

**STANDING COMMITTEE ON ESTIMATES AND
FINANCIAL OPERATIONS**

2015–16 ANNUAL REPORT HEARINGS

**TRANSCRIPT OF EVIDENCE
TAKEN AT PERTH
TUESDAY, 25 OCTOBER 2016**

**SESSION THREE
OFFICE OF THE INFORMATION COMMISSIONER**

Members

**Hon Rick Mazza (Chair)
Hon Peter Katsambanis (Deputy Chair)
Hon Alanna Clohesy
Hon Helen Morton
Hon Sally Talbot**

Hearing commenced at 12.49 pm**Mr SVEN BLUEMMEL****Information Commissioner, examined:**

The CHAIR: On behalf of the Legislative Council Standing Committee on Estimates and Financial Operations, I welcome you to today's hearing. Can you confirm that you have read, understood and signed a document headed "Information for Witnesses"?

Mr Bluemmel: I have.

The CHAIR: It is essential that all your testimony before the committee is complete and truthful to the best of your knowledge. This hearing is being recorded by Hansard and a transcript of your evidence will be provided to you. It is also being broadcast live on the Parliament's website. The hearing is being held in public, although there is discretion available to the committee to hear evidence in private. If, for some reason, you wish to make a confidential statement during today's proceedings, you should request that the evidence be taken in closed session before answering the question. Agencies and departments have an important role and duty in assisting the Parliament to review agency outcomes and the committee values your assistance with this.

Hon PETER KATSAMBANIS: Thank you for attending today. I have a series of questions, if you do not mind answering. Does your office provide guidelines to the agencies on FOI?

Mr Bluemmel: Yes, we do. We provide a series of information-related publications. As of September last year, when we relaunched our new website, we have actually categorised and revised pretty much all of our publications so that they are now targeted at either members of the public or government agencies. Of course, they are all available to everyone publicly, but we really wanted to target them, particularly to make sure that we account for the different levels of knowledge and sophistication of people who might be wanting the information.

Hon PETER KATSAMBANIS: They are all publicly available on the website?

Mr Bluemmel: They are; that is right.

Hon PETER KATSAMBANIS: There is nothing that you provide to agencies that is not on the website?

Mr Bluemmel: Not by way of any sort of guideline or publication. An agency may well contact my office on a particular matter to seek some advice and guidance. That may, of course, disclose some sensitive material while they are asking us. For example, if it is a hospital contacting us about how to deal with a sensitive application for mental health records and those sorts of things, clearly, the detail of that would not be disclosed publicly. I certainly cannot think at the moment of anything that we would provide to an agency by way of a publication or a guidance document that would not also be publicly available.

Hon PETER KATSAMBANIS: You update these guidelines, obviously.

Mr Bluemmel: That is correct. Some of them need to be updated more frequently than others, depending on recent cases that have happened or legislative changes. Some of them, on the other hand, are fairly stable and do not really need to be changed much at all.

Hon PETER KATSAMBANIS: When there are updates, particularly in the case of significant Supreme Court decisions or something like that, you make the updates that you require. How do you communicate to agencies that there have been updates made?

Mr Bluemmel: What we would do is, if we are making a significant change—anything that is more than a mere technical change, for example—on our website we would highlight that in the "What's

New?” section, which is on the homepage. Whenever there is a Supreme Court decision handed down that is an appeal from my office, that Supreme Court decision will be published on our website as well.

Hon PETER KATSAMBANIS: Other than publication on the website, you do not have any other correspondence with agencies?

Mr Bluemmel: We have nothing more formal than that. What we do have is an FOI newsletter that we publish around every second month. That is quite a short document. Anyone can sign up to that subscription service—a member of the public or a government agency. As part of that subscription service, firstly, you get a notification whenever my office makes a new published decision, which is about 20, 30 or 40 times a year. In addition, if you are on that list, you get our bimonthly newsletter, which would highlight those sorts of things as well.

Hon PETER KATSAMBANIS: Would it be fair to say then that it is up to agencies and the people responsible for sensitive information in agencies to keep themselves abreast of changes?

Mr Bluemmel: I think that is fair to say. We do what we can, of course, but the obligation falls primarily on agencies, under the FOI act, to make sure that they make decisions in accordance with the act. I then have a duty under the act to make sure that agencies are aware of their obligations. Obviously, we do what we can but, as I have already said, with our very small staff, there is only one person in my office dedicated full time to advice and awareness, including for agencies.

