

## Making allegations of corrupt conduct public: is it in the public interest?

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Mr Alan MacSporran  
Chair  
Crime and Corruption Commission  
GPO Box 3123  
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By email: [publicisingallegations@ccc.qld.gov.au](mailto:publicisingallegations@ccc.qld.gov.au)

Submission 'for publication'

Dear Mr MacSporran

Thank you for the opportunity to make this submission; thank you also for permitting this late submission – I was made aware of the forum earlier this week consequently I haven't researched this as I would have liked.

I am a private individual (Public Housing Tenant), concerned at the current culture amongst very senior public servants within the [REDACTED] and their previously separated portfolio agencies: [REDACTED], combined with other commissions, [REDACTED] (quasi-judicial authorities), supposedly independent (which they are not) where the public servants and commissioners) are always right; and your referral of matters to the [REDACTED] for investigation [REDACTED] causing [REDACTED] to myself and my elderly ex-husband on the basis the Department [REDACTED] are reliable informants.

The subsequent response from [REDACTED] without any input from myself other than the recent phone call I made to Crime and Corruption Commission was:

**'It has been determined that no breach of discipline or misconduct was identified as a result of this review.**

**I do not propose to take any further action in relation to your complaint'.**

Having read the other submissions, this is not an isolated incidence of cultures where public servants are 'always right' regardless: whether they are agency officers; commissioners and their officers; [REDACTED]; where the sole outcome of complaints is: **'I do not propose to take any further action in relation to your complaint'** i.e. it is across the 'whole of government; with various portfolio agencies being the arbiter of complaints about their own officers, protecting their mates: ensuing the use of dark arts of misinformation, fabrication of defamatory claims, which are shared across government agencies/commissions; clean torture and any amount of abuse (elder), bullying, intimidation, harassment, etc

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My reading of the Discussion paper indicates the seeking of submissions from the wider community in this instance is motivated by the number of politically motivated complaints received prior to elections (state and local government) with the possibility of allegations being harmful to the people seeking election to public office i.e. the accusations are not in the public interest, threatening a fair hearing for the accused.

It in no way addresses the accusations made by public servants, and supposedly independent commissioners in the course of their employment by the Queensland Government against members of the public without ever considering whether these accusations are not in the public interest, nor permit a fair hearing.

Firstly: I seek Whistle Blower Protection.

Secondly: this is not a complaint for investigation by the Crime and Corruption Commission.

In Queensland, 'open', 'accountable' and 'transparent' government does not exist.

My observations are: Something is considered criminal when there is money involved. Somehow when conduct is unethical, unprincipled, motivated by protection of mates, it does not warrant being considered.

### **Recommendation 1:**

A 'Fitzgerald' type inquiry is undertaken across the whole of government. Whilst Colin Dillon's efforts and the newspaper journalist's various reporting of the corruption at the time as 'freedom of speech' identified corruption within the Queensland Police Service – Any attempt to address corruption in Queensland since has fallen away.

### **Recommendation 2:**

A different paradigm and best practice methodology of complaint processing across the whole of government is required: i.e. where the general public can be confident matters reported are reviewed and their concerns are actioned.

Resolution of complaints made are not reviewed by peers (looking after mates); and these peers having responsibility for referral to the Public Service Commission, Crime and Corruption Commission etc – the general public should have access to these commissions as a right (frivolous, vexatious and scurrilous complaints can be weeded out with proper processes, proper processes and proper consultations – being approached in an open an honest manner rather than use such terms as a means to gag the informant/whistleblower etc.

## **Openness and Accountability**

I refer to my incomplete submission to QCAT of 1 August 2016 on 'Document Integrity and Information Release' (Annexure A) (page 25)

*"The effective operation of representative democracy depends on the people being able to scrutinise, discuss and contribute to government decision making. To do this, they need information."*<sup>1</sup>

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<sup>1</sup> Australian Law Reform Commission/Administrative Review Council, *Open government: a review of the federal Freedom of Information Act 1982*, Report No. 77 No. 40, December 1995, p. 12.

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### Key Points<sup>2</sup>

- Australia's liberal democratic system of government is underpinned by a constitutional framework, which establishes the rule of law and defines the limits of government power and its political institutions<sup>3</sup>
- Australia's system of government is formed around the Parliament, the Executive and the Judiciary, and the notion that their separation is paramount in a system of checks and balances. The Australian Constitution and the two Houses of Parliament (Queensland has one House of Parliament) reflect the extent to which separation and accountability are paramount to preserving democracy in Australia. Accountability is dependent upon the availability and flow of relevant information.
- Tony Fitzgerald, AC, QC, architect of Queensland's anti-corruption reforms has indicated that secrecy impedes accountability whilst 'knowledge is quite literally power,' enabling citizens to effectively participate in the political process.<sup>4</sup> Accountability is therefore dependent upon the availability and flow of relevant information.
- Citizens require information from the Parliament, the Executive and the Courts to enable effective representative democracy.
- Open government enables public scrutiny through the maximum disclosure of information about all arms of government. Public scrutiny reduces the need for prescriptive regulation and the cost of bureaucratic checks and balances.
- Public scrutiny of the use of public funds is fundamental to representative democracy. Public scrutiny, as an element of any accountability mechanism, fundamentally strengthens the mechanism's effectiveness. Public scrutiny enhances the ability of the elected representatives to concentrate on issues of importance to the community rather than defending issues arising where there has been a lack of public scrutiny over time.
- The business of ... Parliament involve the use of public funds and should be subject to public scrutiny through the availability and flow of relevant information.

Senator Brandis in Opposition in 2009 said

"..The true measure of the openness and transparency of a government is found in its attitudes and actions when it comes to freedom of information. Legislative amendments, when there is need for them, are fine, but governments with their control over the information in their possession can always find ways to work the legislation to slow or control disclosure...."<sup>5</sup>

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<sup>2</sup> Julie Kinross, former Queensland Information Commissioner - Submission to the Standing Committee on Finance and Public Administration 5 November 2009

<sup>3</sup> Parkin, A & Summers, J 2006, 'The Constitutional Framework', in A Parkin, J Summers & D Woodward (eds), *Government, politics, power and policy in Australia*, 8<sup>th</sup> ed, Frenchs Forest, Pearson Education Australia, p. 46.

<sup>4</sup> See Lane, W 2009, *Queensland Administrative Law*, Loose-leaf, Lawbook, Balmain, NSW at [2.20].

<sup>5</sup> Ibid, Friday 22 July 2016 - FREEDOM OF INFORMATION (REMOVAL OF CONCLUSIVE CERTIFICATES AND OTHER MEASURES) BILL 2008 [2009], Senate Hansard, Second reading 13-08-2009 -

[http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p?query=BillId\\_Phrase%3A%22s702%22%20DataSet%3Ahansardr.hansards%20Title%3A%22second%20reading%22;rec=1](http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p?query=BillId_Phrase%3A%22s702%22%20DataSet%3Ahansardr.hansards%20Title%3A%22second%20reading%22;rec=1)

## In the Public Interest

I refer to the submission of The Whistleblowers Action Group Queensland (Submission 23) addressing '**The Conflict of Interest Held by the CCC**' (pages 5 - 6) states:

'Major allegations of corruption and wrongdoing continue against the CCC, the reputation of which organisation is being affected by the history of actions taken regarding whistleblowers. Their disclosures should have been properly, thoroughly and impartially investigated by the CCC, and the whistleblowers should have been protected by the CCC, it is alleged.

Such matters as: ... exemplify the troubled history of the CCC with matters that continue to be raised in quasi-judicial inquires and Parliamentary business.

