse not to release it. We need to have a good information policy to have credibility.

Ms O'DONNELL: We do; it is foundational.

CHAIR: This issue is very foundational and no-one seems to be able to access the information.

Mr PAUL LYNCH: I tried 15 years ago.

Ms O'DONNELL: You can be a small voice or more, like the integrity arm of government. I alluded to that in my answers. There are opportunities for us to have strategic conversations with the Audit Office and the Ombudsman's Office, where people are doing other sorts of reviews of administrative processes or accountability systems and frameworks. That is an opportunity for us. If I can call it as I see it after two years, we do not seem to have our foundation in place or a good records management framework that allows us to find what we need when we need it. I am not confident that that is anywhere near the standard we should have in a bureaucracy as important and as large as the public service of New South Wales. That is an issue for me. Then there is the information technology infrastructure and whether that facilitates ready and easy access. I have a big focus in my early days to get the foundations right so that we can really test some of those things.

CHAIR: I now draw your attention to the information technology framework. It seems to me that the Government collects an enormous amount of data that is a valuable taxpayer-funded asset. If it is not being managed properly, we will end up duplicating it and wasting money and not making it properly accessible for any reason other than parochialism in an agency. I stumbled across a website that contains extensive government data. I cannot recall the name, but it astonished me. It contains things like population data, some State development data—

Ms O'DONNELL: It is *data.nsw.gov*.

CHAIR: That is it. Is that the website you would support containing more data? Should it not be publicised more extensively?

Ms O'DONNELL: Exactly, we should know about it. That is a huge challenge. The information and communications technology strategy has named better information sharing as

one of the deliverables that it wants to implement and the State Plan makes that very clear. As watchdogs we are very much about saying that government will be accountable against these deliverables and it is our role to hold the Government to account. There is enormous potential for improvement because our baseline is awful.

CHAIR: That is good news.

Ms O'DONNELL: Dr Coombs and I were lucky enough to be part of the extraordinary activity that occurred before Christmas and over Christmas in the development of the information and communications technology strategy. We were consulted on citizen-centric services and better information sharing. That was really helpful because the better information sharing people would say, "Privacy? No!" A big issue for me is a citizen-centric approach because we need to provide the people of New South Wales with what they need, not what we think they need. That is about being open and engaged as a government. We were able to talk about some of the shortcomings that exist and there are clearly buckets of data that exist for exactly the reasons you mentioned—that is, historical and parochial reasons—and the door has never been opened and their glory has never been displayed to the world.

The information and communication [ICT] strategy is now making it accountable. There will be a plan for the release of data. The thing that I take comfort from is that technology is moving so rapidly that if a bureaucrat says, "I do not want you to" or "Maybe I will if I feel in a good mood today", technology is making that irrelevant. To use an analogy, in the early days of my role as Information Commissioner I found that people would say to me, "It is alright, you will get over it, just calm down", and then WikiLeaks happened. Suddenly the world saw a game changer. Suddenly everyone saw that cyberspace is uncontrollable. We have had all the excitement around privacy awareness week, which is completely analogous around Facebook, and people are seeing that technology is the game changer. No matter how hard you try to protect, that is the reality.

CHAIR: So you have been consulted. Is the Government making full use of this opportunity, do you believe?

Ms O'DONNELL: I suspect it is. I have informed my colleagues across the country. Nobody is doing what New South Wales is doing at the moment, so all the other information access commissioners are looking at us with a great deal of interest. No-one has taken it quite as far or quite as bravely as New South Wales, so for that reason I am encouraged, and I will really use it as an accountability mechanism. It seems to be an opportunity that is quite a precious one and we should not squander it.

CHAIR: The public can then question the data as well, because the data might not be correct.

Ms O'DONNELL: Exactly.

CHAIR: That has always been an excuse as to why it cannot be released—it might not be right.

Ms O'DONNELL: That is right.

Mr KEVIN ANDERSON: Why have it?

CHAIR: Exactly, and I can tell you four different agencies in New South Wales give four different population projections for the North Coast, and that information is very important because resource allocation is based around it.

Dr COOMBS: Could I ask what data you saw was not there that you were interested in?

