



information
and privacy
commission
new south wales

The Honourable Catherine Cusack MLC
Chair
Committee on the Ombudsman,
The Police Integrity Commission
and The Crime Commission
Parliament House
Macquarie Street
SYDNEY NSW 2000

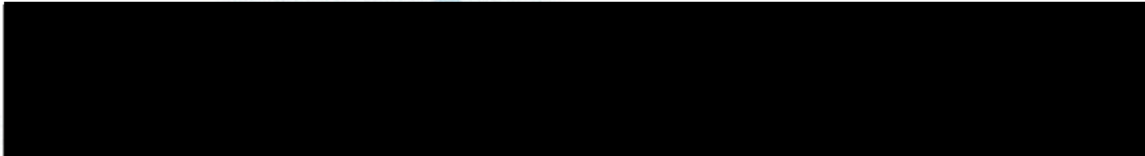
1 February 2013

Dear Ms Cusack

Information Commissioner's responses to questions on notice

I refer to your letter dated 10 December 2012 which attached questions on notice for me in preparation for the second General Meeting with the Information and Privacy Commission and the Committee.

Please find attached my responses to your questions.



Yours sincerely



Deirdre O'Donnell
NSW Information Commissioner



Joint Select Standing Committee on the Ombudsman, the Police Integrity Commission and the Crime Commission

Questions on Notice for the NSW Information Commissioner

1. **The Committee notes that, in the CEO's overview in the Information and Privacy Commission (IPC) annual report for 2011/12, you state that the Commission's focus has been on establishing itself as a single organisation (p.6). Can you advise the Committee as to the progress of the merger of the Office of the Information Commissioner (OIC) and the Office of the Privacy Commissioner (OPC)?**

Since the IPC's formation in January 2011, we have been working hard to integrate our systems and create 'one IPC', with a uniform approach to our functions and a central point of contact. This has been a lengthy process, but we are close to the full establishment of a single organisation.

The IPC now has one website with updated material from the historic OIC and OPC websites, providing a central source of information for agencies and members of the public about their privacy and information access rights and responsibilities.

We also have an integrated telephone system with a single free call number (1800 IPC NSW). This central point of contact ensures telephone enquiries can be handled efficiently and effectively.

Another important milestone is the recent introduction of a common case management system. The databases previously used by the OIC and OPC have been decommissioned and all service areas now use the same system to track and manage casework and enquiries. This enables consistent reporting across the organisation and will assist the smooth integration of the privacy and information access review and investigation teams, which will take place in early to mid 2013.

At the end of 2012, we conducted an extensive review of the IPC's organisational structure and its effectiveness in delivering the objectives of the integrated organisation. Many of our service areas are already working across both privacy and information access, such as our policy, communications and stakeholder engagement and business services teams. However, under our old structure, our casework teams were still separated. A new structure has been developed and will be implemented in the first half of 2013, merging the two casework teams and strengthening the support provided by other service areas. The new integrated casework team will be supported by a performance reporting and projects team and a communications and corporate affairs team. See attached organisational chart.

2. **The annual report notes that a key element of compliance with the Treasury requirements for internal audit and risk management is to have a chief audit executive as part of the organisation. However, because IPC is a small organisation, the Commission's newly appointed executive director is undertaking the duties of a chief audit executive, amongst other prescribed duties (p.7). Are you satisfied that these arrangements are sufficient for providing effective internal audit and risk management support for the IPC?**

While it would be ideal for every agency to have its own chief audit executive, in an organisation as small as the IPC this is not feasible. I believe that the current arrangement is the best approach in the



circumstances and I am confident that the Executive Director will provide the necessary internal audit and risk management support for the IPC.

3 The annual report states that steps were taken to establish the Information and Privacy Advisory Committee (IPAC) to advise on matters relating to the performance of the Information Commissioner and the Privacy Commissioner (p.7). Can you advise the Committee if the IPAC has been appointed, and, if so, has it met and commenced its advisory role?

The IPAC will consist of the Information Commissioner, the Privacy Commissioner and a range of other members, including some that will have specialised knowledge or interest in matters relating to access to government information and privacy. The role of the IPAC is to provide the IPC with advice about matters relevant to the functions of the Information Commissioner and the Privacy Commissioner.

