

STATE ARCHIVIST REPORT

TO

HON. LEEANNE ENOCH, MP,

MINISTER FOR INNOVATION, SCIENCE AND THE

DIGITAL ECONOMY AND MINISTER FOR SMALL

BUSINESS

**STATUTORY INVESTIGATION INTO ALLEGATIONS OF UNAUTHORISED
DISPOSAL OF PUBLIC RECORDS BY HONOURABLE MARK BAILEY MP,
MINISTER FOR MAIN ROADS, ROAD SAFETY AND PORTS AND MINISTER
FOR ENERGY, BIO FUELS AND WATER SUPPLY**

5 SEPTEMBER 2017



1. EXECUTIVE SUMMARY

This report is an independent report provided to the Minister responsible for the State Archives, Minister Leeanne Enoch, fulfilling the State Archivist's statutory responsibility to investigate allegations of unauthorised disposal of public records by Mark Bailey MP, Minister for Main Roads, Road Safety and Ports and Minister for Energy, Bio Fuels and Water Supply.

This investigation sought to answer a number of core questions:

1. Were there public records within the private email account of Minister Bailey at the time of the deletion of the account on 5 February?
2. If there were public records present, were any disposed of without appropriate authorisation?
3. Did the actions of Minister Bailey in managing the public records contained within this private email account result in a breach of the *Public Records Act*?
4. What actions if any should be taken in response to breach of the *Public Records Act*?
5. What other actions in regard to fulfilling the purpose of the *Public Records Act* are required to be undertaken by the State Archivist or others as a result of this investigation?

WERE THERE PUBLIC RECORDS WITHIN THE PRIVATE EMAIL ACCOUNT OF MINISTER BAILEY AT THE TIME OF THE DELETION OF THE ACCOUNT ON 5 FEBRUARY?

There have been 1199 public records identified that were within the account at the time of deletion.

IF THERE WERE PUBLIC RECORDS PRESENT, WERE ANY DISPOSED OF WITHOUT APPROPRIATE AUTHORISATION?

Of the 1199 public records identified: 539 were able to be disposed of without additional authorisation, as they were deemed as transitory public records and were not required to be retained beyond their immediate business use. Minister Bailey had authorisation to dispose of these 539 public records.

660 were required to be retained for periods ranging from 2 years to permanent retention. 69 records were deemed as having permanent value and were required to be retained permanently. 355 records were required to be retained for 7 years. Minister Bailey had no authorisation to dispose of these 660 public records and their disposal, if actioned, would be deemed as occurring without appropriate authorisation which would be a breach of section 13 of the *Public Records Act*.

DID THE ACTIONS OF MINISTER BAILEY IN MANAGING THE PUBLIC RECORDS CONTAINED WITHIN HIS PRIVATE EMAIL ACCOUNT RESULT IN A BREACH OF THE *PUBLIC RECORDS ACT*?

The State Archivist's view is that Minister Bailey's actions in managing the public records within his private email account are likely to have resulted in multiple breaches of the *Public Records Act*. Specifically:

Section 7 – Making and keeping of public records

Section 8 – Custody and preservation of public records

Section 13 – Disposal of public records

Section 14 – Public authority must ensure particular records remain accessible.

WHAT ACTIONS IF ANY SHOULD BE TAKEN IN RESPONSE TO BREACH OF THE *PUBLIC RECORDS ACT*?

At the most basic level the allegation that Minister Bailey deleted 660 public records from his private email account without appropriate authorisation is an attack on the accountability of government and its place in a free and democratic society. These records document potentially

decisions he has made as a Minister of State, the factors influencing his decisions and how those decisions were implemented. Public records are a cornerstone of accountable government and allow scrutiny from the public of the decisions of those who are elected to act on their behalf. The position of the State Archivist is that the allegations against Minister Bailey, in principle are significant as they relate to a senior official of the Queensland Government bypassing a statutory obligation in place to promote the accountability of government.

However it is the view of the State Archivist that there are likely to be difficulties in successful prosecution of the breaches of sections 13 and 14 of the Act due to Minister Bailey's reactivation of the email account on 3 March 2017.