CHAIR: I find the health population data very difficult to access. I would like to be able to compare dental outcomes in unfluoridated and other areas. I have spent days looking for that data. The areas keep their information separately from the health department. Transport information is hopeless. I do not want to be down on it because I was very excited to find information that I did not know existed, and it was very valuable, but I saw it as the beginning of something that could have greater potential.

Ms O'DONNELL: Exactly, because there is *data.gov* at a national level, and New South Wales has copied that. We have also got Publications NSW which, under the State Plan, has special accountability. State Records is leading that and they are consulting with me as the Information Commissioner on Publications New South Wales. That is one of the deliverables under Goal 31 of the State Plan. They are looking at a way in which all the GIPAA information that agencies put out can be harvested, for example, and somehow linked to Publications NSW, so if you want to know what is the GIPAA information for the health department, Publications NSW should be able to show you this year's work. That should be a later this year thing. That is happening at the Commonwealth level, it is happening in Queensland, so it is starting across the country.

CHAIR: The other issue is integration of information. When the United States did its stimulus package for capital works it put out a Facebook application that integrates on map every project—local, State and Federal—and it is so effective that when council workers have to repair a pipe they rely on this application to know what other public work is going on in that street or area. It is astounding.

Mr KEVIN ANDERSON: In addition, the other day I stumbled across a United States site that gave residential street addresses and how they voted.

CHAIR: That is a privacy question, but it is because they have to register for the primaries. The point I am making is that you get your information to a tipping point where it becomes very cost effective and you are reaping benefits. I understand that while you are going through the development process and putting data in it can be expensive.

Dr COOMBS: Could I pick up on something that Ms O'Donnell said earlier about people saying, "We cannot do that because of the Privacy Act"? Data sites like these do not necessarily—and I will come back on that other issue—raise issues about privacy when at a sufficiently aggregated level. The point that we often discuss is that many of the access requests that agencies receive are from people seeking their own personal information because they want to know what is held about them and they want to ensure that it is accurate and up to date. There are certain times when Ms O'Donnell and I come from different perspectives, and the way we work through that is what is in the public interest, so that is the tipping point. Generally, people expect that privacy will have concerns about data going out. The point that I keep making is that, if it is at aggregated level, it is very valuable for planning and is not necessarily a privacy concern. When you start getting into personal information such

as name, address, signature and voting—that most certainly would be something we would have some issues with.

CHAIR: Patrons trying to enter hotels and clubs may be asked to provide fingerprints and drivers licences for scanning.

Dr COOMBS: Fingerprints?

CHAIR: Yes, and I am going out of the annual report now. Patrons of the Coogee Bay Hotel complained about having to provide their fingerprints before being allowed into the venue, and when I go to the Ballina RSL club I have to hand over my drivers licence to be scanned. I do not understand why they need all that information and I do not understand what the security of that data is.

Dr COOMBS: I would love it if everybody asked the same questions as you.

CHAIR: There is no use asking questions because they are not going to let me in unless I let them scan my drivers licence.

Dr COOMBS: We always say, when people come to us with those questions, ask them why do they need it, how will it be destroyed and when will it be destroyed. Ask them, "When I leave, can I actually see it being destroyed?" We also point out that it is a private facility and, if that is a condition of entry, you have to make a choice. My legislation does not extend into the private sector in that way. I do not have capacity under the Privacy and Personal Information Protection [PPIP] Act to say that is inappropriate.

CHAIR: Does anyone have the capacity? Is it governed by any privacy legislation?

Dr COOMBS: I am wondering here about the federal privacy legislation. That would depend upon it being of a certain nature, over 3 million clubs. I am not necessarily sure that it would be covered. I can take it on notice to check with the Federal Privacy Commissioner and provide a response, but in terms of the Privacy and Personal Information Protection Act, that applies to public sector agencies, it does not apply to those in the private sector.

CHAIR: Drivers licences are provided by government agencies and they are necessary in order to drive on the road and, it seems, to access the Ballina RSL club—

Dr COOMBS: And some hotels as well, when you travel.