Hon PETER KATSAMBANIS: Sure, I understand that. I understand you are a small agency and you do the best with what you have got. I am just trying to look at where there might be information gaps. Because there could be someone making a decision today and there was a Supreme Court decision a month ago, and if they consider it is business as usual and they have not been informed about it, and they have not gone and proactively sought to find out if any changes have been made, they can go on and continue with their business as usual and make the significant error that could impact on individuals in some cases.

Mr Bluemmel: It certainly can happen and, in fact, it can happen not just with Supreme Court decisions, but with any aspect really of FOI. One of the issues we have is that there are, of course, hundreds of state and local government agencies. Each one has an obligation under the FOI to discharge its duties under that act faithfully and correctly, but there is also quite a high turnover of people who deal with FOI. In a large agency you do have often a whole team that deals with information release and FOI is a part of that. In some of the smaller agencies, say, particularly non-metropolitan shires and towns, they might get one or two FOIs a year and it is very hard in that case for them to maintain that sort of capability.

The sorts of things we try to do to minimise that risk are, firstly, to make our information as readily available as possible. Second, we provide free training, which is open to all government agencies in the state; they can attend at our office, a half-day or a full-day course depending on the level required. As I said, that is free of charge. Then also my office will, every year, undertake regional visits where we go out to a region, or sometimes several in a year, to invite people to come in from government agencies and indeed community groups and learn about FOI. But you are absolutely right. Of course, there are undoubtedly cases—perhaps a significant number of cases—where a person in an agency who has to make a decision under the FOI act may not have all of the information in their knowledge. It may be available to them if they then go searching for it.

Hon PETER KATSAMBANIS: I am not sure how many people are listening today, watching today or are going to be reading this transcript, but it is quite clear the person who is responsible for making the decision is also responsible for making sure they are kept as informed as they can be and you make that information available to you through the website. So there are no excuses. There is a website. They can access it before they make any decision and update themselves and make sure they are using the most recent guidelines or law in that case.

Mr Bluemmel: I think that is right. I would also just add to that slightly. I do have a legislative obligation to assist them to do that, but also I would say, as I already have, for a number of agencies, being able to do that really effectively given their size and frequency of FOI use, that can be quite hard for them and I have sympathy for them for that. Of course, that is why we also have an appeals mechanism under the act where those decisions can be reviewed by someone like me who is independent of the decision-maker.

Hon PETER KATSAMBANIS: If we have time, I would like to get to some more detailed questions. You often determine complaints against an agency not to release documents or information. When is it considered appropriate in those circumstances when an agency is looking at that to consider the options of redacting or seeking the authorisation to release from the authors as being an appropriate step for the agency to take?

Mr Bluemmel: Right. Well, there are a couple of different elements to that. Firstly, on the redacting point under the FOI act—the broad rule, of course, as you would be aware, is that if somebody asks for something that is in existence, the agency has to give access to it unless it is exempt under the FOI act.

The additional mechanism there is that if the document is being asked for contains material that is exempt, but it is practicable to edit that material out and give access to what we might usually call a redacted copy, then the agency has an obligation to do that. Of course, that is not always feasible and occasionally I do see documents given out where it is a 20-page document and everything has been redacted apart from “Dear Mr Smith”.

Hon PETER KATSAMBANIS: We have all seen them.

[1.00 pm]

Mr Bluemmel: In a case like that, I would strongly encourage the agency to consider that as non-practicable and, in fact, far more infuriating than simply saying to someone “You can’t have the document”, rather than giving someone false hope. That is the redacting point. If it is practicable to redact the exempt material and still give access to something that has meaning, an agency must do that.

On the other issue of seeking authorisation from authors, there are a couple of elements in there. One is that if the document contains material that is either personal information about an individual, which is very broadly defined, or commercial or business information about a third party, before the agency makes a decision to give access to that information, it has to take steps to seek the views of that person or that person whose information is in the documents. It is important to note that that person does not have a right of veto; they simply have a right to be heard before the decision is made to give access. If, for example, that person objects to disclosure, say, in a commercial relationship, and the agency decides in any event to grant access, that person has a right to appeal that decision before access is given. So it is important to note that the agency still makes the decision but there are appeal rights.