The breaches of sections 7 and 8 are potentially more significant. These breaches both potentially could have resulted in Minister Bailey breaching section 204 of the *Criminal Code*. They also potentially set a significant precedent as there is potential other Ministers and ministerial staff could also be in breach of these sections of the Act if they are using their private email accounts without appropriate processes in place to manage public records created or received within them.

A further consideration must be whether it is in the public interest to seek the prosecution of Minister Bailey for breach of the *Public Records Act*. The breaches of sections 13 and 14 are likely to have been for a period of around 26 days – 5 February 2017 to 3 March 2017, and arguably were remedied by the reactivation of the private email account. It must also be acknowledged, that at this point, we are not aware of any public records that have been permanently lost that were within the account at the time of deletion.

There are clearly considerations around the actions of Minister Bailey in principle and in particular the message sent to others if Minister Bailey's actions go unpunished, however there is also a question of equity in terms of whether the punishment of Minister Bailey, personally, greatly exceeds his "crime". The State Archivist's view is that Minister Bailey's practices have potential to be widespread and action against Minister Bailey may well be deemed as scapegoating.

A further learning from this matter relates to the independence of the State Archivist and the ability to undertake his statutory functions without external interference. As an Executive Director of the Department of Science, Information Technology and Innovation (DSITI) and also the incumbent of the statutory role of State Archivist, the potential for conflict of interest emerged a number of times. It must be stressed there was no attempt to interfere with the investigation itself, there were however instances where the ability of the State Archivist to undertake statutory functions was impeded, in particular the issue of guidance around recordkeeping practices. The ability for the State Archivist to undertake his statutory functions without interference must be enhanced.

WHAT OTHER ACTIONS ARE REQUIRED TO BE UNDERTAKEN BY THE STATE ARCHIVIST OR OTHERS AS A RESULT OF THIS INVESTIGATION?

The investigation highlighted the potential for widespread creation of public records in the private email accounts of Ministers and their staff. Without appropriate processes to manage public records created within the private email accounts of Ministers there is a significant risk of further breaches of the *Public Records Act* by other Ministers and their staff.

As a result the State Archivist as a matter of urgency will be reviewing the processes in place to capture and manage public records within the private email accounts of all Ministers and their offices. In addition the State Archivist will be contacting Ministers from the last two

governments to request they review their private email accounts for public records that should be transferred to the State Archivist.

How this matter has arisen has highlighted that significant changes are required in the *Public Records Act* and the support Ministerial Services, the Queensland State Archives (QSA) and others give to Ministers in the area of recordkeeping. The passive approach QSA has historically always taken to monitoring recordkeeping practice and compliance with its guidance is ineffective and inadequate. Significant changes are required at QSA to address the standard of government recordkeeping practice.

KEY RECOMMENDATIONS

- The State Archivist considers whether prosecution is appropriate for multiple breaches of the *Public Records Act*.
- The Office of the Information Commissioner review this matter to consider if breaches of the *Right to Information Act* and *Information Privacy Act* have occurred.
- The State Archivist undertakes an urgent review of the processes in place for all current Ministers and ministerial staff in managing public records created or received within their private email accounts.
- The State Archivist contacts former Ministers of the last two Governments to request that they review their private email accounts for public records that may be in their possession.
- The State Archivist reviews urgently the guidance provided on the management of public records within email, private email and social media accounts.
- Department of the Premier and Cabinet (DPC) reviews urgently the training and support it provides Ministers and their staff in managing public records. DPC should work closely with the State Archivist in developing and delivering this training and support.
- DPC reviews urgently the guidance it provides via the *Ministerial Handbook* and *Ministerial Information Security Policy* around the management of public records within the private email and social media accounts of Ministers and their staff. This needs to have regard to QSA guidance.
- An urgent amendment of the *Public Records Act* to include a requirement that all public authorities must comply with mandatory guidelines issued by the State Archivist.
- The State Archivist develop a priority set of mandatory guidelines for implementation.
- The State Archivist develops a team to undertake monitoring of compliance with mandatory guidelines. Additional resources and budget will be required for QSA to undertake these tasks.
- Urgent amendment of the *Public Records Act* to include a requirement that all public authorities must ensure public records created or received in private email and social media accounts are forwarded to official systems within 20 days of creation or transmission; or the inclusion of this requirement as a mandatory guideline.
- The State Archivist reviews all guidance and retention and disposal schedules relevant to Ministers.
- The State Archivist reviews recordkeeping systems and processes in key departments supporting Ministers.
- An alliance of integrity agencies is established including the State Archivist, Information Commissioner, Integrity Commissioner, Auditor-General, Ombudsman, Crime and Corruption Commissioner and Public Service Commissioner to raise awareness and promote the importance of recordkeeping for good governance and government accountability.
- Measures to protect the independence of the State Archivist in undertaking statutory functions must be enhanced.