CHAIR: There are thousands and thousands of people who go through Ballina RSL club. These clubs are enormous places.

Dr COOMBS: They are.

CHAIR: I would have thought the Government has an interest in protecting the data that is being collected in very large quantities by these clubs.

Dr COOMBS: We do tell people they can request that certain aspects or parts of their licence are screened so that that information, when it is photocopied, is not there, and to ask, "What is it that you need to know? Is it because you want to see the vehicle? What is it that

you are actually after?" Sometimes that has assisted people in that predicament as to what is provided. In terms of the issue about the Government having an interest in protecting it, I would be very interested to see the response from the Government on that.

CHAIR: Is that something we should perhaps ask the relevant Minister as well?

Dr COOMBS: I think the issue is that when the Privacy Act came into existence it was a very different world. In 1998 we barely had email. I can remember back in 1996 it was coming and people were talking about it, but not everybody had access to it—not everybody had access to the internet. The analogy I am drawing here is that everything has moved on in a way that has seen exponential growth in technology and also too in people's expectations of what data they can ask of you and what you will provide. Sometimes you will be surprised what even people who are privacy conscious will hand over. If I could just take a step to the side and just talk about Privacy Awareness Week, that was very much the message that we were giving to people. In this occasion it was very much focussed on social media and internet use but it was also about in a general sense be conscious. It is a valuable asset in the information economy, it is the lubricant to keep it going and you have to protect it. You do not hand over the keys to your house; you do not hand over your personal information willy-nilly. So to bring back to people, why do they need it, what rights do they have and what are your choices is something that we encourage people to do.

Mr KEVIN ANDERSON: I believe there has been a little turn. A few years ago, as you rightly point out, in 1998 there was this breakout and people were in on it, Facebook, Twitter, the whole train smash and people were willingly giving their identification and doing the whole thing. I think given what we are seeing on the social front now, and the implications of identity theft and cyber bullying and everything else, there is now this reluctance to, okay, who am I giving this information to? Why are you requesting it?

Dr COOMBS: In terms of the calls that we get, we would certainly like to see more action in that area because people are concerned. They do ask, why do I have to give it? What recourse do I have? With the internet, when I was doing some research recently I found a Neilson's poll from February of this year saying that something like 75 per cent, 68 per cent of Australians aged two years and above are active online users. So this whole issue has just become much more on people's minds and our numbers of calls are growing incredibly. When I just do a two-year comparison from April 2010, the percentage of calls has gone up something like 224 per cent just over two years just looking at the month of April, and that has nothing to do with Privacy Awareness Week because that is in May.

But if you look at other months they are up to sort of the same level as well—154 per cent, 115 per cent. So we are seeing growth in people's concerns in areas such as surveillance, internet, things have gone up, I want to get them down, do they have the right to ask me for this information when I go into clubs or wherever else? I think one of the things which we can do at this stage is very much work on people's responsible behaviour and that is some of the approaches which we can do. In terms of what we do with agencies, obviously once again is to go back to them to say, it is about what information do you need; it is not about it is nice to have.

CHAIR: We have responsible service of alcohol laws, and selling someone a drink is potentially going to cost them their whole identity. Do you see what I am saying? So collecting somebody's details can have consequences. Is identity theft a crime in New South Wales?

Dr COOMBS: Yes. I think Col Dyson, who spoke at Privacy Awareness Week—I am not sure of the particular Act it falls under.

Mr PAUL LYNCH: There is a lot of Federal legislation that would cover New South Wales. Often what happens is it is not so much the stealing of the identity; it is what you do with the identity.

Dr COOMBS: That is right.

CHAIR: I guess that is my question. It is the theft of the identity, because I had understood that was a grey area. Misuse of someone else's identity is definitely a crime.

Mr KEVIN ANDERSON: Credit card fraud.

Mr PAUL LYNCH: It is very difficult and it depends how you get it. If you physically steal something from someone and the information is contained in it, that is clearly a criminal offence, although it is the theft of the drivers licence rather than the information in it that is the offence. Simply having someone else's information if you have obtained it legally by itself I would have thought it is probably not an offence but misusing it is.