I will further refer to the same submission addressing: '**Tricks and Ploys**' in its entirety (pages 6 – 7), ending with:

'The outcome from this continuing history of alleged tricks is that the CCC cannot reasonably expect to be trusted with legislation that disempowers those who are genuinely working in the public interest to arrest wrongdoing'.

and '**Notions of Public Interest**' (page 7) stating:

'One aspect of the CCC's record of major concern is responding to whistleblower disclosures – and it is directly relevant to this current CCC process and to the proposed law – is the alleged misuse of by CCC and its ancestors of the definition of '***the public interest***'. It is submitted that the CCC has used and is using its own purported notion of '***the public interest***' to excuse the CCC from pursuing disclosed corruption and wrongdoing. On such matters, the CCC would be enabled to use '***the public interest***' to deny investigation against corruption and to deny publicising of CCC's refused, delayed or deficient investigation.'

The Information Commissioner is also using its own purported not of '***the public interest***'.

As a starting point so everyone can at least be on the same page – let's start with the following from my incomplete submission to QCAT of 1 August 2016 on 'Document Integrity and Information Release' (Annexure A) for a hearing on Tuesday 30 August 2016 (yesterday 25 August 2016 marks six years since the first information access request was made 25 August 2010 in this series of external reviews (remitted 23 October 2014) appeals now before QCAT for the second time – the contortionist decision/document hopping gymnastics, linguistic gymnastics required and deliberate intentioned misinterpretation of the legislation in this abuse of power and process leaves nothing to one's imagination.)

**Background (Right to Information Act 2009) (page5)**

The Solomon Report states:

"History in Queensland, as in many other jurisdictions, has proven unambiguously that there is little point legislating for access to information if there is no ongoing political will to support its effects. The corresponding public sector cultural responses in administration of FOI inevitably move to crush the original promise of open government and, with it, accountability.<sup>6</sup>

**The Public Interest**

The Solomon Report<sup>7</sup> states:

"The public interest is the central, unifying feature of freedom of information. As the Australian Law Reform Commission/Administrative Review Council Report said in 1995, 'What most distinguishes the approach to disclosure of government information in the FOI Act from approaches taken prior to its enactment is its focus on the public interest.'<sup>8</sup> It headlined its discussion of the public interest test,

'The availability of government information should be determined by the public interest.'<sup>9</sup>

... the application of public interest tests has always been one of the most significant weaknesses of FOI. Again, as the ALRC/ARC Report said, 'Public interest tests allow all considerations relevant to a particular request to be balanced ... it can at times be difficult to perform this balancing exercise.'<sup>10</sup>

One problem is ... "the public interest" has been regarded as "an amorphous concept", undefined, and dependant on the application of subjective criteria.<sup>11</sup> Another is that most FOI laws include at least several different public interest tests. Some put a small emphasis on disclosure, others tip the balance heavily in favour of withholding information. Yet another problem in Queensland (and in some other jurisdictions) is the way the role of the public interest has been downgraded by assuming that if a document can be classified as falling within the bounds of an exemption, there is a prima facie case against disclosure under a public interest test. That does not give the public interest a fair chance in the balancing exercise, contrary to the original intention of the legislation."

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<sup>6</sup> The Right to Information - Reviewing Queensland's Freedom of Information Act: The report by FOI Independent Review Panel - Chair: Dr David Solomon AM; Members: Ms Simone Webbe and Mr Dominic McGann - June 2008, Chapter 1: page 2

<sup>7</sup> The Right to Information - Reviewing Queensland's Freedom of Information Act: The report by FOI Independent Review Panel - Chair: Dr David Solomon AM; Members: Ms Simone Webbe and Mr Dominic McGann - June 2008, Chapter 1: page 1

<sup>8</sup> Australian Law Reform Commission (ALRC)/Administrative Review Council (ARC), *Open Government: a review of the federal Freedom of Information Act 1982*, ALRC Report No. 77, ARC Report No. 40, December 1995, page 95 (hereinafter referred to as the ALRC/ARC Report)

<sup>9</sup> ALRC/ARC Report, page 95

<sup>10</sup> ALRC/ARC Report, page 95

<sup>11</sup> ALRC/ARC Report, page 95

## Making allegations of corrupt conduct public: is it in the public interest?

Queensland Information Commissioner's guideline (Public interest balancing test<sup>12</sup>): states **without acknowledging its copyrighted source,<sup>13</sup> and decision-maker's** (Right to Information Commissioner) **further claim it is relevant law<sup>14</sup>** (submission 36 restates this)

"The term 'public interest' refers to considerations affecting the good order and functioning of the community and government affairs for the well-being of citizens. Public interest considerations are generally common to all members of, or a substantial segment of, the community, as distinct from matters that concern private or personal interests. However some public interest considerations can apply for the benefit of an individual."

The New South Wales Ombudsman defines the term '**public interest**' as:

**The meaning of the term 'public interest'**<sup>15</sup> (copyrighted ISBN: 978-1-921132-93-303/2012)

"The concept of the 'public interest' has been described as referring to considerations affecting the good order and functioning of the community and government affairs, for the well-being of citizens. The expression 'for the common good' is also used.

What is in the 'public interest' is incapable of precise definition as there is no single and immutable public interest. In some ways it is easier to make general statements about what is not in the public interest than what is in the public interest.

For example it can be said that the public interest is distinguishable from a private interest because it extends beyond the interests of an individual (or possibly even a group of individuals) to the interests of the community as a whole, or at least a particular group, sector or geographical division of the community.

However, even such a statement must be qualified because there are some circumstances where an individual's private interests – in privacy and procedural fairness, for example – are regarded as being in the public interest."

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<sup>12</sup> OIC Guideline: Interpreting the legislation - *Right to Information Act 2009*, Public interest balancing test - section 49 RTI Act (Published 1 December 2009 and last Updated 17 March 2015); para 2.0 What is the public interest, page 1

<sup>13</sup> Crown Copyright, NSW Ombudsman, November 2010, Reprinted March 2012 ISBN: 978-1-921132-93-303/2012 - Factsheet '**Public Interest**'

<sup>14</sup> Decision 17 March 2016: **Contrary to public interest information - Relevant Law** - para [38] page 7 of 20 **NB: omitted from** OIC's Documents Relied upon by the Information Commissioner in making the decision - Redacted (to remove any reference to the 'Information in Issue' in this appeal): QCAT Appeal APL 126-16 filed 14 July 2016

<sup>15</sup> Crown Copyright, NSW Ombudsman, November 2010, Reprinted March 2012 ISBN: 978-1-921132-93-303/2012 - Factsheet '**Public Interest**'

## Making allegations of corrupt conduct public: is it in the public interest?

The New South Wales Ombudsman acknowledges: Public officials should serve the '**Public Interest**'; stating

### **Serving the public interest**<sup>16</sup>

Public officials should perform their official functions and duties, and exercise any discretionary powers, in ways that promote or preserve the public interest.

#### **How do they do this?**

As a first step, public officials must determine the public interest as it applies to them by referring to the purposes for which their organisation was established and the functions they and their organisation are required to perform. They should consider:

- any enabling legislation setting out objectives, purposes or functions of the organisation
- relevant government policy
- their organisation's corporate plan or other relevant internal policy statements
- the duty statement for their position.

#### **Object of RTI Act, s3 states:**

- (1) *The primary object of this Act is to give a right of access to information in the government's possession or under the government's control unless, on balance, it is contrary to the public interest to give the access.*
- (2) *The Act must be applied and interpreted to further the primary object.*

OIC's decision fails to uphold the objects of RTI Act.

