

Division 58: Office of the Information Commissioner, \$1 507 000 —

Mr V.A. Catania, Chairman.

Mr C.C. Porter, Attorney General.

Mr S. Bluemmel, Information Commissioner.

Ms M.M. QUIRK: Through the Attorney General, we appreciate that the commissioner has been in the job a short time only.

Mr C.C. PORTER: That is no excuse!

Ms M.M. QUIRK: In his short exposure to the position, is the commissioner satisfied? Certainly in my experience there is a climate of non-disclosure and a level of technicality that I think undermines the whole principle of the legislation. The basic premise of the legislation is that access to information should be granted unless there is very good reason for access not being granted. My experience is completely the converse. I wonder whether the commissioner is revisiting training of freedom of information officers in agencies to ensure they take a more appropriate attitude to the legislation and their role, which is to facilitate disclosure.

[8.40 pm]

Mr C.C. PORTER: My view is cautious but probably not as cynical as the member's view, but I appreciate what she says about different cultures existing. I have not worked in this office and Mr Bluemmel has been there only a short time, but I am very pleased for him to give the member his views about what he has witnessed and what he perceives to be the culture, if he has had that opportunity, and how he thinks he may go about changing it. As I understand it, during the interview stage Mr Bluemmel had some very succinct things to say about those very issues.

Ms M.M. QUIRK: We like succinct, Attorney General!

Mr S. Bluemmel: The situation varies quite significantly across agencies. One thing I can report is that those agencies that have taken a proactive stance to releasing information as a matter of course have actually seen their FOI workload drop quite considerably. I think that information is now being shared across the sector. One of the roles that I see for myself is to highlight those sorts of successes, and put those agencies in touch with other agencies that perhaps are suffering a greater FOI workload than they would if they changed their processes. That is something that I think has already made a significant impact. The general culture varies enormously between agencies.

Ms M.M. QUIRK: I have a case study that, I think, confirms the commissioner's statement. We are up to about five *Yellow Pages*' worth of correspondence, and today I received a meteorological report that I would have been able to get on the internet. One of the claims made is that computer systems in particular departments are not up to researching requests. That is a matter of some concern to me, and I seek the Attorney General's views and the commissioner's views about whether there are protocols for the ways in which searches should be done. I received a response in one case in which it was claimed that there were millions of documents, which is clearly rubbish.

Mr C.C. PORTER: Again, I will ask Mr Bluemmel to give the member a direct response in addition to what I will say. My experience of being employed in the public sector is that there is sometimes some truth to the concept that the systems in place do not allow for convenient searches for the information that is sometimes asked for. For instance, the Director of Public Prosecutions would often receive well-meaning requests for information that we would have been happy to give out, except that the data was not stored in an intuitive way. I can say that I think there is sometimes some truth in such a response; I also accept that it may also at times be used by some departments as an obfuscating excuse. Perhaps the commissioner might give an indication of which departments he perceives need helpful assistance with their responses, based on IT issues.

Mr S. Bluemmel: Again, the situation varies. One of my roles as Information Commissioner is to be a member of the State Records Commission. I will use that role to try to assist agencies to improve those sorts of record-keeping issues. Ideally, it is one and the same process. In other words, record keeping and FOI processes are quite similar. That is the ideal outcome. There are some agencies that are much closer to that than others, but I will use those two roles to try to provide actual practical guidance to agencies. The Freedom of Information Act is technology neutral in the sense that it does not provide specific guidance as to how searches are to be conducted, or what constitutes an unsuccessful search or inability to locate a document. That is quite independent of the way in which the document is stored or indexed, or anything like that.

Ms M.M. QUIRK: Are protocols being developed service-wide—for example, in the case of requests for emails from a particular department—so that even the most computer-illiterate person can conduct a series of tests that

would generally be considered as satisfying the requirements for having made reasonable attempts to search for documents?

Mr C.C. PORTER: I am in the unusual situation of having budgetary responsibility for the commissioner, but I am not able to speak on behalf of every agency that he oversees in respect of requests for information. With regard to document management, particularly correspondence, we operate on the TRIM system in our office, which seems to me to be a relatively good system on the occasions that I have used it when I have responded to FOI requests. It seems to me that if that system is properly managed, there would not be huge scope for excuses for being unable to find hard-copy correspondence. Emails are slightly different, because email retention as a system—this has been a problem in corporate and commercial litigation—depends very much upon the individual user of email. Personally, I use my inbox as a to-do box, and if it is too full, I feel guilty; I want to get things done and delete them. Other people have thousands upon thousands of emails in their inbox and keep their deleted emails for months. Mr Bluemmel might have some views as to whether his office is the appropriate office, given that the structure of the act is technology neutral, to advise different agencies on their document management. This is an issue that goes back to the Commission on Government, but I would imagine that the commissioner now takes some responsibility for giving educative advice to the departments.