Dr COOMBS: Yes. By a public sector agency it certainly is.

Mr LEE EVANS: As far as the internet goes and Facebook and such like, the genie is out of the bottle though, is it not?

Dr COOMBS: Not in terms of how people use it, I believe. I think the technology most certainly is there and you will not be able to put it back in the bottle, as you so rightly said. But people's behaviour and how they use it is something which we can address. I use social media but I am a very limited user. I use it more in terms of my work than in terms of communicating my doings and social events across the internet. When I was part of some of the research I was doing on social media I had a friend show me her Facebook and the settings which are there. You can, for example, make your page limited just to your friends, which you have nominated, or their friends, so friends of friends, or then the whole world can see it. They are some of the things which I think are important to encourage people to use.

I am not saying not to read privacy policies. However, I will say that there has been some research which shows that if you read every privacy policy on every website that you visited in a year you need something like 250 hours a year just to do that. But some of them are extremely difficult to read. They do not necessarily tell you things. With Facebook, for example, to understand its privacy and application settings you had to be an account holder to get in to see what was in it. So you might get some general information but the more detailed information is only subject to you having established an account in which you have provided information about your identity.

Mr LEE EVANS: I had a circumstance where a young lady came into my office and she did not get a job because of her activities on Facebook.

Dr COOMBS: Young school-aged students do not necessarily have a common sense of the consequences of their behaviour. I think probably I was one of those when I think back in

terms of my youth many years ago. It is just a very different—in fact, I was speaking to a CEO recently who said that his daughter has photographs up there of her and he said, "Yes, they're fun but in years to come you'll be applying for jobs and they will still be there." Digital eternity.

Mr LEE EVANS: That is the sort of circumstance this young lady found herself in. When I was a kid two cans and a piece of string was the communication medium. My 16-year-old or my 18-year-old now, he has more electronics than Apollo had.

Dr COOMBS: And their capacity.

Mr LEE EVANS: We are getting into a discussion.

CHAIR: Have you reviewed any guidelines that the police might have in relation to the use of CCTV cameras?

Dr COOMBS: That is a very topical question at the moment. Not ones of the police service but I was looking at some guidelines produced for local councils, produced in 1999 I assume in the run-up to the Olympics, which was advocating the role of councils in the prevention of crime and saying that CCTV cameras were a valuable aid in that. There is a lot of conflicting research out there about how much these tapes—or are the cameras actually turned on? Number two, are the tapes actually used? We do get quite a number of calls about surveillance—surveillance at work, surveillance by neighbours, but surveillance in public places. I think that the issue is one which we will be dealing with more.

CHAIR: There was some question with the student who died in Pitt Street, that police had used the CCTV cameras which were, I think, positioned to the public as being an anti-terrorism measure and seen as being part of a strategy for major crime. It was not envisaged I think by many people that someone stealing a packet of biscuits would be tracked all the way down using that infrastructure. Hence my question: Are there any guidelines or restrictions or would it appropriate to have any in place for the police use of that facility?

Dr COOMBS: I am very interested in the appropriate use of surveillance wherever it is. The workplace surveillance is not a piece of legislation that falls within my responsibilities with the Attorney General.

CHAIR: This is now an expensive infrastructure which covers the whole city.

Dr COOMBS: Yes. It is like any screening device; it depends upon the use to which it is put and how well it is actually used and whether it is used appropriately. In terms of do I know of any guidelines which restrict or define how it is best used from the police side, no, I do not but I am happy to look into that.

CHAIR: Thank you.

Dr COOMBS: I am very happy to.

Mr KEVIN ANDERSON: It could also lead back to where we were talking about earlier where it is not a crime to have someone's identity but it is a crime to use it. In terms of someone having closed circuit television footage of a street, wherever it may be, that is okay, and then you need to apply to use that in a lawful sense.

Ms O'DONNELL: We will do some research.

CHAIR: In Victoria the cameras are used to detect people dropping cigarette butts out of cars because the numberplate can be identified.

Dr COOMBS: Some people view it as using a bulldozer to crack a walnut and others see it as a really powerful preventive tool, whether it is for terrorism or smaller or petty crimes.