An agency or Minister must decide to give access to the document (if an access application is made) unless disclosure would, on balance, be 'contrary to the public interest'.<sup>17</sup>

RTI Act specifically sets out the factors for deciding the 'public interest' in Schedule 4 – in four parts:

*Part 1 Factors irrelevant to deciding the public interest*

*Part 2 Factors favouring disclosure in the public interest*

*Part 3 Factors favouring nondisclosure in the public interest*

*Part 4 Factors favouring nondisclosure in the public interest because of public interest harm in disclosure*

RTI Act imposes mandatory steps (a) through (g)<sup>18</sup>, an agency or Minister to: relevantly consider whether, on balance, disclosure of information would be 'contrary to the public interest'.

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<sup>16</sup> Ibid

<sup>17</sup> s49(1) RTI Act

<sup>18</sup> S49(3) RTI Act

## Making allegations of corrupt conduct public: is it in the public interest?

Agency/OIC failed to nominate the extent documents comprise information<sup>19</sup> or state the mandatory steps taken<sup>20</sup> to ascertain, the documents sought in the RTI access application, the disclosure of which **‘would on balance, be contrary to the public interest pursuant to s49’**.<sup>21</sup>

Part Recommendation 22 in my submission (page 18) regarding *‘The Public Interest’* is:

**Public interest balancing test** (Published 1 December 2009 and last Updated 17 March 2015)  
**para 2.0 What is the public interest?**

**Requirement:** a **‘more appropriate definition’** of **‘What is the Public interest?’** preferably the NSW Ombudsman's copyrighted definition included in this submission.

## **Making allegations of corrupt conduct public**

‘Publicising allegations of corrupt conduct may adversely affect the ability of the Crime and Corruption Commission (CCC) to perform its corruption function, damage the reputation of the person alleged to have engaged in corrupt conduct, and compromise the fair trial of persons charged with corruption. However, identifying a solution that ensures allegations of corrupt conduct are kept confidential must be balanced against the right to freedom of speech within current legal constraints and the need for open and accountable government’.

Government business is under the control of various Queensland “public sector entity/ies”: defined to include a department<sup>22</sup> and a commission, public authority<sup>23</sup>, office, government owned corporation<sup>24</sup>; a subsidiary of a government corporation<sup>25</sup>, or instrumentality established under an Act or under State or local government authorisation for a public, State or local government purpose.<sup>26</sup> It is through these public sector entities that the public business of the State is carried out. Queensland government's business is defined and supported by legislation. The employees of such entities are carrying out the business of the State. In so doing, they apply the law that relates to their task. Respect for the law and the system of government is fundamental to their work.<sup>27</sup>

Members of Parliament are elected; Commissioners are appointed by the Executive of Parliament (are mostly not accountable); public servants are employed to carry out and perform the business of government for the State; are paid very lucrative salaries and benefits in the process; the *Public Service Act 2008* establishes Public Servant’s employment as a **‘Public Trust’**, *Public Sector Ethics Act 1994* sets out established principles, ethics and standards, and Queensland Government Code of Conduct for the Queensland Public Service sets out requirements of Conduct.

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<sup>19</sup> s49(1) RTI Act

<sup>20</sup> s49(3) RTI Act

<sup>21</sup> s47(3)(b) RTI Act – **Grounds on which access may be refused**

<sup>22</sup> s14(1)(a) RTI Act

<sup>23</sup> s14(1)(c) RTI Act

<sup>24</sup> s14(1)(d) RTI Act

<sup>25</sup> s14(1)(e) RTI Act

<sup>26</sup> s14(1)(b) RTI Act

<sup>27</sup> Building Integrity in the Queensland Public Sector - A Handbook for Queensland Public Officials - The Honourable Alan Demack AO, Queensland Integrity Commissioner - Rockhampton April 2004: page 19

### **Reputation of the person alleged to have engaged in corrupt conduct**

The Crime and Corruption Commission, an independent commission and the peak commission overseeing alleged/actual crime, misconduct, etc in public office; is also required to be open, transparent and accountable to the Queensland constituency; and should lead by example i.e. model behaviours (ideas, attitudes) it seeks to have society persistently educated regarding ethics, principles, truths etc.

Allegations should be made public in the ordinary course of establishing independence and impartiality. The Crime and Corruption Commission had a duty and a responsibility to be above manipulation by powerful people either in public office or privately. It must remain frank and fearless in its operations.

Politicians and Public Servants should not be afforded confidentiality in these matters. The discussion paper refers to the time during the election campaign of Mr Campbell Newman (Member for Ashgrove). This is one on many – personally this is only time the general public get to hear these matters – It is public money paying their salaries etc.

My grandmother had a 45 rpm vinyl recording of a song ‘Don’t trust any person whose title starts with ‘P’ – yes you have it Parliamentarians, Politicians, Public Servants, the list goes on; it may have been tongue in cheek, however today not a truer word has been uttered.

Mr Campbell Newman’s alleged conduct is not the only times such things have been alleged, I will remind you of another (whether it was referred to the Crime and Corruption Commission or the Parliamentary Committee): our ‘Mr Plonker’ from the Redlands area where he texted a photo of his person in a glass of red wine – he was subsequently not re-elected – the public made up their own mind. Without the exposure by journalists using the freedom of speech informed the constituency.

Another practice I have a challenge with is when these people refer themselves to the Parliamentary Committee or the Crime and Corruption Commission effectively gagging any further discussion of the matter as it is under investigation – The practices ought not be permitted because it crushes open, accountable and transparent information being disseminated to the general public.

*‘All power tends to corrupt; **absolute power corrupts absolutely**. Great men are almost always bad men, even when they exercise influence and not authority; still more when you superadd the tendency of the certainty of corruption by authority’.*<sup>28</sup>

Now I will disclose my situation: Please consider how I have not been afforded confidentiality, the disclosures have not been ‘**in the public interest**’ - i.e. my reputation has been damaged and continues to be damaged. This will be summarized in dot points as follows:

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<sup>28</sup> John Emerich Edward Dalberg-Acton, 1st Baron Acton, KCVO DL (10 January 1834 – 19 June 1902) [www.acton.org/research/lord-acton-quote-archive](http://www.acton.org/research/lord-acton-quote-archive) - [Cached](#) - [Similar](#)

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- Housing purchased a 'lemon' – this was to become my home January 2009; 5 days after moving into the property the rear private courtyard flooded; it later continually flooded internally and externally with effluent (raw sewerage); the property had previously been condemned and refurbished covering up the reasons for the condemnation; the building was badly designed, a neighbourhood dispute ensued with [REDACTED] – I was blamed for the neighbourhood dispute.
- 1 August 2010, my property was burnt by [REDACTED] – there was an escalation of [REDACTED] by the [REDACTED], including three (3) applications to QCAT to terminate my lease, give possession to the agency – had these been successful I would have been homeless.
- 6 RTI Access applications were made: two (2) to Department of Public Works; three (3) to Department of Communities (Housing and Homeless Services); one (1) to Minister for Communities and Housing between 25 August 2010 and 28 February 2011.
- Immediately upon making the first two (2) external review applications (there are no coincidences) OIC produced 4 weeks later a research paper on repeat external review applications – I topped the list, whilst not immediately identifiable it was not hard to identify myself – This research paper set out to establish as a repeat user of OIC with external review applications one was considered 'vexatious'.
- 9 February 2012 immediately prior to machinery of government changes the 4 Communities and Housing applications were combined [REDACTED] and OIC refused to deal with them totally on the basis the applications were 'frivolous' and 'vexatious'.
- The decision was published on OIC's website (without taking into account the second part of the publication requirements in the RTI Act; it remained there until March 2015.
- As if the decision being published in this manner, OIC then used the decision as authority for their annotated legislation of both RTI Act and IP Act – This was removed late 2014 after making a privacy complaint; whilst privacy provisions were considered did not apply, I negotiated the annotated legislation references were removed.
- After remittal of the QCAT appeal 23 October 2014, I threatened [REDACTED] if the decision was not removed – it was removed reluctantly.
- There has also been the rental litigation where: it was found that public housing is subsidized housing and as public housing tenants we are not entitled to housing that is fit for purpose, being uninhabitable. I appealed this to the High Court – whilst the appeal was disposed of they did find the law has not been established.
- I can prove [REDACTED] by the agency's own admission, deliberate and intentioned misinterpretation of the legislation, obfuscation; I say misfeasance in public office is made out.