2. INTRODUCTION

On 28 February 2017, The Australian newspaper reported an allegation that the Honourable Mark Bailey MP, Minister for Main Roads, Road Safety and Ports and Minister for Energy, Bio Fuels and Water Supply, (Minister) had deleted the private email account mangocube6@yahoo.co.uk. It was further alleged that this email account may have contained emails that constituted "Public Records" under the *Public Records Act 2002* (the Act).

On 1 March 2017, allegations concerning the use, and deactivation, of the Minister's private email account were referred to the CCC. The CCC directed DPC to work collaboratively with the State Archivist to review the contents of the emails retrieved by the CCC to determine if any of them constituted a public record as defined by the *Public Records Act 2002*. On 15 June 2017, DPC provided a report to CCC on this matter which identified 1167 potential public records that had been potentially disposed of without appropriate authorisation and a further 47 for which insufficient information was available to determine their status as public records. Following consideration of the report, and an examination of those emails identified as public records, the CCC considered there was sufficient evidence to raise a reasonable suspicion of corrupt conduct relating to the potential unauthorised disposal of public records by the Minister in breach of section 13 of the Act.

On 19 July 2017, the CCC wrote to the State Archivist acknowledging that in Queensland, the State Archivist is responsible for ensuring that public records are appropriately made, managed and preserved and that the Act bestows upon the State Archivist relevant powers to assist in the investigation of breaches of the Act. The State Archivist reported to CCC on 30 August 2017 and 5 September 2017.

This report is an independent report provided to the Minister responsible for the State Archives, Minister Leeanne Enoch fulfilling the State Archivist's statutory obligation to independently investigate in matters relating to the *Public Records Act* and the responsibilities of the State Archivist.

3. SCOPE OF INVESTIGATION

The investigation considered whether the actions of Minister Bailey in the management of public records within his private email account, may have amounted to a breach of the *Public Records Act 2002* (the Act). In particular, section 13 of the Act which relates to unauthorised disposal of public records.

Key focus was on confirming emails and attachments within the private email account at the time of deletion were public records; confirming the required retention periods for any public records identified; and assessing if there had been a breach of the *Public Records Act*, in particular related to unauthorised disposal of public records.

To undertake the investigation we have assumed that the USB information provided to us is reflective of what was downloaded from the private email account on reactivation on 3 March 2017 and this is reflective of the information within the account at the time of deletion of the private email account on 5 February 2017. However we cannot confirm that other public records were not within the account at any other time prior to deletion of the account or that the data provided to us is identical to the data within the account on reactivation.

During the investigation Minister Bailey was contacted as to details of any emails he had sent from his private email account to qld.gov.au addresses, essentially the forwarding of emails to official systems. From the perspective of the State Archivist if the emails had been forwarded we considered them likely to have been appropriately managed. Minister Bailey provided a list of 351 emails he had forwarded from his private email account in this way. On review the QSA investigative team found that a significant majority of these emails had not been provided in the data for review at any point. There is little doubt that Minister Bailey had forwarded these emails from his private email account. These emails were either missing from the data made available to us, but within Minister Bailey's copy of the data or Minister Bailey had retrieved them from other accounts, potentially the accounts he had forwarded them to.