Mr LEE EVANS: And public safety.

Dr COOMBS: And whether to provide a record that can then be used in hindsight to say that a person was in a particular public place even though they said they were somewhere else. It is how it is used, who has access to it, and how it is disclosed. They are the issues. We would be taking that perspective in terms of the information protection principles.

CHAIR: Hopefully you will be consulted.

The Hon. SARAH MITCHELL: My question relates to staffing and it comes from some comments that I think you made, Dr Coombs, but I am happy for both of you to answer it. From what I have read it seems you feel your staffing is a bit insufficient but you manage it by being sensible in your resources allocation. In relation to staff resources, is it just a case of there not being enough people to cover the work or is it because of the changing dynamic, such as the increased social media presence, and you need different skill sets than were perhaps needed five or 10 years ago? Would you like to comment on that?

Dr COOMBS: Thank you for that question. Yes, there are. I will make a number of points so just bear with me. First, we recognise it is a fiscally tight environment so jumping up and down and asking for more resources is not necessarily going to be very effective. We are approaching that by trying to get agencies to realise that this is their issue as well as mine as a regulator. However, I am a regulator and I am more at the back end of the chain of events rather than at the front, so I think it is important that they prevent matters so it will reduce their workload as well as mine. In our written response we spoke about how we work to prioritise matters. The requirement to keep dealing with complaints has meant that we have probably done less policy work and less guideline updating and writing and research work, which we would dearly love to get into. I am delighted to say that through Deirdre and me looking at how the IPC is structured and our business planning processes we have had the opportunity—and have taken it up—to identify where further resources will be made available to Privacy. That will be an incredible boon to us. There are two positions that we looking to recruit.

Ms O'DONNELL: I have an explicit deliverable as head of the IPC. The Parliament has said to me very clearly, long before Elizabeth joined us, that "The effect of this merger will be to increase significantly the resources available to Privacy NSW under current arrangements". I am really mindful of that. In my first year, before Elizabeth joined us, we repositioned our communications team and our community liaison focus. We are progressively repositioning policy and our corporate services area. Those are four business streams, if you like, which share us. We have a business mandate—I hope it is not pretentious to say it, but our plan is to move to blue. We want to show that we are no longer green or orange; we are moving to blue.

Dr COOMBS: I am orange, she is green.

Ms O'DONNELL: So the whole of the office is focused on how we can maximise our resources to ensure that we deliver the best service as the Information and Privacy Commission. That is why we emphasise coordinator distance and advice, one-stop shop, training and overlap issues, because that is where we are going to deliver the best value to agencies and the people of New South Wales. We will have the two new positions. We are in the middle of a frenzy of recruitment, which takes an enormous amount of time, but the outcome will be good. We will shortly have a shared executive director and we will have our first senior officer in the office, which will provide Elizabeth and me with some important support at a strategic level and will also allow us time off for good behaviour, because at the moment neither of us can act for the other. It gives us a bit of flexibility. That is the resources side.

In moving to blue, we have a group who are our engine room people, our review and investigation officers, and we have a program to multiskill them so that they have the flexibility to mobilise should there be a particular issue for New South Wales in respect of, for example, CCTV. Then we can redeploy and we will re-prioritise. That is what we are trying to deliver this year, which is year two of the IPC—the flexibility of resources. I need to deliver—this is something I have not yet delivered—appropriate business systems to allow us to work effectively. That is a very high priority for me as well. So there are a number of administrative things that I need to deliver as well as getting the people to ensure that Privacy NSW, as the Parliament said, should look, feel and punch well above its previous weight when it was submerged in the Department of the Attorney General and Justice. I am really committed to that. We will get there.

Dr COOMBS: One of the things that it is very important for us to demonstrate both the workload and the demand out there, because at the moment we are just meeting the needs of people who come to us rather than necessarily meeting what might be unmet demand, is a means to quantify the work we are doing and the calls that we receive. We will continue to quantify that. It will become very important to us. At the moment we are not in a position to accurately specify the workload and what the gap is. We anticipate the workload will continue to increase for the reasons that we have all touched upon. Also, through the Council of Australian Governments and the Reform Council there are a number of initiatives occurring at the Federal level in the privacy area which we think potentially are likely to cause some increased demand.

