



**Crime and Corruption
Commission**

QUEENSLAND

CRIME AND CORRUPTION COMMISSION

MAKING ALLEGATIONS OF CORRUPT CONDUCT PUBLIC: IS IT IN THE PUBLIC INTEREST?

TRANSCRIPT OF PUBLIC FORUM

Conducted at CCC Brisbane, 6 and 7 October 2016

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Panel members:

Mr Alan MacSporran QC
Mr Marshall Irwin
Mr Richard Bingham
Dr Rebecca Denning

CCC Chairperson and Panel Chair
CCC Ordinary Commissioner
Queensland Integrity Commissioner
CCC Director, Policy and Research

Speaker:

Ms Jennifer Mead

Acting Information Commissioner
Office of the Information Commissioner

Mr MacSporran QC Ms MEAD.

Ms Mead Thank you.

Mr MacSporran QC Thank you for coming, Ms MEAD. Can you just, for the record, state your full name and where you're from?

Ms Mead Yes. My name is Jennifer MEAD. I'm currently the Acting Information Commissioner and my substantive position is the Right to Information Commissioner at the Office of the Information Commissioner (OIC).

Mr MacSporran QC Thank you. Would you like to make a brief opening statement?

Ms Mead Yes. Just a brief one. As you are probably aware, the OIC is an independent statutory body and one of our key functions is to review decisions made by Queensland ministers, public sector agencies and public sector authorities about access to documents. So the main purpose of our submission to this Inquiry was to ensure that any potential proposals that may result don't impede the ability of OIC to perform its functions. The legislation that underpins our activities recognises the competing tensions, that transparency and accountability is of fundamental importance to good government and RTI underpins that.

But we have a lot of protections in the Act that limit the release of the type of information that's being considered here today and to protect the personal information of individuals, witnesses and so forth. So under our legislation there is a broad exemption that relates to CCC matters. So this type of information wouldn't be released pursuant to an RTI application. Any information obtained, used or prepared by the CCC or another agency, through your devolution power and referral back, as part of an investigation, is exempt from release under the RTI Act. So that means the decision-maker has no scope to consider public interest factors in that instance and when it comes to OIC we have no scope either. If it's exempt, that's the end of the matter.

The only exception is where an investigation has been finalised and the information applied for is about the individual who is making the application. But there are still the other factors in the legislation that might come into play and prevent, for example, the release of the

name of the complainant, the witnesses, witness statements, that sort of thing.

So the recent data on access applications across the sector show that only a very small number come on external review. So I think we have about – it varies between 13 to 14,000 applications across the sector and we get about 450 to 500 applications a year. I suppose more generally our observation is that formal access requests under the Right to Information Act cover a very broad spectrum of allegations or complaints ranging from someone complaining about their neighbour's barking dog to the type of matters that get referred to the CCC and I would say the highest percentage is at the lower end of the scale.

Mr MacSporran QC

Thanks very much. I'm particularly interested in the situation where any proposed amendments to our legislation or other legislation may have unintended consequences to your legislative regime. And you will be pleased to hear I'm sure, we have heard from the journalist panel yesterday that your RTI regime has been promoted as the best in Australia. So, if that's to be accepted, and I'm one who endorses that view, it would be a shame to see some unintended interference with the way that system works very well.

You quote in your submission that one of the particular concerns you have is that if there was a prohibition on publication of the fact that allegations of corrupt conduct had come here, to the CCC, that would necessarily mean that the Right to Information Act would need to be changed in terms of the publication of reasons for decisions on review. Can you just expand on that for us, if you wouldn't mind, briefly?

Ms Mead

Well, that was certainly one of the recommendations arising from the Callinan and Aroney Report, that there be – I think it was nine months or a period of time when no reasons could be given. Which of course means there would have to be extensive amendments to our Act because we're required to give reasons. It impinges on people's ability to take appeals. Our matters can be appealed to QCAT on an error of law. It's hard to do that if you don't understand the reasons. And, yes, we were concerned because to our knowledge there hasn't been any instances where the fact that an investigation is being conducted has ever come out through an RTI application and that's probably to do with the timing of it.

So, yes, we're concerned that any restriction on our ability to give reasons is a fundamental problem with transparency, accountability, natural justice for the applicants.

Mr MacSporran QC

But would that inevitably have to flow from the suggestion that any mention of the CCC was prohibited, because in deciding an application you would necessarily have to refer to the material.

Ms Mead

Well, in fact under our legislation as it currently stands, we have provisions that allow decision-makers to neither confirm nor deny the existence of material in documents, and the Act – you don't have to – you get a special exemption from having to refer to the nature of the information that's in the Act as it stands. So they can just – and then it comes to us and we review it and we've got the same obligations so you can manage these matters without revealing the nature of the information. And there's a further provision in the Act even when we're making a decision about material that's exempt for other reasons. For example, it might be legal professional privilege. Our Act prevents us from, even in our discussions in the decisions, from revealing the nature of the information. So I think it's being handled – the legislative regime has been carefully considered to balance those issues.