On 29 November 2012, the non-government members of the IPAC were notified by the Attorney that their appointment had been approved by the Her Excellency the Governor, with the advice of the Executive Council. The non-government members are:

- **Ms Teresa Corbin.** Ms Corbin's career has been in consumer advocacy in a range of areas. She has worked closely with State and Commonwealth Governments on protecting the rights of the consumer and advocating freedom of information.
- **Ms Angela Green.** Ms Green has had a career as a senior professional in the banking and finance sector and was the first Chief Privacy Officer of the National Australia Bank. She is presently Executive Director, Policy, Planning and External Relations, University of New England.
- **Mr Doug Peiffer.** Mr Peiffer's career in the field of market research has focused on consumer habits and activities, and collecting information on television ratings. He has also had exposure to the tracking of consumer behaviour on the internet.
- **Mr Peter Timmins.** Mr Timmins is a former senior public servant and currently a consultant in the area of freedom of information. He was instrumental in the establishment of the framework for the NSW Government in dealing with FOI, providing training and advice to a wide variety of agencies.

The following people have been appointed as deputy members:

- **Mr Bruce Mansfield.** Mr Mansfield's background is in information technology, specifically around credit cards and electronic funds transfers. He possesses extensive experience in dealing with the privacy issues that arise for the vast number of consumers using these methods for financial transactions.
- **Ms Julie Ann Priest.** A senior consultant and executive working in the information technology sector, Ms Priest's experience covers a variety of areas including security, governance, risk, privacy and FOI.

Ms Samantha Yorke. Ms Yorke's career has been as a corporate counsel with particular focus on information technology. She has a wealth of experience and depth of knowledge of the privacy issues related to social media at both national and international levels.



We are now seeking nominees from the Department of Finance and Services and the Public Service Commission. Once the public sector members have been approved through the formal process, the IPAC will commence its work.

Drawing on the members' expertise, the IPAC will provide valuable advice and assistance to the IPC.

4. One of the Commission's 2011/12 Key Strategy Areas was to 'Engage with communities to appropriately target programs to vulnerable and disadvantaged groups' (p.10). Can you provide the Committee with an overview of the work that the IPC has undertaken in this area?

Community engagement is an integral part of the IPC's work. Having committed to better serve vulnerable and disadvantaged groups within the community, our aim is to develop targeted programs and materials and to have strong channels of communication with the community sector. In particular, we are identifying and addressing potential impediments to accessing our services (for example through clear plain English guides, information in community languages, access to information in a variety of formats or through different channels, and an easily navigable website). We are also providing peak community groups with our information about privacy and information access rights in NSW.

In 2011/2012, the IPC started developing its Aboriginal Action Plan, in consultation with Aboriginal people, service organisations and communities in NSW. As part of this project, we consulted with 120 individuals across 13 locations. The IPC Aboriginal Action Plan is in its final stages of development and will be released in 2013 and published on our website.

In 2011/2012, the IPC also attended a number of ATSI events to promote awareness of information access and privacy rights, as follows:

- Aboriginal Information and Assistance Days at Penrith, Katoomba, Wollongong, Bowral and Dubbo
- NAIDOC events at Riverstone, Nowra and Wollongong
- Koori Knockout at Bathurst
- Aboriginal Community Justice Group at Dubbo
- Yarn up – Aboriginal Workers Network
- Illawarra Aboriginal Community Working Group
- Condell Park Aboriginal Elders
- Aboriginal State Forum
- ADHC Aboriginal/Disability Consultation.

We also delivered six training sessions about information access and privacy rights to community workers who assist aged clients and clients with disabilities. We attended two forums for the homeless community and eight multicultural interagency meetings where we presented to over 120 people.

We also attended events for culturally and linguistically diverse communities such as:

- Sydney Chinese Services
- Auburn Multicultural Agency
- Macarthur Diversity Services.



The IPC's brochure, *A guide to protecting your privacy*, is now available in 12 of the top community languages in NSW. The general fact sheet, *How to access government information*, is available in 39 community languages, including simplified English.