The personally controlled electronic health records, which will start on 1 July, have the potential to create greater demand coming to us. We are still trying to work through with the Commonwealth exactly how that system will work and what our role will be. I learnt a very valuable lesson many years ago when I was in NSW Health, standing in the middle of a trauma centre for brain injury patients. I had invited the head of Treasury because it was very important for us to get more money for it and he said, "Liz, you can't put demand on a 2 x 2 table with figures. Treasury isn't going to notice." I really learnt that lesson.

CHAIR: Is there any opportunity for cost recovery from agencies that you are working with?

Dr COOMBS: There is very little room for cost recovery. There is some capacity if they ask us to undertake matters on their behalf but that would only be covering our costs; it is not

a revenue producer. We are just keen to get our publications out there. We do not charge people. We also use the internet as much as possible so people can download it, which is cheaper for them and certainly cheaper for us as well.

CHAIR: I cannot help but comment that the annual report cost \$20,000 for 100 copies.

Ms O'DONNELL: That is my fault.

CHAIR: Is that an area where you might be able to reduce the cost?

Ms O'DONNELL: Definitely. The question from the Committee was a very good one. There were some good reasons and some not-so-good reasons for it. One of the reasons outside our control was that we had prepared a year's worth of financials and at the death knell the Audit Office changed its requirements of us and we had to work 12-hour days to change all our financials and we were going to miss the deadline for reporting. We invested in bound copies and that really was the big cost driver. Our senior communications person, when you asked these terrific questions, came back to me proactively saying, "Deirdre, I can save us an enormous amount this year." It will be well under double figures and probably under \$5,000. So, thank you for your question because I can use that money more constructively elsewhere.

CHAIR: I note that it goes on the website so the 100 copies are not the extent of the publication.

Ms O'DONNELL: No, but it was a bit of a timing problem. It was not beautiful, it was my fault and it will not happen again.

CHAIR: I am also sure there is artwork here that can be utilised in other publications.

Ms O'DONNELL: That is right. We invested in the photos.

Mr KEVIN ANDERSON: Hold an exhibition here in Parliament and put the photos up. It can be a public relations exercise.

Ms O'DONNELL: That is a fair comment.

CHAIR: Is there any way in which our Committee can be of assistance to your organisation or do you have any advice for us?

Ms O'DONNELL: I reiterate how valuable the questions were that you gave us. We did not have strong corporate memory and we still do not have very good records management so this really gave us a good focus. I really valued the scrutiny of our annual reports. It showed us that, even though we are a small office, everything we write matters and needs to be justified. In terms of accountability it was a terrific exhibition of your interest in us. Thanks for the pain, but thanks also for the questions. It was really useful. We are very keen to get feedback from the Committee. You may see, as I gather you saw, common issues across, for example, dealing with difficult complainant behaviour. We would like to be part of those sorts of proactive things because I can see all of us watchdog integrity bodies benefiting from a common approach and you will have the perspective that we might not have. I am mired in the day-to-

day anyway. I welcome any questions from you at any time relating to my chief executive officer role as the Information Commissioner.

Dr COOMBS: I endorse those statements but I would also like to add that I would very much like to use the Committee as a sounding board for future directions, particularly in my case in the privacy area, because there is a very substantive body of work which I would like to see done in my term in office as the Privacy Commissioner. In full time equivalent terms I have been there four months; I am three days a week but as throughout this year, my focus is very much upon actually identifying the issues, working out those ones which can be addressed and then trying to put a strategy behind those to ensure that we in that period get very productive changes for the people of New South Wales in either our approach or in the legislation policies. So I would very much appreciate your input.

CHAIR: It seems to me that the state of our laws and systems are very undeveloped at the moment and so it could almost be a question of a capital investment to get things up to scratch.