Another case in which that third party issue may arise is when the document itself is subject to copyright and that copyright is not held by the state. Usually, a private company has done some sort of report and due to the contractual nature by which that report was commissioned by a government agency, the private sector author retains copyright. In that case, that does not have an impact on whether the document is exempt from disclosure. It means that if the document is found not to be exempt for any other reason, rather than giving the applicant a copy, the agency has to give them access by inspection so as not to breach copyright. Broadly speaking, that is how a third party issue may arise. Does that get to the heart of the question?

Hon PETER KATSAMBANIS: It does, yes, and it moves me to my next question. When an agency has given an undertaking to maintain confidentiality when it receives the information in its possession from, I guess, a member of the public—in the definition, as it is under state law,

a member of the public, whether it is a corporation or not—and then proceeds to publish the identity of that person or the information that they have provided, what criteria would you consider in determining whether the agency has breached its undertaking?

Mr Bluemmel: I take it, honourable member, that you are talking about this being in the context of an FOI application.

Hon PETER KATSAMBANIS: Yes.

Mr Bluemmel: Right. Because, of course, that scenario may well happen outside FOI.

Hon PETER KATSAMBANIS: Yes, definitely in a FOI context. That is my question, yes.

Mr Bluemmel: Right. There is an exemption in clause 8 of schedule 1 of the FOI act. It has two elements to it. The first element is that a matter is exempt if its disclosure would be a breach of confidence for which a legal remedy could be obtained. The classic case when that comes up is when there is some form of non-disclosure agreement or a confidentiality clause in the contract between an agency and this third party and giving access to the document would breach that enforceable legal undertaking. If that is the case, it is exempt. That is fairly straightforward. However, those sorts of legally enforceable confidentiality provisions are fairly rare. Interestingly, in the commonwealth some years ago those sorts of provisions started being utilised by government agencies with, how shall I put it, great enthusiasm.

The CHAIR: I could imagine.

Hon PETER KATSAMBANIS: Why am I not surprised?

Mr Bluemmel: Of course, that effectively took them outside the commonwealth equivalent legislation. What happened there was that a mechanism was passed in the federal Parliament—I cannot recall the precise details of it; I think it originated in the Senate—under which every minister has to report to Parliament every year on all confidentiality clauses any of their agencies entered into and why that was justified. As you can imagine, the use of those clauses dropped fairly substantially. I am not aware of there being a broad problem in that regard in the state here. If I thought there were—if I thought, for example, there was a concerted effort to use these clauses to take things outside FOI, perhaps bordering on bad faith—I would certainly feel the obligation to bring that to the attention of initially the agencies and, if that were unsuccessful, ultimately the Parliament in my report. That is the first part of the confidentiality one. If that would put you in some sort of legal breach, it is exempt.

There is a second part of it, which is perhaps a bit more relevant to the question, which provides that matter is exempt if its disclosure would reveal information of a confidential nature obtained in confidence and its disclosure could reasonably be expected to prejudice the future supply of information of that kind to government or an agency. The first part of that is relatively straightforward, where you have that circumstance of confidence and say, “Look, we would like to receive this information from the private sector to help us inform a planning decision”, or whatever it might be, “and we undertake that we’ll treat it confidentially and so on.” The second part, which could reasonably be expected to prejudice future supply of information of that kind to government, can be a bit more difficult to make out. It is not simply enough to say, “I thought we understood that this was confidential.” You would have to go further and say, “If we now give this out under FOI, in the future when we want to go to the private sector for their ideas about where industry is heading or where planning and development is heading, industry will not help us out because they will have their information disclosed under FOI.” That is the sort of argument that will have to be made for material to be exempt under that clause.

Hon PETER KATSAMBANIS: I am thinking more along the lines of individuals providing information to various government agencies when I guess they are in a relationship in which the non-provision of the information would lead to them perhaps not being able to access various services or compensation, so they would be in a very difficult situation in the future. If people had

provided confidential information and it had been disclosed, in the future other people or the same people would really like to not provide it, but if they did not provide it, they would be in the invidious position of missing out on what they were trying to access. That is the context in which I am asking the question. I think you referred to clause 8 of schedule 1 of the FOI act.

Mr Bluemmel: That is correct.

Hon PETER KATSAMBANIS: Do you think the current provisions are broad enough in that context in the protection of individuals from having confidential information relating to their personal circumstances being disclosed?