In conjunction with the Aboriginal Action Plan, the IPC has drafted a Disability Action Plan, which outlines key strategies to promote citizens' rights, and should assist in overcoming barriers that individuals with a disability face in accessing information and services.

The draft Plan was presented to agencies within the NSW Disability Network Forum, which represents consumer groups, for feedback. Disability Advocacy NSW, Council of Social Service of NSW (NCOSS) and two other agencies (including the Physical Disability Council of NSW) provided helpful suggestions which have been included in the final draft of the Plan. The Physical Disability Council of NSW also recommended further research the IPC might undertake. The finalised Disability Action Plan will be launched in the first quarter of 2013 and published on our website. It will guide the accessibility of the IPC's services for the future.

5. The Committee notes that the IPC recently contracted a software vendor to customise and implement an off-the-shelf case management system for the Commission (pp.19-20). Has the case management system been implemented and, if so, how is it working in practice?

The IPC implemented the first phase of the Resolve software case management system on 23 November 2012, replacing our legacy systems. Resolve will provide a comprehensive management system for all aspects of information access and privacy matters, including enquiries, complaints, investigations, information access reviews, privacy internal reviews and matters before the Administrative Decisions Tribunal.

It will also allow us to record information regarding any public interest disclosures made to the Information Commissioner.

Since its implementation, we have used the system to log over 438 enquiries (received by phone, email and post), 227 reviews and 27 new complaints.

Resolve will allow us to accurately record and report on a comprehensive range of data. Once fully implemented, it will ensure greater efficiency and increased productivity, as well as providing a sound tool for gathering quantitative and qualitative information on all aspects of the work we do.

One immediate benefit of Resolve is the ability to analyse trends in the methods and frequency of stakeholder contact with our office. This enables us to better plan and resource our IPC phone number, prioritise the availability of online resources, and provide a better service overall for our stakeholders.

6. The annual report states that the IPC hosted its first major conference on 'Creating Open Government' in late August 2012 (p.27). Could you give a brief overview of the aims of the conference and an evaluation of the effectiveness of the conference in achieving those aims?

The purpose of the conference was to bring together a range of key decision makers, senior executives, leading thinkers and public servants from across government sectors to explore the themes of access, engagement and accountability and what these mean for open government. The conference



was an opportunity to encourage discussion and debate around ways to improve transparency and promote confidence in government by increasing access to government information. In particular, the aims of the conference were to:

- provide a forum to present national and international perspectives on the significance of right to information laws in achieving open government
- provide attendees with a memorable experience, new connections, and inspiring ideas to help create open government
- enhance existing or build new partnerships across government agencies to achieve shared objectives.

Feedback we received on the conference was largely positive, for example:

- 90% of questionnaire respondents gave the conference an overall rating of good, very good or excellent
- 80% of respondents gave a rating of very good or excellent for the opportunities to network that the conference provided
- 73% of respondents gave the quality of conference presentations a very good to excellent rating
- 85% of respondents gave the keynote speakers a very good to excellent rating.

Dr David Goldberg gave the opening keynote address, which honoured the influence of Peter Forsskal on contemporary right to information regimes. Respondents nominated this presentation as their favourite, with feedback such as, “engaging delivery and interesting topic”. Other presentations that were rated highly included Mr Michael Coutts-Trotter’s presentation, *Access – The ROI of access to government information*, and Dr Michele Bruniges’ presentation, *Engagement – working with citizens for better services*.

7. The annual report notes that the IPC has developed education and consultation strategies to engage with, and promote, the agency’s services to indigenous and culturally and linguistically diverse communities, people with disabilities, older people and other disadvantaged people. Has the IPC been able to evaluate the effectiveness of its engagement strategies in respect of these groups, and has there been an increase in interest of take-up of the IPC’s services as a result?

The focus of our communications strategy has been to ensure vulnerable and disadvantaged citizens are identified as a specific group with whom to communicate about their privacy and access rights, and about the redress they can obtain through the IPC if their rights have not been upheld.

As identifying information is not sought when people contact us for assistance, the IPC does not routinely gather statistics that would enable us to decisively respond to this question. Our new case management system gives us the capability to record demographic information relating to:

- Aboriginality
- cultural and linguistic diversity
- need for an interpreter
- special requirements.