Dr COOMBS: That is why this injection of resources has been so critical for us, because we are always running to catch up with complaint handling. We are not putting as much as we would like into this. I have to say that the office under John McAteer has done an amazing job in the two and a half years that he was acting Privacy Commissioner. They really, in terms of their size, put out high quality products and advice. Their work was really exemplary. In terms of where we go now with more resources, I really would like to focus not just upon doing what we need to do on the complaint handling side but also on strategic work, and actual suggestions and recommendations to government as to where we should take this area.

Mr KEVIN ANDERSON: Given the offer there, I think there may be an opportunity further down the track in terms of using us as a sounding board for strategic planning et cetera, not necessarily the planning aspect of it, but the directions to ensure that they are heading in the right direction would be a great opportunity that we should take up.

CHAIR: Thank you very much for that; intense interest from the Committee. We might schedule something to make that happen. Commissioners, thank you very much on behalf of our Committee for your appearance here today and for the openness and the offers of a positive working relationship in the future. There is great interest in this developing area and we are very pleased to be part of it. Should we have any further questions, or is it in order for us to put them on notice to you and to ask for responses?

Ms O'DONNELL: Certainly.

CHAIR: Before the hearing concludes, I ask members to agree to a motion to publish the transcript of the witness' evidence on the Committee's website after making corrections to inaccuracies and the answers to any questions taken on notice in the course of today's hearings? **Motion agreed to.(The witnesses withdrew)**

The Committee adjourned at 3.04 p.m.

Appendix One – List of Witnesses

21 May 2012, Waratah Room, Parliament House

Witness	Organisation
Ms Deirdre O'Donnell, Information Commissioner	Information and Privacy Commission NSW
Dr Elizabeth Coombs, Privacy Commissioner	Information and Privacy Commission NSW

Appendix Two – Extracts from Minutes

MINUTES OF PROCEEDINGS OF THE COMMITTEE ON THE OFFICE OF THE OMBUDSMAN AND POLICE INTEGRITY COMMISSION (NO. 9)

10:03AM, Wednesday, 22 February 2012
Room 1136, Parliament House

Members Present

Ms Cusack (Chair), Mr Anderson , Ms Mitchell, Mr Park and Mr Searle

Apologies

Apologies were received from Mr Lynch and Mr Evans

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3. Public Hearings

Resolved on the motion of Ms Mitchell:

'That the Committee hold public hearings on the 21 May 2012 with the following

- Commissioner of the Police Integrity Commission
- The Inspector of the Police Integrity Commission
- The NSW Ombudsman, in his capacity as Ombudsman
- The NSW Ombudsman in his capacity as Convenor of the Child Death Review Team
- The Information Commissioner
- The Privacy Commissioner;

And inform the above mentioned of the proposed 21 May public hearing date'.

Resolved on the motion of Ms Mitchell:

'That the Committee staff members prepare an explanation of the remit of this Committee'.

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MINUTES OF PROCEEDINGS OF THE COMMITTEE ON THE OFFICE OF THE OMBUDSMAN AND POLICE INTEGRITY COMMISSION (NO. 10)

10:00AM, Wednesday, 28 March 2012
Room 1254, Parliament House

Members Present

Ms Cusack (Chair), Mr Anderson , Mr Evans, Mr Lynch and Mrs Mitchell

Apologies

Apologies were received from Mr Park and Mr Searle

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3. General Meetings – 21 May 2012

The Chair noted the upcoming meetings with the Information Commissioner, the Deputy Privacy Commissioner, the Inspector of the Police Integrity Commission and the Commissioner of the Police Integrity Commission on 21 May 2012.

Resolved, on the motion of Mr Anderson:

'That the Committee endorse the draft questions on notice to be sent to the Information and Privacy Commission, the Inspectorate of the Police Integrity Commission and the Police Integrity Commission.'

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MINUTES OF PROCEEDINGS OF THE COMMITTEE ON THE OFFICE OF THE OMBUDSMAN AND POLICE INTEGRITY COMMISSION (NO. 11)

10:00AM, Wednesday, 9 May 2012
Room 1153, Parliament House

Members Present

Ms Cusack (Chair), Mr Anderson , Mr Park and Mrs Mitchell

Apologies

Apologies were received from Mr Lynch and Mr Searle

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3. General Meeting – 21 May 2012

The Chair noted that the Committee has the answers to the Questions on Notice from the Inspector of the Police Integrity Commission and the Commissioner of the Police Integrity Commission and the Information and Privacy Commissioner.