In addition in response to a request to provide 87 emails and their attachments which the State Archivist was unable to access from the data provided by CCC, Minister Bailey was able to provide all of the emails and their attachments. This highlighting again that there are either differences in the data provided to us and Minister Bailey's copy of the data or Minister Bailey had retrieved them from other sources.

Overall we have some concerns as to the completeness and integrity of the data we have been asked to review and in particular that there may have been other public records in the private email account at or prior to the time of deletion which we have not been able to review. It must be noted that it was Minister Bailey who provided the information that had not made available to us in the data provided by CCC, without his assistance we would have not been aware of the potential incompleteness of the data we were asked to review. Whilst it doesn't impact the validity of the conclusions on data we were able to review, it does potentially highlight that other public records may also have been within the account at some point which we have not been able to review.

The scope of the State Archivist's investigation as it related to the *Public Records Act* did not seek to provide opinion or judgement around the content of the public records, outside of their required retention period, and did not explicitly consider the Minister's intent in the deletion of the private email account.

Detailed steps conducted to date across both reviews include the following:

STAGE 1: REVIEW BY THE DEPARTMENT OF THE PREMIER AND CABINET (DPC) IN COLLABORATION WITH THE QUEENSLAND STATE ARCHIVES (QSA)

- Minister Bailey's private email account recovered by Minister Bailey, with assistance from the CCC – 3 March 2017
- Emails and attachments provided to DPC by CCC for review - 23 March 2017
- Emails and attachments for the relevant period 16 February 2015 to 28 February 2017 reviewed by Crown Law and QSA to identify potential public records
- 1167 potential public records identified that related to the relevant period
- 5,469 "not" public records identified that related to the relevant period
- 47 emails were not able to be categorised due to an inability to access attachments or insufficient information was available to determine their status as a public record
- DPC report to CCC – 15 June 2017.

STAGE 2: INVESTIGATION OF THE STATE ARCHIVIST

- CCC referred matter for further investigation to State Archivist - 19 July 2017
- CCC provided State Archivist a USB with 1167 potential public records and 47 uncategorised emails recovered from the private email account of Minister Bailey in Stage 1 of the investigation – 21 July 2017
- QSA team reviewed the emails to confirm their classification as public records and sentenced records in terms of their appropriate retention period- 23 July 2017 to 18 August 2017 (Methodology below)
- QSA Management team reviewed decisions made around classification as public records and appropriate retention periods – 23 July 2017 to 18 August 2017
- Independent panel of senior Australian Archivists reviewed decisions made around classification as public records and appropriate retention period 21-22 August 2017
- Minister Bailey was contacted to confirm processes he had in place to identify and manage public records contained within his private email account - 1 August 2017
- CCC provided assistance in reviewing attachments which were potential public records which QSA were unable to view during the investigation. This was to determine whether public records had been destroyed as a result of the deletion and reactivation of the private email account
- Legal advice provided in relation to potential breach of the *Public Records Act 2002* – 23 July 2017 to 25 August 2017
- Minister Bailey contacted to provide copies of the attachments for 87 emails which the QSA investigative team have been unable to recover or view to date – 29 August 2017
- State Archivist Interim report to CCC – 30 August 2017
- Minister Bailey provided copies of all the attachments requested – 1 September 2017
- State Archivist Final report to CCC – 5 September 2017

4. OVERVIEW OF METHODOLOGY FOR CLASSIFICATION AS A PUBLIC RECORD AND ESTABLISHING RETENTION PERIOD

The purpose of the methodology (Attachment A) was to provide a consistent approach to all decisions made by the QSA investigative team. The approach taken included up to seven individual assessments of the emails by experienced personnel from within QSA and senior independent archival professionals. This was to ensure the absolute integrity of decisions made as to whether an email or attachment were a public record or not.