Mr S. Bluemmel: I would say that that is correct, and that is the role that I plan on assuming with my two hats, both as Information Commissioner and State Records Commissioner. I know from my previous work in the sector that some agencies actually have the practice of centrally storing in the system, through their email gateway, every email sent, received, created or filed. Although that has some advantages in the sense that departments can categorically say that they retain their emails, the problem can be that the stored records become so vast and cumbersome that it is very difficult to find things. Of course, the storing of electronic records is simpler than facing a large paper repository, but it does not rely on people retaining all their emails of their own accord. The ideal situation would be one in which emails were appropriately indexed, retained and searchable. The sector as a whole is still a long way away from that, but so are sectors, dare I say, across the world; certainly across Australia. It is a difficult issue to address. I think that things are kept, by and large; but I do not think that they are kept in the most ideal, searchable form, or in the least cumbersome form.

Ms M.M. QUIRK: If documents—specifically emails—are destroyed, it creates issues under the State Records Act. How can the Attorney General, as the first law officer, marry up the different requirements under each piece of legislation?

Mr C.C. PORTER: I would have to re-verse myself in the provisions of the act to which the member refers, and as Attorney General, I take overarching responsibility to ensure that agencies meet the lawful requirements of legislation, but there is a lot of legislation. The way in which email is used means that there is nothing intentional or mischievous about the way in which people go about not retaining information, but it may be that it is something that this government can look into by means of a circular to agencies or some sort of formal centralised information in the form of a policy or program. This dovetails into the issue of information privacy generally, because should that legislation come to be in this state, or in the commonwealth, we will provide guidelines on how not to disseminate. The flip side of that is to provide guidelines for relevant agencies on how to keep the information they have generated. The short answer is that I will look into the question that the member has asked in general terms about more consistency in the treatment of emails.

Mr P. ABETZ: It was alleged in the house some time ago that some people were making requests for thousands of FOI documents, which was totally overloading the FOI system. On page 751 there is reference to advice and awareness. Is it part of the Information Commissioner's role to act as an adjudicator for what appear to be unreasonable requests for information? How does that work?

[8.50 pm]

Mr C.C. PORTER: I will ask the commissioner to give the member a direct response in addition to what I say. I have had the experience of receiving FOI requests in my office—I do not allege that this is a misuse of freedom of information, and I hope that I generally take a reasonable view on requests—that are almost impossible for my office to comply with. One of the requests I had was for all diary entries, supporting documentation and briefing notes over a six-month period. Under the act, the requirements that I and others statutorily must meet are that if we provide information that identifies third persons who might not wish that information to be given out for personal or commercial reasons, they each have to be contacted. In a two-week sample of my diary, that amounted to 60 people. Many of the people whom I meet are not going to have commercial reasons for not wanting their information given out necessarily. There will be some, but, generally speaking, victims of crime and people of that type would have very good personal reasons for meeting with me. They would want to remain confidential and not be the subject of FOI. There is no doubt there has been an increase in FOI applications from the opposition to the government. The opposition would no doubt take the view that the previous opposition did

not do enough; we take a view that some of these might be going a little too far. I will let the commissioner give whatever views he might have about the lay of the land as he has seen it over the past few weeks.

Mr S. Bluemmel: As to the first point, I must not take into consideration any motive for FOI requests. That is not something for me to have a view on. Under the act, my primary role is to make binding decisions on complaints about an agency's decision to grant limited access or refuse access. In terms of the workload issue, there is a provision in the Freedom of Information Act that allows an agency to refuse to deal with an access application if the work is considered excessive. The agency then needs to work with the applicant to reduce the scope or clarify the scope of the request so that it is then feasible to address the request. There are exemptions in schedule 1 of the act—among those are the ones already mentioned by the Attorney General to do with third party requests for information that include information about third parties. That triggers a procedure whereby those third parties have to be consulted, even if they are public servants. That is something that obviously leads to the workload. In terms of advice and awareness, I provide that to agencies, including ministerial officers. I have a regular program of awareness raising, training and publications. Those are the grounds on which an agency can claim an exemption or refuse to deal with an application. If the applicant then has a complaint about the decision of the agency or the minister, that can be brought to me by way of external review, which I will decide, under the act, on a case-by-case basis.

Mr J.R. QUIGLEY: I was trying to get the right spelling of the commissioner's name. They have not updated the website yet. Might I say that it is not the best website but I am sure the commissioner will see to that, too.

I refer to page 750 of the *Budget Statements*, "Significant Issues Impacting the Agency". It appears that a lot of the significant issues impacting on the agency have been digging itself out of the hole of old matters that were hanging around for a while. Could the Attorney General take me through a bit of a history lesson here? It appears that 16 matters were outstanding at 1 July 2007 and five were outstanding at 1 July 2008. Was that during the time of the commissioner's predecessor, Mr Lightowlers?

Mr C.C. PORTER: I will have the commissioner directly respond to that, but it seems that the additional question is what is defined to be an "outstanding matter"? As I understand it—I stand corrected—that means a matter that the commissioner's adjudication has been called upon to resolve; so a matter that has gone to that level of hearing. I might stand corrected on that but I will have the commissioner respond to it.

Mr J.R. QUIGLEY: Rather than matters awaiting conciliation?

Mr C.C. PORTER: Correct.