The Chair noted the draft questions without notice for the upcoming meeting.

Resolved, on the motion of Mr Park:

'To endorse the draft timetable for the General Meeting.'

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MINUTES OF PROCEEDINGS OF THE COMMITTEE ON THE OFFICE OF THE OMBUDSMAN AND POLICE INTEGRITY COMMISSION (NO. 12)

09:30am, Monday, 21 May 2012
Waratah Room, Parliament House

Members Present

Ms Cusack (Chair), Mr Evans (Deputy Chair), Mr Anderson , Mr Lynch and Mrs Mitchell

Apologies

Apologies were received from Mr Park and Mr Searle

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2. General Meetings – 21 May 2012

Members noted the briefing packs that related to each General Meeting.

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The Committee convened a General Meeting with the Information Commissioner and Privacy Commissioner at 2:00pm. The public and media were admitted.

Ms Deirdre O'Donnell, Information Commissioner and Chief Executive Officer of the Information and Privacy Commission; and Dr Elizabeth Coombs, Privacy Commissioner, were sworn and examined.

The witnesses agreed to take further questions from the committee on notice.

Evidence completed, the witnesses withdrew.

Resolution -

On the motion of Mr Evans,

'That the transcript of the witnesses' evidence be published on the Committee's website, including answers to questions on notice.'

3. General Business

Members noted the following:

- That the transcript would be circulated to Members for correction;
- That questions taken by witnesses on notice would be sent to those witnesses, along with any outstanding questions on notice that the Members wish to ask of the witnesses. Questions to be finalised via e-mail by Friday 25 May at 12pm.

The Committee adjourned at 3:15pm

MINUTES OF PROCEEDINGS OF THE COMMITTEE ON THE OFFICE OF THE OMBUDSMAN AND POLICE INTEGRITY COMMISSION (NO. 14)

10:00am, Wednesday, 15 August 2012
Room 1254, Parliament House

Members Present

Ms Cusack (Chair), Mr Evans (Deputy Chair), Mr Anderson, Mr Lynch, Mrs Mitchell, Mr Park and Mr Searle

Apologies

An apology was received from Mr Park

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4. General Meetings and answers to further questions on notice

Members noted the circulated answers to further questions on notice received from the Police Integrity Commission, the Inspector of the Police Integrity Commission, the Information and Privacy Commission and the Ombudsman.

Resolved, on the motion of Mr Anderson:

'That the answers to further questions on notice received from the Police Integrity Commission, the Inspector of the Police Integrity Commission and the Information and Privacy Commission be published and made available on the Committee website.'

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MINUTES OF PROCEEDINGS OF THE COMMITTEE ON THE OFFICE OF THE OMBUDSMAN AND POLICE INTEGRITY COMMISSION (NO. 21)

3:30 PM, Monday, 10 December 2012
Room 1153, Parliament House

MEMBERS PRESENT

Ms Cusack (Chair) and Mr Searle

Via teleconference: Mr Anderson, Mr Evans, Mr Lynch, Mrs Mitchell and Mr Park

Staff in attendance: Rachel Simpson, Emma Matthews, Hilary Parker, Todd Buttsworth and Rohan Tyler

The meeting commenced at 3:33 PM.

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2. Consideration of the Chair's draft reports – Review of Annual Reports following General Meetings on 21 May 2012 and 18 June 2012

Members noted Standing Order 301(3) in relation to report consideration, and resolved on the motion of Mrs Mitchell:

'That the Committee consider each of the Annual Report Reviews in globo.'

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In relation to Report 2/55: *First General Meeting with the Information and Privacy Commission*, resolved on the motion of Mr Searle:

- that the draft Report be the Report of the Committee and that it be signed by the Chair and presented to the House;
- that the Chair and the Secretariat be permitted to correct stylistic, typographical and grammatical errors; and
- that, once tabled, the Report be placed on the Committee's website.

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The Committee thanked the secretariat for its assistance in the preparation of the reports.

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