I will include the [REDACTED] referred in my other submission to QCAT for two current appeals, the remaining two external reviews are not decided as they are now being processed separately and in reverse chronological order (annexures referred to are not annexed here – time does not permit this):

### **Part VII: Abuse of Public Trust - Known deliberate intentioned obstructions**

Submission: Crime and Corruption Commission Queensland  
Helen Underwood

85 The abuse of 'Public Trust' is so monumentally 'serious' because:

a. 27 August 2010 [REDACTED]  
[REDACTED] (DCHHS 09-12); namely:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

following a stage II complaint lodged by the applicant against several senior officers at [REDACTED]

[REDACTED] and others –

**Topic: Stake holder Engagement and Communication Strategy - Meeting Notes** (Annexure B1 - NB: Additional Documents Sought - page 3: Refused at Directions Hearing 31 May 2016 - Justice Thomas advised to refer to the documents – Other Document APL 075-12 pages 47 to 48) particularly regarding Right to Information requests, states:

**‘Agenda Items Discussed’<sup>29</sup>:**

**Dealing with Right to information requests** (my emphasis)

Conduct matters and gaining direction from [REDACTED]  
[REDACTED] on how to progress

**Outcomes**<sup>30</sup>:

4. On the back of the briefing to the [REDACTED] will separately brief the [REDACTED] about issues relating to staff conduct and service delivery to [REDACTED] for consideration of appropriate action.
5. [REDACTED] recommended the officer mainly implicated in breaching code of conduct etc disengage themselves with this tenancy until the staff conduct investigation is completed.
6. [REDACTED] advised that all information entered into the system by [REDACTED] staff e.g. file notes and any other external/internal communication adhere to dept standards i.e. withstand scrutiny through RTI (my emphasis)’.

b. 17 September 2010 [REDACTED] Correspondence Brief (‘Ministerial’) (Annexure B2 - NB: RTI Release 11009R Folios 722 to 723) – Internal Consultation:

- [REDACTED]
- [REDACTED]
- [REDACTED]

<sup>29</sup> Annexure B1: Meeting Notes – 27 August 2010 (RTI Release - Initial Reference Removed: APL 075-12 page 47 i.e. Additional Documents Sought - page 3: Refused at Directions Hearing 31 May 2016 - Justice Thomas advised to refer to the documents – Other Document: APL 075-12 pages 47 to 48)

<sup>30</sup> Annexure B1: Meeting Notes – 27 August 2010 (RTI Release – Initial Reference Removed: APL 075-12 page 48 i.e. Additional Documents Sought - page 3: Refused at Directions Hearing 31 May 2016 - Justice Thomas advised to refer to the documents – Other Document: APL 075-12 pages 47 to 48)

‘Background’<sup>31</sup>

- On 16 September 2010, Ms Underwood lodged a Right to Information application the scope of which is for documents for the period 27 November 2009 to 25 August 2010. **The Housing Appeals and Review Unit are currently processing this request** (my emphasis).’

and

‘Attachment 1 – Additional Information’<sup>32</sup>

- On 16 September 2010, Ms Underwood lodged a *Right to Information* application the scope of which is for documents for the period 27 November 2009 to 25 August 2010. **The Housing Appeals and Review Unit are currently processing this request** (my emphasis).
- Ms Underwood **has previously lodged Right to Information applications on two occasions for copies of her tenancy file and the property files at the addresses she has resided** (my emphasis). She has **also applied to the Information Commissioner for further documentation to be provided on the grounds that an ‘insufficient search’ was conducted in response to the original *Right to Information* applications** (my emphasis).’

c. 24 September 2010 [REDACTED] **Investigation Report– CMS HAR10-0175 Underwood** (Annexure B3 - NB: RTI Release

11009R Folios 708 to 718 ‘Attachment 1 draft letter to Minister ... not released’) states:

**Background**<sup>33</sup>

‘On 16 September 2010, Ms Underwood lodged a *Right to Information* application the scope of which is for documents for the period 27 November 2009 to 25 August 2010. **The Housing Appeals and Review Unit are currently processing this request** (my emphasis).’

**Current Status**<sup>34</sup>

On 16 September 2010, Ms Helen Underwood lodged a *Right to Information* application for documents for the period 27 November 2009 to 25 August 2010. **The Housing Appeals and Review Unit is processing this request** (my emphasis).

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<sup>31</sup> Annexure B2: Correspondence Brief (‘Ministerial’) - [REDACTED] 17 September 2010 – Attachment 1 – Additional Information (Department of Public Works’ (DPW 09-12) RTI Access Application 11009R Folios 722 to 723) – Folio 723 last dot point (RTI Release: 11009R RTI Folio 722)

<sup>32</sup> Annexure B2: Correspondence Brief (‘Ministerial’) - [REDACTED] 17 September 2010 – Attachment 1 – Additional Information (Department of Public Works’ (DPW 09-12) RTI Access Application 11009R Folios 722 to 723) – Folio 723 last two dot points (RTI Release: 11009R RTI Folio 723)

<sup>33</sup> Annexure B3: Investigation Report – CMS HAR10-0175 Underwood – [REDACTED] 24 September 2010 – Background (Department of Public Works’ (DPW 09-12) RTI Access: 11009R Folios 708 to 718) – Folio 708 Background: last dot point.

<sup>34</sup> Annexure B3: Investigation Report – CMS HAR10-0175 Underwood – [REDACTED] 24 September 2010 – Current Status (Department of Public Works’ (DPW 09-12) RTI Access: 11009R Folios 708 to 718) – Folio 717 Current Status: second last dot point.

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d. 25 August 2010 Right to Information (**RTI**) access application was made to Department of Public Works (**DPW 09-12**); 13 September 2010 RTI access application was made to Department of Communities (Housing and Homelessness Services (**DCHHS 09-12**) - i.e. made **separately**; subsequently decided separately:

i. 22 September 2010 Department of Public Works (**DPW 09-12**)  
(Deemed decision date - **Received 28 September 2010**<sup>35</sup>) **Decision**  
(Annexure B4 –

**NB:** Additional Documents Sought - page 3: Refused at Directions Hearing 31 May 2016 - Justice Thomas advised to refer to the documents – Other Document APL 075-12 pages 152 to 157)

RTI Access Application no. 10051R - 'Public Works' [REDACTED]  
[REDACTED] (**DPW-LS-RTIP 09-12**):

“**Searches**<sup>36</sup>:

To locate documents within the scope of your application, searches were conducted by QBuild Brisbane Metropolitan office for all maintenance and improvements carried out on the property, namely 1/1412 Sandgate Road, Nundah and 34 folios were located.