Mr Bluemmel: I would think that in most of those circumstances that you have outlined, the information question is actually likely to be exempt under another exemption provision, which is clause 3 of schedule 1, which relates to personal information. That is also by far the most frequently used exemption clause in the FOI act, as you can imagine. Clause 3 has quite a few levels but, broadly speaking, the rule is that information is exempt from disclosure under FOI if it would reveal personal information about a person, and that is very broadly defined. It does not have to be sensitive or confidential, but certainly confidential information about a person would certainly be included. There are then some limitations on that exemption. For example, work-related information about public servants and contractors is not exempt, generally speaking; information is not exempt if the person in question consents to the disclosure; and, finally, personal information is not exempt from disclosure if its disclosure is in the public interest. I would imagine that in the sort of scenario you have outlined, in many cases I would expect it would be difficult for someone who wants the information under FOI to mount a persuasive public interest argument that they should have it, even though it is personal information about another person.

Hon PETER KATSAMBANIS: That dovetails very neatly into the last question in this set of questions that I have. In your position, when weighing up whether disclosure of the documents or information by the agency is in the public interest, what criterion is used?

Mr Bluemmel: It is entirely a case-by-case matter. Of course, when a matter comes before me in a dispute, all the parties have an opportunity to make their submissions and I will weigh them up. The way I look at it is that I focus mainly on the process of making that decision. So, to me, when making a public interest determination, there are no factors expressed in the FOI act on a public interest determination. The case law around Australia on the public interest follows that usual model, which is understandable, of telling us what the public interest is not rather than precisely what it is. But given how it can vary, I can understand that of course.

[1.10 pm]

I go through this process basically identifying the factors for disclosure and identifying the factors against disclosure and weighing them up. In the case of personal information, it is important to note that we do not have privacy legislation that applies in Western Australia to those state or local government sectors, but the FOI act, through the inclusion of that exemption, does try to provide some privacy protections at least in the FOI context. I have consistently, as have my predecessors, expressed the opinion that protecting a person's privacy is a very strong public interest. It is not absolute, of course, but it is a very strong one. To displace the public interest there would have to be some pretty persuasive factors in the circumstances of the case to suggest that a person's personal information should be disclosed. The sort of case where it does happen is if the personal information in question relates to, say, a senior public servant, their duties and those sorts of things; I already referred to that earlier. There are also occasionally cases—sometimes tragic cases—where a person perhaps went to a public hospital, suffered some adverse event, perhaps in some cases even died, and a member of their family applies for the information relating to their treatment and what happened. That might be the sort of case where some quite sensitive information can be disclosed, but in that case, of course, to the family, and there would be a strong public interest there in the

family getting access and a strong public interest in transparency about the treatment, what happened and how society can learn from it.

Hon PETER KATSAMBANIS: Good public health outcomes.

Mr Bluemmel: That is right.

Hon PETER KATSAMBANIS: I would imagine also things like disclosure of criminal activity might fall into that category. I do not know whether it has ever come up.

Mr Bluemmel: The sort of context where it might come up, although perhaps the other way, is that there are some decisions I have made during my tenure where perhaps a serving prisoner applies to either the police—or indeed the courts, but it is usually the police—for access to information about the evidence that was used to convict them. In some cases that may have been a very, very long time ago and the serving prisoner is looking at the evidence to perhaps claim they are innocent and they need to do their forensic works so they can prove their innocence. In a case like that, as you can imagine, the witness statements in question and so on can be very confronting and very personal about the victims and, indeed, the witnesses. In a case like that there would be a very strong public interest in protecting their privacy when the person who has been convicted of the assault, the sexual crime or, indeed, the murder seeks access to those witness statements. Of course, there is a very strong public interest in making sure that an innocent person is not convicted, but then if there has been a proper, open court process, even many years ago, and often even an appeals process, then you can say that that public interest has been largely satisfied by access to a fair trial.

Hon PETER KATSAMBANIS: If I can close off on that, the only question I have there, and I do not expect you to have this information, I am happy for you to take it on notice, is about the number of applications you have considered in relation to the possible disclosure of personal information under clause 3 of schedule 1 by year, say, over the last three or five years or whatever is convenient for you, and in how many of those circumstances you have determined to disclose information in the public interest—unless you anecdotally have that information.