Mr MacSporran QC

Yes. And the net result is, is it not, that your legislation recognises that balancing act and the need to prevent publication of certain information in certain defined justifiable circumstances?

Ms Mead

Absolutely. We – well, as I said, there's a very broad exemption for CCC information but it – there's also a broader exemption covering all sorts of law enforcement investigations and that can cover all sorts of police investigations or council, internal departmental workplace, investigations. That's used regularly. And again even when you get to the end, when the investigation is completed, there's protections around the nature of the information, for example, somebody might get a summary but they're not going to get the witness statements and things – not through our processes.

Mr MacSporran QC

One of the criticisms of any proposal to amend the law to prohibit publication of the fact allegations of corrupt conduct have come here, is based upon the proposition that you need evidence that there is an interference

potentially with a CCC investigation before you should take that step. But, as you say, your legislation recognises the very real danger of interference with investigations by publication of the fact.

Ms Mead Yes, it does. And there's a specific public interest factor, a harm factor, about unsubstantiated allegations. So it's specifically recognised there as well. And prejudice to fair trials, that sort of-

Mr MacSporran QC Yes, thank you.

Mr Irwin No, I have no questions.

Mr Bingham Thanks. Jenny, the – you have referred to the public interest tests that apply under the RTI legislation and in one way or another it's a similar sort of dilemma that confronts us on the Panel about where the public interest lies. If I summarise the submissions that have been put to us, I think those that would advocate for a prohibition on disclosure would recognise that there are some circumstances in which it might be appropriate to disclose; and, similarly, those who would advocate openness would say, well, there are some circumstances in which it might be appropriate not to disclose, whatever those reasons might be. Given the framework of the RTI legislation, the way in which it lists criteria to be taken into account in balancing those public interest considerations and that ultimate test, are there lessons which we should be applying from that context which could apply in the context that we are looking at here? What's your view about specifying criteria that should be taken into account in making any decision about whether or not the fact of a complaint having been made is publicised or not? Is it a useful framework to use in making those sorts of decisions?

Ms Mead Well, we have, as I'm sure you're aware, extensive lists of factors to take into account. And I think it is useful and it helps to explain to people why decisions are being made. And we find it very useful to – because we can say, "Parliament's decided that these things are not to be disclosed." So we have a two-stage regime with the exemptions which you don't take into account public interest factors but then the rest of the information you do. Look, it's – I don't know if it would be helpful in your circumstances. Is – the one – I suppose our response is based on people have been talking about disclosure and about publicising and I think there's a difference. The

South Australian legislation is about publicising it but then when – disclosure is a complete blanket step which I'm not sure is – well it's just going to have two different outcomes, so.

Mr Bingham

Well, perhaps if you could expand on that a little bit, it would be helpful to talk maybe about the South Australian provision, if you're familiar with it, given that it was the-

Ms Mead

Well, I've looked at it.

Mr Bingham

-Callinan and Aroney recommendation with some minor modification. It is fairly constrained in that it only deals with, as you say, publicising of allegations that go to the ICAC in that State. The advice to us from the media people yesterday was that it has been a very significant constraint on public debate and reporting of allegations in that State. Notwithstanding its supposedly confined application, if you look at the precise words of it. Do you have a view about the efficacy of including those sorts of statements in legislation? Do they sometimes – and your submission alluded to the unintended consequences sorts of things, do they sometimes work in ways which, whilst may not be apparent on the face of the legislation, will tend to encourage or discourage a particular way of behaviour in your view?

Ms Mead

Certainly. But I think that's what these forums should flush out. And also, through the legislative process, careful consultation with all the parties involved. Because the unintended consequence about not being able to give reasons was quite – had quite a significant impact on our work when that was proposed. Now, that didn't proceed. But it was part of the original recommendation. I do share the concerns of others about how you stop publication on the internet and social media. I note from the work we do that by the time matters come to us, there's often a lot of information in the public space about them and it's very difficult for agencies to control that. I think it's an enforcement issue.

Mr Bingham

Okay. Sure. Thanks very much.

Dr Denning

Ms MEAD, you just made an interesting statement about the difference between disclosure and publicising and, again, you just said social media, etcetera. So can I just have, you know, a fuller explanation about what you see to be the difference there in this context?

- Ms Mead Well, I suppose what I was thinking was, from our perspective, I would think that a disclosure – because the definition of “publish” in the South Australian Act talks about, it’s all about media and so forth, so it wouldn’t – I don’t think that would impede our legislation at all in that that’s – it – then it would become the obligation of the person that received the information, rather than a blanket prohibition would impact, there would have to be amendments to the, to our legislation, which I think publication is lesser – from – just from our perspective, yeah.
- Dr Denning So the disclosure is the broader concept.
- Ms Mead Yes.
- Mr MacSporran QC All right. That’s all we have. Thank you, Ms MEAD.
- Ms Mead Thank you.
- Mr MacSporran QC Thank you very much for coming. And that concludes our first session this morning. We are going to have a morning break until about 11 and then we will come back to hear the collection of final speakers. So, thank you, we will adjourn now.

SESSION ADJOURNED