The following provides a summary of key elements of the methodology used to identify and sentence public records present within the private email account of Minister Bailey at the time of deletion on 5 February 2017:

- CCC provided all emails and attachments that had been identified as potential public records during the DPC review. The emails and attachments were provided to QSA on 21 July 2017.
- All emails and attachments were printed, placed in a folder and numbered using a sequential numbering pattern starting at #1.
- Attachments that could not be opened were noted and CCC assistance provided to attempt to open them.
- Decisions around sentencing were made with the assumption that the decision was to be made by Minister Bailey or one his staff, rather than an expert archivist. The sentencing decisions made were moderate interpretations of guidance rather than a strict interpretation made with the benefit of hindsight and archival expertise.
- The initial, level 1, reviewers were each assigned approximately 400 emails to sentence and assess against the sentencing guide (Attachment A, sections 2 and 3) developed for the investigation. Their decisions were recorded in a spreadsheet.
- Upon completion of the review the data captured in the spreadsheet was merged into word documents, printed and placed with each corresponding email. The printout acted as a coversheet and recorded decisions made by reviewers.
- The level 1 reviewers reassessed emails that had been reviewed by other level 1 reviewers. The purpose of this review was to provide an initial integrity check on decisions made. These 2nd level 1 review decisions were handwritten on each coversheet.
- The level 2 reviewers assessed the decisions made by the level 1 reviewers and justified their reason if they disagreed on the coversheets. They reviewed all 1167 emails and the 47 unclassified emails.
- Throughout the QSA review (level 1 and 2 reviews) sentencing rules were continually reassessed and confirmed (Attachment A, section 3.3 for the rules). The purpose of these rules was to provide consistency in the classification and sentencing of the emails across all levels of the review process.
- The level 3 reviewers consisted of three independent experts in archival and recordkeeping principles and practices. They assessed the methodology and rules used to review the emails to provide an independent and objective view. They also reviewed a sample of the emails that fell under each sentencing rule to provide an additional level of comfort around decisions made.
- A level 4 review by independent legal counsel was to review the emails marked as contentious (Attachment A, section 3.3 for a definition), however no emails were referred for additional legal review.

5. KEY MATTERS FOR LEGAL CONSIDERATION

PUBLIC RECORDS ACT 2002

- Breach of section 7 of the *Public Records Act* – Making and keeping of Public Records
- Breach of section 8 of the *Public Records Act* – Custody and preservation of Public Records
- Breach of section 13 of the *Public Records Act* – Disposal of Public Records
- Breach of section 14 of the *Public Records Act* – Public Authority must ensure particular records remain accessible