Mr Bluemmel: I can give you some information and perhaps you can let me know whether that satisfies you at this stage. It is very rare that I find that personal information being sought about someone, other than a public servant doing their job for example, is given out on the basis that it is in the public interest to do so. I can probably safely say—I will get back to you if my research contradicts this—that in some seven years in the role, the number of times I have found personal information about a private citizen and the disclosure thereof to be in the public interest, with no other factors applying, is less than 10, perhaps significantly less than 10 I would say.

Hon PETER KATSAMBANIS: Thank you, I appreciate that.

Hon SALLY TALBOT: Thank you for coming in, commissioner. I just have a couple of questions. If I can start with page 23, which is where you go into significant issues and trends. In section 6 you specifically talk about recommended legislative and administrative changes. I wondered whether you could just talk us through each of those.

Mr Bluemmel: I would be very happy to. The first one “Consultation with officers of government agencies”, I have already touched upon in an answer to a previous question; that is, under the FOI act, before an agency discloses personal information about an individual, it has to take reasonable steps to seek the views of that individual. What I am suggesting here is that where the information in question that is being sought is merely work-related information about a public servant or a contractor, that obligation should not apply to the agency. What happens at the moment is that if somebody asks for work-related information about a public servant who is clearly not exempt, so it might be the email from one public servant to another saying, “The meeting is at three o’clock, please bring the following materials”, it would clearly not be exempt on the basis of being personal information. Yet, in that case, before the agency makes a decision to give that out, it actually has to seek the views of those public servants.

Hon SALLY TALBOT: So it has a statutory obligation at the moment and your recommendation is that that might not be required?

Mr Bluemmel: That is correct. I hasten to add that, of course, it would not prevent the agency from seeking their views, and let me give an example, perhaps, where seeking the views of an individual would be very appropriate, even though the information in question might be the sort of prescribed work details—say, in a mental health context, if you have a situation where you have a patient who is struggling with mental health issues that may at times cause him or her to be violent and the information in question is clinician's or nurse's notes about the patient, which might include things that perhaps could reasonably be expected to make that clinician the target of violence if they were disclosed to the patient. In a case like that, even though the notes in question may be what are called prescribed details and therefore not exempt as personal information of the clinician, there might be a very good reason not to disclose them because of that threat of violence. Now, that is a completely different exemption clause and in the case like that, obviously, I would expect the FOI decision-maker in the hospital to consult with the clinicians to make sure that that risk does not exist or is insignificant. But that is such a small proportion of the cases where a public servant is consulted for their views before their very routine work information is disclosed.

Hon SALLY TALBOT: So your inclination is not to try to burrow down into the statutory provisions to make certain the request for prescribed details are subject to consultation; your instinct is to free it all up, but then allow discretion?

Mr Bluemmel: Essentially, that is correct, but I am only proposing freeing up the consultation where it pertains to the work-related information of public servants. Clearly, for anything that goes beyond that —

Hon SALLY TALBOT: Even if it is prescribed information?

Mr Bluemmel: Prescribed details, which is the work-related information of public servants, that is right.

Hon SALLY TALBOT: That is a pretty narrow exemption.

Mr Bluemmel: Yes. For example, if the information in question is about someone other than a public servant, the consultation would still need to happen even under my recommendation, and beyond that, even if the information is about a public servant but it goes beyond the mere work-related information, then, again, consultation would still have to occur.

Hon SALLY TALBOT: I think your second category is fairly self-explanatory—removing outdated references to people with disability.

Mr Bluemmel: I would think so. I mean, these would not at all be substantial changes; they would simply be updating the language.

Hon SALLY TALBOT: The third one is of interest—they are all of interest. The third one is about the appointment of staff, so you are talking about delays because of the process of having to go to the Executive Council, essentially.

[1.20 pm]

Mr Bluemmel: That is correct. Put it this way: if I want to hire a receptionist, Her Excellency would have to sign off on that, as it currently stands.

Hon SALLY TALBOT: That takes me to the question of the level of staffing. You currently have 11, including you, is it?

Mr Bluemmel: We are in a slight state of flux at the moment because we have a couple of acting positions but, yes.

Hon SALLY TALBOT: That is what I wanted to ask you about.