Mr S. Bluemmel: It is correct that under Mr Lightowlers' tenure the amount of, shall we say, long-term or old complaints was brought down significantly. That is a credit to him and the office.

Mr J.R. QUIGLEY: He inherited a lot of old matters?

Mr S. Bluemmel: That is correct. I understand that part of the reason for the larger number of old matters was that there was previously an approach in the office to conciliate as many matters as possible. That often resulted in parties being given an appropriate amount of time to conciliate outstanding matters before the commissioner commenced his formal determinative function. If conciliation failed after that investment of time, the determinative process would then have to start afresh as a formal process; however, the clock was already ticking. Over about the past 18 months the approach was taken by the acting commissioner to —

Mr J.R. QUIGLEY: This is Acting Commissioner Wookey or Lightowlers?

Mr S. Bluemmel: Acting Commissioner Lightowlers, as I understand it.

Mr J.R. QUIGLEY: That is the commissioner's immediate predecessor?

Mr S. Bluemmel: My immediate acting predecessor; correct. The approach was taken to move to a formal process much more quickly at the expense of a high conciliation rate. Coupled with diverting all office resources that were available, that led to a determination. That was also somewhat at the expense of other activities of the office—for example, advice and awareness raising, and the website, as previously mentioned. I think the content of the website is quite strong but the look and feel of it is very dated, I agree. I will certainly do something about that. It was basically all hands to resolution of complaints.

Mr J.R. QUIGLEY: To clean up the backlog?

Mr S. Bluemmel: Correct. I think the numbers quoted may have been those complaints that were over a certain age rather than total number of complaints on hand. However, the point made is quite right—there was a massive downward trend. Unfortunately, over the past six months or so, we are back on an upward trend simply because of the office's workload.

Mr J.R. QUIGLEY: I was going to ask about resources.

Mr S. Bluemmel: Unfortunately, at the moment, that upward trend is very, very strong. That will become apparent in the annual report. The current figures are not in yet. The way we are tracking, we will have 50 per cent more total formal complaints than we did the previous year. The previous years have been fairly steady.

Mr J.R. QUIGLEY: Fifty per cent more formal complaints?

Mr S. Bluemmel: Formal complaints for external review by the commissioner.

Mr J.R. QUIGLEY: Is that because the commissioner's office is now going back to conciliation, trying to conciliate a whole lot of outstanding matters?

Mr S. Bluemmel: No. We still have all hands to the pump on resolving complaints as quickly as possible. The reason that the numbers of outstanding complaints is trending up again is the sheer number of complaints. It is simply an absolute number and our staffing, being quite small, is fairly static, so there is very little room to shift priorities across the office and absorb.

[Mr M.W. Sutherland took the chair.]

Mr J.R. QUIGLEY: When we look at other jurisdictions, if I can call them that, we look at optimal times to resolve matters—32 weeks to trial in the Supreme Court, 126 weeks in the Coroner's Court —

Mr C.C. PORTER: One hundred and twenty-eight weeks.

Mr J.R. QUIGLEY: I realise 126 weeks was the target. We blew that out by two weeks. Is there any optimal time or target time to move a matter through the FOI commissioner?

Mr C.C. PORTER: I will have the commissioner answer that directly. I will add that my understanding is that that is not one of the key performance indicators. It may be one that Mr Bluemmel wants to look into to see whether other jurisdictions have such KPIs. I am not aware of whether they do. With respect to the issue of there being 50 per cent more formal complaints now, again by way of clarification, I understand that to mean that there are now 50 per cent more formal complaints in terms of a request not being acceded to and that matter requiring eventual resolution by the commissioner.

Mr J.R. QUIGLEY: By way of conciliation or by —

Mr C.C. PORTER: I imagine that those are complaints that arise out of a situation in which the request has been viewed by the recipient as adventurous or outside the terms of what is reasonably required—there has been a refusal and that has resulted in a complaint. From my observation, it seems that because the opposition has been robust in its applications under freedom of information, there have been more of them —

Ms M.M. QUIRK: Optimistic, Attorney General.

Mr C.C. PORTER: Optimistic or robust, whatever word we want to use. There have been some refusals, including one from my office. These are matters that now need to be adjudicated upon. By virtue of the sheer number of increased applications, there has been an increase in the number of refusals and thereby an increase in the number of complaints. It appears to me—this is a view that I hold and it might be a view that the commissioner wants to add to, negate or expand on—that it is not necessarily a bad thing, in an environment in which there is a robust or optimistic number of applications coming in and there is an elevated number of refusals and an elevated number of complaints, to actually hear some of these matters, make a determination and establish something —

[9.00 pm]

Mr J.R. QUIGLEY: Of a precedent.

Mr C.C. PORTER: Exactly, a precedent, so that we know what we are dealing with. With some of the complaints, it may be that the commissioner views the refusals as improper, or it may be that the commissioner takes the view that the refusals are proper. At least we then know what we are working with.

Mr J.R. QUIGLEY: The last thing, just for the record, is that I want to see whether I can get the correct spelling of the commissioner's name.

The CHAIRMAN: I am sure we can do that at another time.

The appropriation was recommended.