The following documents sought by you are not in the possession of the Department of Public Works but are held by the Department of Communities (Housing and Homelessness Services):

*The complete file in no way limiting it and to include the following:*

- *all information, documents, correspondence, photos, phone calls, emails, file notes, memos, discussions, reports regarding the property and/or any other information of any nature whatsoever;*
- *all SAP data base entries of any nature whatsoever;*
- *all correspondence, emails, phone calls, appointments/actions etc of all dealings;*
- *all maintenance requests by myself and/or [REDACTED] regarding the property and Brisbane North Area Office Staff;*
- *all inspections and resultant reports including any pre-purchase inspections, surveys, searches and resultant reports;*
- *anything else that may be on the file or the database or held in any other place regardless of the information;*
- *signed and completed property entry condition report; and*
- *call centre logged calls.*

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<sup>35</sup> s18(1) RTI Act - **processing period**, for an application to an agency or Minister— ... is a period of 25 business days from the day the application is received by the agency or Minister.

s46(1)(a) RTI Act - If an applicant is not given notice of the Decision by the end of the processing period for an access application for a document—on the last day of the processing period the principal officer of the agency or the Minister is taken to have made a decision (a deemed decision) refusing access to the document.

Operative words: 'given notice of the Decision' - Accepted practice is the 'date a notice of Decision **is received**' is the 'date given notice of the Decision'.

<sup>36</sup> Annexure B4: Department of Public Works (DPW 09-12) – RTI Access Application 10051R: Decision 22 September 2010 (Received 28 September 2010 – Deemed decision date (Ibid)) – APL 075-12 – pages 152 to 157: page 153

## Making allegations of corrupt conduct public: is it in the public interest?

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Accordingly, these documents are not "documents of an agency" as defined in section 12 of the RTI Act.

Section 12 of the RTI Act provides:

### **12 Meaning of document of an agency**

*In this Act, **document**, of an agency, means a document, other than a document to which this Act does not apply, in the possession, or under the control, of the agency whether brought into existence or received in the agency, and includes -*

- (a) a document to which the agency is entitled to access; and*
- (b) a document in the possession, or under the control, of an officer of the agency in the officer's official capacity."*

ii. 30 September 2010 - Applicant's letter (Annexure B5 –

NB: Additional Documents Sought - page 3: Refused at Directions Hearing 31 May 2016 - Justice Thomas advised to refer to the documents – Other Document APL 075-12 page 151)

sought to have included in Department of Communities (Housing and Homelessness Services) (**DCHHS 09-12**)'s RTI access application no. R0602 (this series of external reviews no. 301531 - remitted now 100103) items not considered documents of Department of Public Works (**DPW 09-12**) (attaching DPW 09-12's RTI access Application and Decision) decision of 13 September 2010.

iii. 21 October 2010 (Deemed decision date - received 29 October 2010<sup>37</sup>) Department of Communities (Housing and Homelessness Services) (**DCHHS 09-12**) advisement (Annexure B6 –

NB: Additional Documents Sought - page 3: Refused at Directions Hearing 31 May 2016 - Justice Thomas advised to refer to the documents – Other Document APL 075-12 page 128)

administratively released a single document and (accepted the documents not considered to be documents of DPW 09-12 as part of the RTI Access Application no. R06002 - external review 301531; remitted now 100103) stated:

“The other documents you have requested will continue to be processed under your Right to Information application R0602”.

e. 7 through 10 January 2011 – [REDACTED] (**DPW-LS-RTIP 09-12**),

[REDACTED]

[REDACTED]

[REDACTED] (**DPW-LS 09-12**) [REDACTED]

[REDACTED]

[REDACTED] (**DCHHS 09-12**); as well

as [REDACTED]

[REDACTED] influenced/dictated Communities' housing entity (**DCHHS 09-12** including Minister for Communities and Housing **MCH 09-12**) RTI Access Application decisions (series of emails) in this series of RTI access Applications

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<sup>37</sup> Ibid

## Making allegations of corrupt conduct public: is it in the public interest?

(Annexure B7 - NB: emails Series 1, Branch 1 – RTI Release 11009R Folios 853 to 855; and 859; Annexure B8 – NB: emails Series 1, Branch 2 – RTI Release 11009R Folios 862 to 864; Annexure B9- NB: emails series 2, Branch 1 – RTI Release 11009R Folios 827 to 830; Annexure B10 – NB: emails series 2, Branch 2 with attachment removed – RTI Release 11009R Folios 824 – 827; Annexure B11 – NB: emails series 2, Branch 3 with attachment removed – RTI Release 11009R Folios 816 – 819)

**Summary: RTI Access Application to Department of Communities (Housing and Homelessness Services) (DCHHS 09-12) – Number R0766 2 December 2010 (Period 13 September 2010 through 2 December 2010; External Review (final after much confusion) Number 310531 (now 100103 – third remitted external review in this series)**

Transfer of Application between Agencies/Department of Public Works' (DPW 09-12)'s documents are not available for a Communities (DCHHS 09-12)'s RTI request/delay tactics/lack of independence in the RTI Units – Contentious Issue Management/Damage Control – three (2) series of emails: Memorandum and record-keeping practices 'to prove sufficiency of search' – final recipients of both – extremely senior officers: [REDACTED], [REDACTED] (DPW-LS 09-12) with final oversight [REDACTED], [REDACTED], Right to Information and Privacy, Legal Services, Department of Public Works (DPW-LS-RTIP 09-12).

**Series 1 –**

**Branch 1:** three (3) pages emails; one (1) page: Memorandum: documents sought and record-keeping practices to 'prove sufficiency of search' (Annexure B7- NB: RTI Release 11009R Folios 853 to 855; and 859)

Friday 7 January 2011 – **RTI Application: R0766 (Com Property Portfolio – Asset Mgt).**

11:19 AM [REDACTED] – Right to Information and Privacy Branch, Department of Communities (Housing and Homelessness Services) (DCHHS-RTIPB 09-12)<sup>38</sup>

To: [REDACTED], [REDACTED], Department of Communities.

11:30 AM [REDACTED] (DCHHS 09-12)<sup>39</sup>

To: Mailbox CPP Exec

Cc: [REDACTED]

11:55 AM [REDACTED] (DCHHS 09-12) [REDACTED], [REDACTED], Department of Communities)<sup>40</sup>

<sup>38</sup> Annexure B7: Department of Public Works (DPW 09-12) – RTI Access Application 11009R: Series 1 – Emails 7 January 2011 Folios 853 to 855 and 859; folios 854 to 855 and 859

<sup>39</sup> Annexure B7: Department of Public Works (DPW 09-12) – RTI Access Application 11009R: Series 1 – Emails 7 January 2011 Folios 853 to 855 and 859; folios 854 and 859

<sup>40</sup> Annexure B7: Department of Public Works (DPW 09-12) – RTI Access Application 11009R: Series 1, Branch 1 – Emails 7 January 2011 Folios 853 to 855 and 859; folios 854 and 859

To: [REDACTED]  
12:16:10 [REDACTED] (DCHHS 09-12) [REDACTED]  
[REDACTED], Department of Communities<sup>41</sup>  
To: [REDACTED]  
(DPW-LS 09-12)  
NB: changed format names – Surnames first in upper-case  
Actually Department of Public Works, Legal Services  
Cc: [REDACTED] (Communities); [REDACTED] (Housing)  
(DCHHS 09-12)

1:32 PM [REDACTED] (DPW-LS 09-12) (NB: no details of position –  
[REDACTED], Department of Public Works<sup>42</sup>  
To: [REDACTED]  
(DPW-LS 09-12) and lastly (DPW-LS- RTIP 09-12)  
Cc: [REDACTED] (DCHHS 09-12)  
NB: (body of email – no details of position held or with which  
Department)

M

Pls liaise with [REDACTED] regarding the rti request. Please  
note that legal services files are dpw's (my emphasis).