Mr Bluemmel: That is correct. What we have done over the last couple of years is we have had a couple of retirements, and rather than filling those positions permanently, as I would have normally done, I took the step, initially, even before the recruitment freeze was on, to fill those temporarily because I thought there was opportunity to improve and update the structure of the office a bit—nothing too radical there. The other thing is I also thought, frankly, there would be tough economic times coming for the public sector and I did not want to be in a position where I had permanent staff to the full complement of my budget, which could then be cut. Now, of course, with the agency expenditure reviews, my budget—along with everyone else, of course—is being reduced, and I am now pleased that I have got that little bit of flexibility.

Hon SALLY TALBOT: What has the reduction been? Are you saying that you have had a reduction over and above the recruitment freeze?

Mr Bluemmel: The recruitment freeze has finished now. I do not have the precise figures in front of me, but the reduction is in the order of about \$30 000 to \$40 000 a year.

Hon SALLY TALBOT: Could we ask you to take that on notice and give us the detail?

Mr Bluemmel: Yes, I would be very pleased to do that. In fact, I think it might be a bit larger than that, but I will certainly provide that. For clarity, I will provide the size of the budget cuts that are being implemented.

[Supplementary Information No C1.]

Hon SALLY TALBOT: Were you talking specifically in relation to staffing or are you talking about cuts that involve other aspects of service provision?

Mr Bluemmel: These are just the total cuts to my budget.

Hon SALLY TALBOT: So that question is about total cuts?

Mr Bluemmel: Yes. And, really, with the way that the budget process has been changed over the last few years and moving away from a firm, say, FTE employee ceiling and moving more towards “This is your budget, you make it work”, the headline figure for me is the budget cuts.

What I have now, therefore, is the situation in which I have a couple of staff that are not permanently filled; in fact, I am currently operating slightly below my normal complement of staff, but I am about to seek to procure some secondments, hopefully from within the public sector, for at least the rest of this financial year because we have a lot of work on. Then, as part of my strategic planning, which is also reflected in the annual report, I am looking at some changes to the structure, which will probably take about 12 to 18 months to be implemented. I do not want to fill these permanently now because that will remove the flexibility I would otherwise have.

Hon SALLY TALBOT: I would be as bold as to suggest that perhaps you are using your coordinators’ reference group as a training ground, are you?

Mr Bluemmel: I had not set out to, I must be honest, but now that you say that, I may well include that in my strategic planning. Thank you very much, yes.

Hon SALLY TALBOT: I was going to ask you a few questions about the details, but I imagine you would get a feel for people who had their head around the issues that are of prime concern to you.

Mr Bluemmel: Yes; and, in fact, looking for particularly temporary staff so far for the rest of this financial year before the budget reductions, I am looking ideally at some people who have some FOI expertise at the moment, so I have started to try to identify some of those. It is almost the corollary or perhaps a complement to what you are suggesting, which is that I think there would be significant benefit to agency FOI decision-makers and coordinators having to spend some time in my office, because there they get access to FOI work full time. They get access to the sort of

research and decision-making that we do in my office, and then when they get back to their agencies they are, hopefully, even better equipped to do their jobs.

Hon SALLY TALBOT: That is very interesting. I must say that the people whom I have worked with in the past on the political side of things who have had training courses provided by your agency are worth their weight in gold.

Mr Bluemmel: I am delighted to hear that.

Hon SALLY TALBOT: That is something you can take away with you.

Mr Bluemmel: Thank you.

Hon SALLY TALBOT: Do you have an acting commissioner or an assistant commissioner? How does that work?

Mr Bluemmel: There is no assistant commissioner as such. My most senior staff member is my principal legal officer, and she has been with the office for a few years now and is very experienced. What I do when I go on a period of leave is approach the Governor through Exco and ask Exco to appoint her as an acting commissioner. There are fairly obvious reasons for that of course, but also under the FOI I can delegate a number of my functions and powers to staff; for example requiring people to attend and give information and so on. Most of my senior staff have a number of those delegations, but what I cannot delegate is my function to make the ultimate legally binding decision on a dispute. If I am going away for a short period, say, up to two weeks or less, we simply manage our workload in the office so that for that period of one or two weeks my absence will not cause any decisions to be held up. We will try to get as many out as possible before I go and then use those two weeks to do the groundwork for matters that can be signed off on my return. But where it is more than two weeks, I think an acting commissioner is required so that the full suite of powers and functions can be discharged. Certainly my standard practice is for that to be my principal legal officer, who has in fact acted as commissioner on a number of occasions now.