OTHER RELEVANT LEGISLATION

- Breach of the *Right to Information Act 2009*

6. BACKGROUND

KEY EVENTS & TIMELINE

- 17 January 2017 - The Australian newspaper reported allegations of secret lobbying by the Electrical Trades Union (ETU) of Minister Mark Bailey in regard to an email exchange with Mr. Peter Simpson of the ETU on November 26 2016.
- 17 January 2017 - the Premier made statement that she will instruct her Ministers to stop using their private email accounts for official business at the Cabinet meeting on 23 January 2017.
- 19 January 2017 - The Australian made a Right to Information request (RTI) application for emails related to lobbying by the ETU in matters relating to the merger of superannuation funds contained in the private email account of Minister Bailey mangocube6@yahoo.co.uk.
- 24 January 2017 - Ministerial Office of Minister Bailey made aware of RTI application
- 25 January 2017 - The Australian newspaper reports “Mark Bailey refuses to release emails on super fund merger” stating Minister Bailey’s spokesman said “the minister would not be releasing the correspondence on his private email account”
- 3 February 2017 - Minister’s Chief of Staff emails Minister Bailey about RTI application
- 5 February 2017 - Minister Bailey deletes his private email account. Minister Bailey’s use of the private email account for official purposes continued until 5 February 2017. Minister Bailey deleted his account 16 days after being told by the Premier not to use private email accounts for official business, and 11 days after his office was made aware of the RTI application
- 6 February 2017 - Minister and his Chief of Staff discuss RTI application. Minister’s states this was the date he was first aware of the RTI application
- 28 February 2017 - The Australian newspaper reports the Minister has deleted the private email account to avoid RTI application
- 28 February 2017 – Minister Bailey answers questions in Parliament relating to the deletion of his private email account
- 28 February 2017 - Allegations concerning the use, and deactivation, of the Minister’s private email account were referred to Director General (DG) of DPC by the Premier for investigation
- 1 March 2017, State Archivist informs DPC, DSITI, CCC and the Minister responsible for State Archives that the State Archivist has a statutory obligation to investigate this matter
- 1 March 2017 - The Queensland opposition refer the allegations to CCC
- 3 March 2017 – Minister Bailey, with the assistance of CCC, reactivates the private email account
- 6-10 March 2017, The State Archivist sought to issue urgent advice on this matter to CEO’s of public authorities and Ministers. The issue of advice on recordkeeping practices is a statutory function of the State Archivist.
- 16 March 2017 - CCC direct DPC to work collaboratively with the State Archivist to review the contents of the emails retrieved by the CCC to determine if any of them constituted a public record as defined by the *Public Records Act*. Also on 16 March 2017 the CCC requested the State Archivist postpone his independent review until CCC had ended its interest in the matter.
- 20 March 2017 - Dave Stewart, DG of DPC removed from CCC/DPC review in light of perceived potential perception of conflict of interest.
- 15 June 2017 - DPC provide a report to CCC on this matter. The DPC report identified that the Minister’s private email account contained 1167 potential public records that related to the period 16 February 2015 to 28 February 2017 and a further 47 which were not able to accessed fully. The DPC review did not include any steps to “sentence” the potential records in terms of their required retention periods.
- 19 July 2017 - CCC announce that following consideration of the report, they considered there was sufficient evidence to raise a reasonable suspicion of corrupt conduct relating to the potential destruction of public records by the Minister in breach of section 13 of the Act.

- 19 July 2017 - CCC refer the matter for further investigation by the State Archivist.
- State Archivist's reports to CCC issued 30 August 2017 and 5 September 2017

7. RESULTS & DISCUSSION OF EVIDENCE

IDENTIFICATION & UNAUTHORISED DISPOSAL OF PUBLIC RECORDS— QSA ASSESSMENT

It is important to note that the use of a private email account by a Minister for portfolio duties is not in itself a breach of the *Public Records Act*, whilst there are clear prohibitions outlined in the *Ministerial Information Security Policy* around the use of private email accounts for official business, the Act itself does not prohibit the use of private email accounts. The State Archivist recognises that public records can be created in many different modes of interaction including private emails and social media. The guidance supporting the Act in this area issued by QSA recognises this fact and reflects the priority should be to ensure that Ministers and others have appropriate processes in place to manage all public records created no matter where they are created.

A simple ban of private email use by Ministers, although arguably a logical solution is not considered realistic, practical or effective given the widespread use of private email today and the high likelihood that Ministers will potentially receive emails that relate to their portfolio responsibilities directly from members of the public and other organisations via their private email accounts.

These emails are potentially public records, but their initial creation was potentially outside of the control of the recipient. To simply assume that this does not occur and that a ban of private email use by Ministers is sufficient is unrealistic. The current investigation has highlighted how common this practice actually is and it has clearly shown it extends beyond the private email account of Minister Bailey to at least a number of other Ministers private email accounts. The Queensland State Archivist's position around the use of private email account and the management of public records within them is consistent with practices in most similar jurisdictions which recognise that public records will be created outside of official systems and the absolute priority, in terms of maintaining full and accurate records of the activities of government, is that processes are in place to manage records created wherever they are created.

The investigation primarily sought to identify whether there were any public records disposed of without appropriate authorisation when the private email account was deleted on 5 February 2017. Authorisation in this context can normally only be given through Retention and Disposal schedules (schedules) approved by the State Archivist. In this instance the Office of a Minister of the Crown and Parliamentary Secretaries Retention and Disposal Schedule and the General Retention and Disposal Schedule (GRDS).