Thanks

[REDACTED]  
1:52 PM [REDACTED] (DPW-LS-RTIP 09-12) [REDACTED]  
[REDACTED], Department of Public  
Works<sup>43</sup>  
To: [REDACTED] (DCHHS 09-12)  
Cc: [REDACTED]  
(DPW-LS 09-12)  
NB: (body of email)

[REDACTED]  
I have received an email thread (below) relating to a right to information  
request you are currently processing.

I note that this RTI search request has been forwarded to your area for  
accessing relevant documents which may be located in the Communities  
Property Portfolio of the Department of Communities. **Please Note that  
under section 38 of the *Right to Information Act 2009* if the  
Department of Communities believe there may be relevant  
documents held by the Department of Public Works (DPW) then  
your Right to Information Unit should consider a transfer (or part-  
transfer) of the RTI request to this department. Documents that may**

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<sup>41</sup> Annexure B7: Department of Public Works (DPW 09-12) – RTI Access Application 11009R: Series 1,  
Branch 1 – Emails 7 January 2011 Folios 853 to 855 and 859; folios 853 to 854 and 859

<sup>42</sup> Annexure B7: Department of Public Works (DPW 09-12) – RTI Access Application 11009R: Series 1,  
Branch 1 – Emails 7 January 2011 Folios 853 to 855 and 859; folios 853 and 859

<sup>43</sup> Annexure B7: Department of Public Works (DPW 09-12) – RTI Access Application 11009R: Series 1,  
Branch 1 – Emails 7 January 2011 Folios 853 to 855 and 859; folios 853 and 859

be located on DPW records are considered to be in this agency's possession and are not able to be accessed by another department for the purposes of processing a right to information request that they have received.

If you believe DPW may have relevant documents please contact your RTI Unit in the Department of Communities and request that they consult me about a section 38 transfer of the RTI application (my emphasis).

Cheers

██████████

**Series 1 –**

**Branch 2:** three (3) pages emails; (NB: Memorandum: documents sought and record-keeping practices to 'prove sufficiency of search' not attached) (Annexure B8- NB: RTI Release 11009R Folios 862 to 864; Folio 862 only is relevant – other folios repeat of above up to 12:16 PM ██████████ to ██████████; copies to ██████████; ██████████)

12:48 PM ██████████ (DPW-LS 09-12) ██████████ ██████████, Department of Public Works)<sup>44</sup>  
**To:** Mailbox ██████████ (DCHHS 09-12); ██████████ (DPW-LS-09-12); ██████████ (DPW-LS-RTIP);  
**Cc:** ██████████ (Housing) (DCHHS 09-12)

Legal Services does not process Right to Information requests, I will forward this to our Right to Information and Privacy ██████████, ██████████.

Kind Regards

██████████

1:11PM ██████████ (DPW-LS 09-12) ██████████ ██████████ Department of Public Works)<sup>45</sup>  
**To:** ██████████ (DPW-LS 09-12)  
Thanks for that. I got a call from ██████████ a little while ago too (obviously just before you sent your email) and I explained to her we would send it to our RTI area (apparently she was instructed to send it to us)

██████████

**Series 2 –**

**Branch 1** three (3) pages emails 7 January 2011 through 10 January 2011; one (1) page: Memorandum: documents sought and record-keeping

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<sup>44</sup> Annexure B8: Department of Public Works (DPW 09-12) – RTI Access Application 11009R: Series 1, Branch 2 – emails 7 January 2011 Folios 862 to 864; folio 862

<sup>45</sup> Annexure B8: Department of Public Works (DPW 09-12) – RTI Access Application 11009R: Series 1, Branch 2 – emails 7 January 2011 Folios 862 to 864; folio 862

Making allegations of corrupt conduct public: is it in the public interest?

practices to 'prove sufficiency of search'  
(Annexure B9- NB: RTI Release 11009R Folios 827 to 830)

Friday 7 January 2011 – **RTI Application: R0766 (Brisbane Region - Housing).**

11:19 AM [REDACTED] – Right to Information and Privacy Branch,  
Department of Communities (Housing and Homelessness Services)  
(DCHHS-RTIPB 09-12)<sup>46</sup>

To: [REDACTED] (DCHHS 09-12) [REDACTED],  
[REDACTED], Department of Communities

Cc: [REDACTED] (DCHHS 09-12)

Monday 10 January 2011 –

8:10 AM [REDACTED] (DCHHS 09-12)<sup>47</sup>

To: [REDACTED] (DCHHS 09-12) [REDACTED]  
[REDACTED]

Cc: [REDACTED] (DCHHS 09-12)

Hi [REDACTED]

Please refer to the attached Right to Information application from Helen Underwood for the period 13 September 2011 to 6 January 2011.

Thank You.

[REDACTED]

15:36:08 [REDACTED] (DCHHS 09-12)<sup>48</sup> (NB: Different Computer used  
– sending to a [REDACTED] Department of Public Works  
(DPW-LS 09-12)

To: [REDACTED] (DPW-LS 09-12); [REDACTED]  
(Housing) (DCHHS 09-12)

Cc: [REDACTED] (Housing); [REDACTED] (DCHHS 09-12)

Hi [REDACTED]

Please refer to the attached Right to Information Application from Ms Helen Underwood. **I am sending you this email to give you the 'heads up' that I will be providing your names to the Right to Information and Information Privacy Branch as possibly holding records.**

**I have printed more than a ream of paper (of emails) that relate to this application (much of which includes your names). The Legal advice provided to the department and associated communication is included in the emails I have printed (my emphasis).**

Thank you.

<sup>46</sup> Annexure B9: Department of Public Works (DPW 09-12) – RTI Access Application 11009R: Series 1, Branch 1 – emails 7 January 2011 through 10 January 2011 Folios 827 to 830; folios 828 to 830

<sup>47</sup> Annexure B9: Department of Public Works (DPW 09-12) – RTI Access Application 11009R: Series 1, Branch 1 – emails 7 January 2011 through 10 January 2011 Folios 827 to 830; folios 827 to 828 and 830

<sup>48</sup> Annexure B9: Department of Public Works (DPW 09-12) – RTI Access Application 11009R: Series 1, Branch 1 – emails 7 January 2011 through 10 January 2011 Folios 827 to 830; folios 827 and 830

3:43 PM [REDACTED] (DPW-LS 09-12)<sup>49</sup>

To: [REDACTED] (DPW-LS-RTIP 09-12); [REDACTED]  
[REDACTED] (DPW-LS 09-12)

Cc: [REDACTED] (DPW-LS 09-12)

[REDACTED]  
**Can you please deal with this email** (my emphasis).

Thanks

[REDACTED]  
**Branch 2 – Continuing** - (Annexure B10: emails 3 pages with attachment removed – RTI Release 11009R Folios 824 – 827; only folio 824 is relevant – other folios repeat of above up to 3:43 PM [REDACTED] to [REDACTED]; [REDACTED]; copy to [REDACTED] [REDACTED])

15:55:32 [REDACTED] (DPW-LS-RTIP 09-12)<sup>50</sup>

To: [REDACTED] (DPW-LS 09-12)

Cc: [REDACTED]; [REDACTED] (DPW-LS 09-12)

Hi [REDACTED]

I became aware of this one last week and **responded with advice that DPW documents are not available for a Communities RTI request. I advised [REDACTED] (Housing) that if she believes we may hold documents then she is to advise her RTI Unit and ask them to contact me about part-transferring the application to us.**

**I have also spoken to Communities [REDACTED] to give them a heads-up that they may receive a request to part-transfer it to DPW so everyone is now in the loop with this one** (my emphasis).