Hon SALLY TALBOT: I will just return to the previous line of questioning, which was about your FTE level. You are saying that you have a couple of those positions currently filled on a temporary basis.

Mr Bluemmel: Yes.

Hon SALLY TALBOT: I think you were indicating that as you move towards the completion of your review that will give you a degree of flexibility. Are you looking at maintaining the 11 FTEs or are you going to put forward an argument that you need more?

Mr Bluemmel: Ideally, really at the moment we can afford around 12 FTEs so we are a little below our full complement. My normal complement, I would say, is 12 FTE and I am certainly hoping to get back up to that. The issue of course is with the budget after the agency expenditure review process. That is where I have to make things fit. I can probably make it fit fairly close to 12 because I have quite a number of people who are on flexible working arrangements for various reasons. In my office I think that works extremely well. It may well be that I end up having a headcount of 12 or even 13, but an FTE of perhaps 11.5 or thereabouts. If we optimise that sort of structure and the skillset, I think that will be very productive.

Hon SALLY TALBOT: I can keep going. Can I ask one more question?

The CHAIR: Yes, you can go all the way to 1.30 pm.

Hon SALLY TALBOT: We had the famous Integrity Coordinating Group reference, which seems to have not been referred to in the last three or four years. Do you still have an involvement with that group?

Mr Bluemmel: Yes, I do. In fact, I have informally chaired the group for the last year. We sort of take turns. It is not a decision-making forum. The arrangements are very informal, so there is no

real actual chairing role other than undertaking the meeting itself and so on. We have decided to go from the previous three to four meetings a year; we are now going to meet twice a year and rely on more informal discussion as and when required in between those meetings. We still get such positive feedback from agencies about the guidance and materials and events that the ICG coordinates. Let me give one example: a couple of years ago we undertook an event on information and confidentiality and so on. What you had was hundreds of public servants in a room, and all five of us members of the ICG were there—the Public Sector Commissioner, the Ombudsman, the Auditor General, the public service commissioner and myself—and you had public servants who were able to hear from all of us at once and we were all talking about the different elements of confidentiality and secrecy, but also I was then able to inject this issue of freedom of information and information disclosure. Without coordinating that through the ICG, what may well have happened is that you would have these hundreds of public servants in a room hearing from, perhaps, the Public Sector Commissioner about the importance of your statutory confidentiality obligations as a public servant, and then they might leave that room, take that a bit out of context, and next time they get an FOI application they might be more reluctant to release information because they think, “Oh, I’ve just heard about how dangerous inappropriate release of information is, therefore I am not going to release anything.”

[1.30 pm]

Hon SALLY TALBOT: Play safe.

Mr Bluemmel: Play safe, exactly. Of course, that would be taking it out of the context; the Public Sector Commissioner would never say you cannot ever release anything, but because I was right there, people in the audience were able to ask all five of us, to give us scenarios: What should I have done in this case? What can I do if this happens? The five of us were all able to be there in one forum and answer all those questions really clearly and concisely, and no-one would have left the room with any ambiguity about what does this mean for FOI or what does this mean when the auditor comes calling. It was all there and very, very consistent.

We also produce, or have produced in the past, a number of publications on things like gifts, benefits and hospitality in the sector and so on. Of course, there are plenty of risks around that. Again, the feedback we get from agencies about how useful these are—in fact, we get lots of feedback from other jurisdictions where the integrity agencies do not work together anywhere near as well as I think we do here, and they provide us with feedback on these products and say, “Well, this is really useful. I wish we could do something similar.”

Hon SALLY TALBOT: I must say that your enthusiasm is so infectious that you might consider giving it a more substantive reference in next year’s annual report.

Mr Bluemmel: I would be happy to do that.

The CHAIR: Noting the time, I might just leave it at that, I think.

On behalf of the committee, I thank you for your attendance today. The committee will forward the transcript of evidence, which highlights the questions taken on notice, together with any additional questions in writing, after Monday, 31 October 2016. Responses to these questions will be requested within 10 working days of receipt of the questions. Should you be unable to meet this due date, please advise the committee in writing as soon as possible beforehand. The advice is to include specific reasons as to why the due date cannot be met.

If members have any unasked questions, I ask them to submit these to the committee clerk at the close of the hearing.

Once again, thank you for your attendance today.

Mr Bluemmel: Thank you very much.

Hearing concluded at 1.32 pm