The QSA investigative team identified all emails and attachments that were public records present when the private email account was deleted. They then "sentenced" the public records using the appropriate schedules to identify the appropriate retention periods. It is important to note that some public records do not need to be retained for significant periods. Some public records can be disposed of once their business use has ended. These records are deemed transitory records. In addition, where a series of emails are simply a continuing thread in the same conversation, in many cases the requirement is that only the last email in the conversation



thread, if it contains all earlier parts of the conversation should be retained as a public record. The exception being where attachments vary on emails in the same conversation.

Part of the investigative process involved separating the public records that were transitory, and thus legitimately able to have been disposed, from those that were required to be retained for longer periods. It is the public records that were required to be retained for 2 years or more that are relevant to the question of unauthorised disposal in this instance. In simple terms if there were any public records in the private email account with a retention period of 2 years or more, not held elsewhere, they were potentially disposed of without appropriate authorisation, subject to the actions of deleting the account being deemed as unauthorised disposal under the Act.

The following is a summary of the number of public records and the relevant retention periods, identified within the private email account at the time of deletion of the account of 5 February 2017.

The number of potential public records identified in Stage 1 of this investigation was 1167 records plus an additional 47 that were unable to be categorised. As a result of work undertaken in Stage 2 the final number of emails and attachments identified to date c records is 1199 plus 13 that remain questionable due to a lack of context.

539 of the public records identified were deemed to be transitory and thus Minister Bailey had appropriate authority to dispose of them.

660 of the public records however were deemed as not transitory with required retention periods ranging from 2 years to permanent. Minister Bailey had no authority to dispose of these records at the time of deletion of the account. The 660 public records identified as requiring retention had the following retention periods:

# of Records	Required Retention Period
234	Required to be retained for 2 years
1	Required to be retained for 3 years
355	Required to be retained for 7 years
69	Required to be retained permanently
1	Required to be returned to Cabinet Secretariat before disposal
660	Total

There were a distinct group of emails that related to correspondence with the ETU which were considered as significant and have been highlighted below.

# of Records	Required Retention Period
22	Transitory
54	Required to be retained for 2 years
227	Required to be retained for 7 years
50	Required to be retained permanently
353	Total

Minister Bailey was contacted on 15 August 2017 to confirm emails he had forwarded on to official systems. As a result of the response provided we were able to confirm that none of the

660 records noted above had been forwarded to official .qld.gov.au addresses from his private email account.

The QSA investigative team noted a numbers of features of Minister Bailey's email practices within this account. Minister Bailey has a large portfolio and was clearly busy. Within his private email account, he received a lot of emails, from a core group of people. Out of the 1199 emails that have been deemed public records, less than 70 were actually conversations clearly initiated by Minister Bailey. Minister Bailey's responses were often limited and mostly in simple acknowledgement. In the early period of Minister Bailey's time in office the Minister tended to copy in his office staff 'for correspondence', indicating he had a process of sorts for capturing records, unfortunately this process does not seem to have continued past the early period of the Minister's time in office.

The volume of emails received over the period has a distinct pattern, of the 1199 emails that we would consider a public record, 321 were sent or received in the first month of his period as a Minister, 454 within the first 3 months, and 709 within the first 6 months. There was a noticeable change in the usage of the account for ministerial purposes from around November and December 2016. The change indicated a change from being seemingly his default contact point for his ministerial office staff, to being used as mostly an account to forward news articles for reference and limited contact with people. It is noticeable however RTI's related to the usage of his private email account started to be made in November 2016.

MINISTER BAILEY RESPONSE IN CONFIRMATION OF PROCESSES IN PLACE TO MANAGE PUBLIC RECORDS CREATED OR RECEIVED IN HIS PRIVATE EMAIL ACCOUNT

On 14 August 2017, the State Archivist asked Minister Bailey to outline the processes he had in place to manage emails within his private email account that related to his portfolio responsibilities. A central concern was to establish whether Minister Bailey had retained any of the relevant emails outside of this private email account, through for example forwarding to an official ministerial email address or printing of emails and attachments prior to his deletion of the account on 5 February 2017. Minister Bailey's response via his legal advisor was as follows:

"We advise that the process followed by Minister Bailey was that emails related to portfolio responsibilities would generally be sent, copied or forwarded to ministerial staff. Mr Bailey understood that emails sent and received by ministerial email accounts were automatically saved and backed up to the government server. The majority of documents that Mr Bailey's office handled, being correspondence, briefs etc. were not held within the ministerial office and were returned and captured by departmental processes. Our client and his office understood that the responsibility for storage and maintenance of decision making documents and records sat largely with the relevant department.