No further action will be taken from here until Communities [REDACTED] contact me.

Cheers

[REDACTED]  
**Branch 3 – Continuing** - (Annexure B11: **NB:** emails series 2, Branch 3 with attachment removed – RTI Release 11009R Folios 816 – 819; only folio 816 is relevant – other folios repeat of above up to 15:55:32 (3:56 PM) [REDACTED] to [REDACTED]; copies to [REDACTED]; [REDACTED] [REDACTED])

4:09 PM [REDACTED] (DPW-LS-09-12)<sup>51</sup>

To: [REDACTED] (DCHHS 09-12); [REDACTED]  
(DPW-LS-RTIP 09-12); [REDACTED] (DPW-LS 09-12)

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<sup>49</sup> Annexure B9: Department of Public Works (DPW 09-12) – RTI Access Application 11009R: Series 1 – Emails 7 January 2011 through 10 January 2011 Folios 827 to 830; folios 827 and 830

<sup>50</sup> Annexure B10: Department of Public Works (DPW 09-12) – RTI Access Application 11009R: Series 2, Branch 2 – emails 7 January 2011 through 10 January 2011 Folios 824 to 826; folios 824

<sup>51</sup> Annexure B11: Department of Public Works (DPW 09-12) – RTI Access Application 11009R: Series 2, Branch 3 – emails 7 January 2011 through 10 January 2011 Folios 816 to 819; folio 816

Cc: [REDACTED] (DPW-LS 09-12)

[REDACTED]  
Fyi

Thanks

4:18 PM [REDACTED] (DCHHS 09-12)<sup>52</sup>

To: [REDACTED] (DPW-LS 09-12); [REDACTED]  
(DPW-LS-RTIP 09-12); [REDACTED] (DPW-LS 09-12)

Cc: [REDACTED] (DPW-LS 09-12)

Hi [REDACTED]

Thank you  
[REDACTED]

- f. 18 January 2011 [REDACTED] and approved by [REDACTED] – Correspondence Brief<sup>53</sup> ('Ministerial') (Released in this RTI Access Application) – Internal Consultation:

- [REDACTED] Housing Appeals and Review Unit
- [REDACTED] – Body Corporate, Communities Property Portfolio

**'Background**

- On 16 September 2010, Ms Underwood lodged a Right to Information application for documents for the period 27 November 2009 to 25 August 2010. The Housing Appeals and Review Unit is processing this request. (fourth last dot point - page 22)
- Ms Underwood has again lodged a Right to Information application for documents for the period 13 September 2010 to 6 January 2011 (second last dot point - page 22)

**Additional Background Information**

- On 16 September 2010, Ms Underwood lodged a Right to Information application. The scope is for documents for the period 27 November 2009 to 25 August 2010. (second last dot point – page 23)
- Ms Underwood has previously lodged Right to Information applications on two occasions for copies of her tenancy file and the property files at the addresses she has resided. She has also applied to the Information Commissioner for further documentation to be provided on the grounds that an 'insufficient search' was

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<sup>52</sup> Annexure B9: Department of Public Works (DPW 09-12) – RTI Access Application 11009R: Series 2, Branch 3 – emails 7 January 2011 through 10 January 2011 Folios 816 to 819 folio 816

<sup>53</sup> OIC's Documents Relied upon by the Information Commissioner in making the decision - Redacted (to remove any reference to the 'Information in Issue' in this appeal): QCAT Appeal APL 444-15 filed 20 April 2016 – Document 3: External review application 4 April 2011 – pages 13 to 85; page 15 attached to applicant's letter 4 April 2011; and page 69 Document Released in this RTI Access Application (subject to CTPI – Mobile Phone numbers; personal information etc pages 22 to 24) pages 15 to 17; and 69 to 71

## Making allegations of corrupt conduct public: is it in the public interest?

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conducted in response to the previous Right to Information applications. (last dot point – page 23)

- g. decision-maker's (DCH-RTIIPS 09-12) [REDACTED]  
[REDACTED] 2 August 2011  
11:38:11 Statement<sup>54</sup>

Issue to be discussed: despite [REDACTED] brief submission, OIC does not have enough information available to make a decision on the disclosure of pages 23 and 24. [REDACTED] information has not changed OIC's preliminary view that, on balance, disclosure of the information would not be CTPI.

OIC officers sought to engage [REDACTED] with the Public Interest factors to assist OIC in forming a view:

[REDACTED] concern –

**“... whether or not the applicant already knew the information. ... it was not about balancing the public interest, but about whether or not the third party's information was already known to the applicant (my emphasis).**

...

[REDACTED] also noted that this was her call to make (not ours [OIC's] or [REDACTED] because she is operating outside of the Act here (my emphasis).

[REDACTED] (OIC) asked whether this was really a Moon issue then? She [REDACTED] did not respond directly to that question”.

- h. [REDACTED] (DCH-RTIPB 09-12) [REDACTED]  
[REDACTED] 2 August 2011 11:08 statement<sup>55</sup>  
(Annexure B12 NB: Additional Documents Sought - page 3: Refused at Directions Hearing 31 May 2016 - Justice Thomas advised to refer to the documents):

‘Discussing agency's decision not to accept PV on pages 23 and 24 of the docs in issue. [REDACTED] said she had "lost that battle" and we (OIC) were welcome to talk to [REDACTED] ourselves’.

- i. [REDACTED] (DHPW-LS-RTIP 2002>), [REDACTED]  
[REDACTED] [REDACTED] is today, influencing this series of remitted external review decisions (as well as having influenced the initial [REDACTED] (DCHHS-RTIPB 09-12) [REDACTED] (MCH 09-12) access application decision/s), particularly with bias (actual and apprehended), conflicts of

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<sup>54</sup>OIC's Documents Relied upon by the Information Commissioner in making the decision - Redacted (to remove any reference to the 'Information in Issue' in this appeal): QCAT Appeal APL 444-15 filed 20 April 2016 – Document8: Phone Call 02/08/2011 11:38:11 (OIC) to [REDACTED] - pages 116 to 117; page 116

<sup>55</sup> Annexure B12: Phone Call 02/08/2011 11:08 (OIC) to [REDACTED] APL 075 ‘Appeal Book’ page 38 i.e. Additional Documents Sought - page 3: Refused at Directions Hearing 31 May 2016 - Justice Thomas advised to refer to the documents

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interest; defamatory statements (**conducting a personal vendetta**<sup>56</sup>: legalese potentially leading to adverse preliminary views/decisions against the applicant): **at best are hearsay; certainly with no evidence to back up the claims; with victimisation, abuse, intimidation and bullying** - her submission<sup>57</sup> to OIC 30 April 2015:

"OIC are no longer of the view that disclosure of the segments in issue would, on balance, be contrary to the public interest"<sup>58</sup>;

claims (**indicating SAP note entries including those following, are 'recollections of events' only and cannot be relied upon ('ever')** (my emphasis)):

"...SAP note entries are a recollection of the events of the day ... entered into the system ... It is not a verbatim account of conversations held with individuals and therefore should not be viewed as a disclosure of the relevant information".

then states:

" ...

Disclosing the relevant information would be a significant intrusion into another person's privacy and the extent of public interest harm that could be anticipated from disclosing that information is also quite significant [Footnote 3: 0P58 NI and Department of National Parks, Recreation, Sport and Racing 12 September 2013 (OIC review 311232)].

...