It is not our intention to routinely collect this information for enquiries as a matter of course, as this information is generally not relevant to the issues people contact us about, and some people prefer anonymity or to limit the personal information they wish to share.

We have therefore chosen to proactively engage with key peak bodies and with like agencies that target similar groups, to ensure that information about our role is readily available. With our focus on plain English, we want our materials to be accessible in both format and language.

Although we have as yet no measures specific to our target groups, we routinely invite and collect feedback through our website and our other communication channels. Demand for the IPC's services remains relatively consistent over time. There is no evidence to show either increased or decreased usage by particular groups.

We maintain a record of issues raised and questions asked at all public events we attend, such as information days and expos. The key issues that were raised in the last financial year related to internet theft and safety when using the internet. In response to these issues, the IPC launched a brochure about how to safeguard against identity theft, as part of our Privacy Awareness Week resources.

We will revisit our strategies in 2013, in light of our new organisational structure, to ensure we continue to provide suitable materials and liaise with appropriate bodies to serve these groups.

8. Could you update the Committee on the progress of IPC's project to develop externally hosted e-learning platforms and products to support the education of agencies and the public in the GIPA Act, PPIP Act and the HRIP Act (p.31).

To date we have undertaken considerable research on potential platforms and products to support agency education through online training and services. We are awaiting confirmation from the provider

of our information technology infrastructure as to whether the IPC website can host e-learning before the full scope of viable options can be confirmed and the research finalised.

We remain committed to improving our guidance and materials available through our website and e-learning tools, and the development of e-learning platforms and products is a high priority for this year. We will be losing the position of Education and Promotion Officer under the office restructure, so these responsibilities will now be led by our Manager Communications and Corporate Affairs. The development of training materials for agencies will draw on the skills and knowledge of our casework team. As we cross-skill in order to deliver consistent advice across both privacy and access areas, those experiences will directly inform the development of new training materials.

9. Could you update the Committee on the progress of the Disability Action Plan and Toolkit project (p.32) and provide an overview of the information that is being developed to ensure that the IPC's resources are appropriately targeted and accessible to people with a disability.

The IPC recognises that people with disabilities can encounter extra barriers to knowing and enforcing their rights and accessing information and services.



The IPC's draft Disability Action Plan outlines key strategies to promote citizens' rights and assist in overcoming any barriers to access. The plan has been developed taking into account state and national initiatives and legislation, in particular the National Disability Strategy (NDS), which outlines six policy areas to improve the lives of people with disabilities.

As this is the IPC's first Disability Action Plan, we have identified areas of focus for our first two years based on five priority areas that have been determined having regard to our size (around 28 staff) and the volume of contacts we receive.

Our proposed priority areas are:

Priority 1: Accessible services.

Outcome: All enquiries, complaints, reviews, investigations and consultations are accessible for people with disabilities.

Priority 2: Accessible information.

Outcome: People with disabilities report IPC information to be accessible, reliable and responsive to their needs.

Priority 3: Accessible buildings and facilities.

Outcome: People with disabilities have equitable access to the building where the IPC is housed.

Priority 4: Inclusive employment practices.

Outcome: To provide and promote a workplace that encourages inclusiveness, fairness and equity.

Priority 5: Effective, inclusive monitoring, evaluation and reporting

Outcome: To monitor, evaluate and report on the Disability Action Plan in an inclusive manner.

When we come to review our plan, our focus may shift to other aspects of our business, or target specific groups such as young people, Aboriginal or Torres Strait Islanders or people from culturally and linguistically diverse backgrounds with disabilities. The second and subsequent NDS NSW Implementation Plans will also focus on these groups. The Disability Council of NSW will oversee reporting for plans under the NDS NSW Implementation Plan.

10. Could you update the Committee on the progress of the IPC's Aboriginal Action Plan and provide an overview of the intended objectives of the action plan.

The IPC wants to develop good relationships with Aboriginal people and communities and to ensure that the services we offer are accessible and useful. Our Aboriginal Action Plan is a first step towards developing stronger relationships with Aboriginal people and communities across NSW.