The department contends that:

- Ms Underwood relocated from the subject address over 4 years ago, however continues to seek access to the relevant information;
- harassment or intimidation of other individuals could reasonably be expected as a result of disclosure of the relevant information; and
- there are no other circumstances whereby the relevant information could be obtained by Ms Underwood.

...

In the case of Ms Underwood It is submitted that there is evidence that the release of the relevant information could reasonably be expected to result in serious harassment or intimidation, including:

- (a) the records reflect that Ms Underwood has previously behaved in an inappropriate manner, for example tracking movements of other residents, taking numerous photographs around the property including the car park and recently (February 2015) when contractors and staff

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<sup>56</sup> <https://dictionary.cambridge.org/dictionary/english/vendetta> - vendetta: a [long](#) and [violent argument](#) between [people](#) or [families](#), in which one [group tries](#) to [harm](#) the other in [order](#) to [punish](#) them for things that [happened](#) in the past

<sup>57</sup> OIC's Documents Relied upon by the Information Commissioner in making the decision - Redacted (to remove any reference to the 'Information in Issue' in this appeal): QCAT Appeal APL 444-15 filed 20 April 2016 - Document 21: Redacted - 30 April 2015; pages 214 to 215

<sup>58</sup> OIC's Documents Relied upon by the Information Commissioner in making the decision - Redacted (to remove any reference to the 'Information in Issue' in this appeal): QCAT Appeal APL 444-15 filed 20 April 2016 - Document 20: **OIC's View** to Redacted - 8 April 2015; pages 208 - 209

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attended her unit to repair a trip hazard she abused staff and contractors and threw herself on the ground to stop work from proceeding. She was then arrested by police so that the work could continue;

- (b) the records reflect that Ms Underwood has displayed inappropriate behaviour when a neighbouring unit was for sale with reports that she approached potential buyers saying "Buyer beware, buyer beware. The unit you are looking to purchase has been flooded and is having major issues with the Body Corporate". One potential buyer reported Ms Underwood's behaviour as erratic and expressed concern for their safety should they purchase the unit;
- (c) Ms Underwood has stated previously that the purpose of her right to information applications were to 'bury the bastards in paper [Footnote 9: OIC Decision re Underwood 9 February 2012]; **Note:** This remitted decision is the subject of this appeal.
- (d) the records reflect that Ms Underwood has behaved unreasonably by, for example, requesting that the department carry out repairs to her public housing unit and then repeatedly refusing entry on around 10 occasions. [Footnote 10: QCAT transcript of hearing dated 18 April 2011]. She then attempted to claim a rent reduction in Queensland Civil and Administrative Tribunal (QCAT) for the state of the unit (which Ms Underwood prevented the department from entering to repair) and when she lost that she appealed to the QCAT appeals division, the Court of Appeal and tried to appeal to the High Court. On each occasion she lost and there are significant costs orders against her which she has never paid. This is mentioned because it demonstrates the extreme nature of Ms Underwood's behaviour;
- (e) Ms Underwood is continuing to seek access to the documents which relate to her previous tenancy and events which occurred over four years ago. There seems to be no genuine reason or legitimate forensic purpose for her to have access to the relevant information she would harass and intimidate other individuals; and
- (f) we refer you to a large amount of material in your possession which contains information about Ms Underwood's inappropriate behaviour. [Footnote 11: OIC reviews 100104, 100105, and 100106 refer] **NB:** 100106 is this QCAT Appeal APL 444-15

Given the sensitivity of the relevant information and the history of conflict between Ms Underwood and other individuals the release of the relevant information could reasonably be expected to result in further acts of harassment or intimidation.

...

... Department of Communities' RTI records shows that the department did not consult with other individuals about the release of the relevant information in the initial assessment of documents for 100106 (RM0870 refers). ... a handwritten note by [REDACTED]

[REDACTED] Department of Communities on another of Ms Underwood's external review applications [Footnote 12: Department of Communities R0602 and OIC review 100103] that provides insight into the original decision-maker's deliberations relating to the relevant information. A copy of file note is attached for your reference".

I have been denied any opportunity to rebut any of the allegations whatsoever.

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I absolutely now rebut entirely, every allegation made by [REDACTED] throughout these external review processes or otherwise.

How is [REDACTED] conduct **not**:

- **severely & seriously based on misapprehension<sup>59</sup>, leading to a flawed prejudgment throughout the matter;**
  - **severely and seriously influenced by fabricated information in documents?**
  - **partial?** based on that prejudgment, (a violation of the precept of impartiality)
  - **biased (actual and apprehended)?**
  - **conducting a personal vendetta?** legalese potentially leading to adverse preliminary views/decisions against the applicant?
  - **providing and relying on relevant information?** based on the provision & reliance upon irrelevant information not, as a result of this misled her decision-making colleagues to change their preliminary views?
  - **seeking a genuine reason or legitimate forensic purpose for providing access when events occurred more than 4year ago?**
  - **influencing the outcome of Decisions by other officials: OIC's external review; OIC's remitted external review; Minister for Communities RTI access application; and Department of Communities (Housing and Homeless Services) RTI access applications?**
  - **unequivocally demonstrating 'SAP note entries' including those above, are 'recollections of events' only?**
  - **as such espousing 'SAP Notes' are to be relied upon 'ever'?**
  - **defamatory?**
  - **abusing and breaching a Fiduciary Trust of Public Office?**
  - **abusing and breaching a Fiduciary Trust created under *Public Service Act 1992*?**
  - **conduct unbecoming?**
  - **misconduct in Public Office?**
  - **a model litigant?**
  - **considered a fit and proper person to be Manager of a Right to Information and Privacy Area?**
  - **misfeasance in Public Office?**
- j. non-compliance Queensland's *Public Service Act 2008*, **Public Sector Ethics Act 1994**, and Government Code of Conduct for the Queensland Public Service; with breaches of RTI Act and breaches of individual's ethical obligations -

Office of Information Commissioner (OIC)'s guidelines:

Information Obligations of Public Service Employees - rules relating to

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<sup>59</sup> <https://www.oxforddictionaries.com/definition/english/misapprehension> - A [mistaken](#) belief about or [interpretation](#) of something:

## Making allegations of corrupt conduct public: is it in the public interest?

Public Service Employees and the consequences of not following these rules<sup>60</sup>:

### **‘Why do I have to follow these rules?’**

All Public Service Employees under the *Public Service Act 2008* are subject to the *Public Sector Ethics Act 1994* and the Queensland Government Code of Conduct for the Queensland Public Service<sup>61</sup>; these require you to follow the law and the rules of government. You also have to follow these rules because Parliament has decided they are in the public interest: they protect what information needs to be protected, release what needs to be released, and provide a framework for making decisions about when it is in the public interest to release or withhold information.

### **What are the consequences of not following these rules?**

Depending on the nature of the rule and the reason it was not followed, a failure to comply could result in the removal of the information’s protection, a breach of an Act, or a breach of your ethical obligations. In some cases offences and penalties will apply for a breach of an Act’.

Yours faithfully

Helen Underwood

PS: a signed copy will be forwarded by mail.

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<sup>60</sup> OIC Guidelines - Information Obligations of Public Service Employees - ***Published 1 August 2012 and Last updated 28 May 2015. Changes to legislation after the update date are not included in this document***

<sup>61</sup> The Queensland Government Code of Conduct for the Queensland Public Service requires public sector employees to manage information as openly practicable within the legal framework and includes specific requirements relating to the handling of government-held information – see also Appendix 1 of this guide (OIC Guidelines - Information Obligations of Public Service Employees - ***Published 1 August 2012 and Last updated 28 May 2015. Changes to legislation after the update date are not included in this document***)