The objectives of the Plan are to:

- demonstrate and promote recognition and respect for Aboriginal culture and people
- educate and engage Aboriginal people about access to government information and privacy



- develop targeted resources that are culturally appropriate in design and content, and
- develop and maintain partnerships with Aboriginal organisations, groups and individuals.

Information Commissioner

11. **The Committee notes that, in the Information Commissioner’s overview in the IPC annual report for 2011/12 you state that there has been a greater than expected volume of requests for Information Commissioner reviews of agency decisions than was predicted when the Office was being established (p.23). In your view, is the OIC adequately resourced to effectively undertake the workload?**

This is a very timely question, as Information Commissioners in other jurisdictions also grapple with higher than expected demand and backlogs of matters to handle.

One of the greatest impediments to finalising cases last year was the lack of a case management system (CMS), a core business system for a watchdog agency. The delays in acquiring and establishing a CMS were largely outside our control, with it taking well over 18 months to be able to purchase an off-the-shelf system which is used by many watchdog agencies across the country but which was not available through a NSW panel contract.

The delay in acquiring and implementing our CMS has meant that inefficient and complex processes were followed to deal with demand. These were necessary but far from optimum. Now that the CMS is in place, I expect to see much better, quicker and more consistent processing of complaints. Reports from the system will also help us identify patterns of demand (such as for particular agencies) and address these more strategically.

A second key strategy to address workload demand will be the restructure of the core business team to handle both access and privacy matters. Cross-skilling of investigations staff; developing a common approach to investigations and documenting that in a procedures manual; and increased management support of the team, should result in more efficient handling of investigations and reviews.

Agencies right across the NSW public sector are experiencing pressure on staff resources because of budget imperatives.

Given the IPC’s reduced staffing numbers, these are the steps we must take to manage our workload:

- ensure our business systems and processes are as efficient and effective as possible, supported by a helpful and comprehensive operations manual and with rigorous quality assurance mechanisms in place;
- ensure our staff are appropriately trained, well-managed, and able to be deployed flexibly to meet areas of high demand or key risk;
- constantly monitor our performance against our service standards and, where delays occur, ensure we keep the affected parties informed. This last point cannot be emphasised strongly enough. In my experience in a range of watchdog roles, one of the most important factors for members of the public is being kept informed. If the watchdog body is doing all it reasonably can to progress an individual’s matter, and keeps the person informed, then in my experience the person has confidence that ultimately they will receive a fair outcome.



12. **In the annual report you state that the Premier has set a requirement for Ministers to ensure that each of their agencies has an Open Government Plan in place as part of the business development by December 2012 (p.23). To date, have Government agencies been effective in implementing Open Government Plans, and what measures have been taken by the OIC to ensure compliance.**

As part of the *NSW Government ICT Strategy 2012* and its commitment to Open Government, agencies are required to implement an Open Government Plan. The NSW ICT Board has issued guidance for agencies that suggests the Plan should report against six open government actions. Action 3 is to increase open access information available at opengov.nsw.gov.au. Open access information is defined under the GIPA Act and must be made publicly available, free of charge in at least one format, unless there is an overriding public interest against its disclosure.

The Information Commissioner does not have an explicit role in monitoring or ensuring compliance with Open Government plans. However, as the Plans are inextricably linked with agencies' open access requirements under the GIPA Act, the IPC's future compliance monitoring and reporting will capture some information relevant to the implementation and effectiveness of agency Open Government Plans. Once formed, the IPC's Performance and Reporting team will consider efficient methods for monitoring agency compliance, bearing in mind the requirements and broader objectives of the ICT Strategy.

Further, the Privacy Commissioner and I have both been working with the Department of Finance and Services to develop policies and strategies to implement and ensure success of the Open Government Plan project as part of the broader ICT strategy.

13. **What education strategies have been put in place by the OIC to promote the benefits of good information management in respect of Government agencies' capacity to comply with the principles of the GIPA Act?**

The IPC, covering both privacy and information access, promotes good information management at every opportunity. While the IPC does not have a specific mandate to promote the benefits of good information management, we do so in tandem with our focus on agency compliance and good practice standards. Good information management is a key factor in ensuring compliance with the GIPA Act, PPIP Act and HRIP Act. It enables agencies to find and track records, provide timely access to government information and minimise the risk of privacy breaches.

The IPC develops and delivers GIPA and privacy training to agencies. Our materials and programs reinforce the importance of good information management to facilitate compliance with our legislation. We offer practical tips where we can and welcome examples that can be shared with other agencies.

For example, the recently released *GIPA Annual Reporting Template* and revised *GIPA Annual Reports Knowledge Update* promote good information management to ensure accurate and efficient reporting under the GIPA Act. They also suggest simple strategies for the ongoing proactive release of information as it is created.

The importance of good information management and information management tools was also a common theme at the IPC's *Creating Open Government Conference* in August 2012, and was reinforced by many of the conference speakers. One of the very workshops was *Information Management for NSW Senior Decision-Makers* by David Glynne Jones of DGJ Consulting. Feedback



about the session was positive and showed strong agency awareness of the value of good information management in both promoting and protecting information and privacy.

Privacy Commissioner and I actively participate in and assist the work being undertaken by the Department of Finance and Services, as the lead central agency to promote and implement the NSW ICT Strategy. State Records, part of the Department of Finance and Services, is the key body in NSW promoting good information management.

- 14. In the annual report, you comment that in the year ahead you hope to provide better data to the Parliament and to agencies on the performance of those agencies against the GIPA Act (p.24). What operational initiatives have been put in place to enable the OIC to achieve this outcome?**

The critical new development that will assist me to provide better data to Parliament and agencies on their performance against the GIPA Act will be the full implementation of our new case management system, Resolve. As outlined in my responses to questions 5 and 11, Resolve will allow us to track compliance issues and trends, and provide data to inform our external reporting.

The other operational initiative that will directly assist me to report on agency performance is the establishment of a new team within the IPC called 'Performance Reporting and Projects'. This three-person team will specifically focus on performance reporting. One of its early priorities will be to develop and oversee the IPC's whole of government performance monitoring and reporting framework, including agency report cards and reports to Parliament.

I am confident that the new IPC structure, aided by efficient systems, will provide useful and timely data to the Parliament and agencies, both on compliance with the GIPA Act and the broader interaction with the NSW ICT Strategy and Goal 31 of the State Plan.

- 15. The annual report states that an unexpected volume of requests for assistance resulted in delays in the processing of GIPA reviews and complaints. The annual report also notes that the IPC is in the process of purchasing a case management system and an electronic records management system, which, it is anticipated, will improve the IPC's capacity to deal with the volume of reviews and complaints (p.33). Are you confident that the implementation of these systems will enable the OIC to undertake its review and complaint-based workload in a timely manner?**

Please see my answer to 11 above. Better systems, coupled with clear communications to parties, will assist in better meeting demand for our services and maintaining the public's confidence in our processes.



16. **The annual report notes that the OIC commenced a review of 266 agency websites to determine if and how those agencies were publishing mandatory open access information required to be disclosed under section 18 of the GIPA Act. The annual report states that 47% of the agencies complied with the open access requirements, with 53% of agencies being non-compliant (pp.34-35). Does the OIC have any strategies in place to educate Government agencies about their obligations under section 18 of the GIPA Act in order to improve compliance amongst those agencies.**

The IPC provides continued training and education programs as well as direct assistance to agencies. We give targeted advice to agencies when dealing with reviews and complaints, including specific advice about meeting the requirements of section 18 of the GIPA Act and methods for ensuring ongoing compliance. As outlined in the annual report, the IPC conducted an extensive review of agency websites to see how agencies were tracking against the section 18 requirements. We also provided detailed feedback to agencies about their first year Agency Information Guides (formerly Publication Guides).

The IPC's compliance manual was first produced in 2010 and is available on our website. It is currently being revised in light of IPC and agency experiences with the GIPA Act in its first few years of operation. A key feature of the guide will be the updated self audit checklist tool, allowing agencies to easily and efficiently assess their own compliance against the open access requirements in the GIPA Act. I trust that the new and improved resource will benefit agencies and contribute to a sector wide improvement in compliance with section 18 of the GIPA Act.