As a busy Minister dealing with a high volume of emails, texts and calls, Mr Bailey utilised two smartphones, one of which provided access to his personal email account. Mr Bailey would often use both smartphones at once, for example, reading on one whilst talking on the other. There were times, whether by oversight or because, for example, one phone was out of battery or temporarily misplaced, when Mr Bailey used his private email account to send work-related emails.

If Mr Bailey sent or received emails regarding his portfolio via his private email, it was usually to and from members of his staff using their ministerial email accounts. When Mr Bailey received emails from members of the public in his private email account that he thought should be registered to receive a formal response, he would forward the email to a member of his ministerial office for this purpose. As noted above, Mr Bailey expected (and

believes) emails sent to and from ministerial email accounts were systemically captured by the government server, such that they were properly preserved and recorded.

Before becoming a minister, Mr Bailey had previously worked in a number of ministerial offices as a senior ministerial staffer. In his experience, arrangements such as those outlined above are common, and he had not encountered more formal arrangements for the transfer of emails that could be potential public records from private email accounts to official record management systems.

Mr Bailey does not recall ever having been advised or instructed in respect of necessary processes for the management of emails that are potential public records sent or received from a private email account, and we note in that regard that the Ministerial Handbook provides no such guidance. Mr Bailey appreciates the benefit that guidance in this area would provide.”

It is important to note that the key guidance available to Minister Bailey in regard to the management of public records and the use of private email accounts as a Minister are provided via the *Ministerial Handbook*, the *Ministerial Information Security Policy* and the State Archivist.

Selected guidance within the *Ministerial Handbook* states:

Section 2.1 -

“All Ministers, Assistant Ministers and staff employed within Ministerial offices are provided with access to the Internet and email through the ministerial network.

The Ministerial Information Security Policy sets out the basic security requirements that everyone accessing these services through the ministerial network needs to be aware of and comply with. This policy includes information on the use of internet, email and social media.

Detailed IT security policies and procedures are in place in the Department of the Premier and Cabinet and apply to the ministerial network except where they conflict with policies and procedures detailed in the Ministerial Information Security Policy.”

Section 2.3 -

“Certain records of ministerial offices are public records under the Public Records Act 2002. These records may only be disposed of in accordance with the Disposal Authority issued by State Archives. Public records of any type or format (including electronic records, microfilm, sound recordings, films etc.) of ministerial offices cannot be legally destroyed or removed by an outgoing Minister without authorisation by the State Archivist.

Furthermore, computer systems cannot be wiped without full back ups.

Public records would include those that document a Minister’s work as a Minister of the Crown. They do not include electorate, party political or personal records

Disposal of Ministerial Records

The disposal of records includes their destruction, their removal from the custody of the creating agency, or their transfer to State Archives. The effective disposal of records is an essential part of good record management. The disposal of ministerial records should be in accordance with the disposal authority issued by State Archives.”

Of relevance to this investigation is that the *Ministerial Handbook* does make it clear the Minister has to comply with the *Public Records Act* in terms of disposal of public records. Whilst

the *Ministerial Handbook* itself doesn't expressly prohibit the use of private email accounts for ministerial purposes, the referenced *Ministerial Information Security Policy* does:

"A Queensland Government email address will be provided for business purposes. Controls will be put in place to maintain the confidentiality, integrity and availability of the system.

Email System

The use of an external, non-supported email system can pose a security risk to government information.

A centrally provided email system will be used within the Ministerial network that incorporates appropriate access controls for each user. No other email systems, including those offered by Internet Service Providers (ISPs) or external web-based mail systems are to be used for official purposes."

The prohibition of private email for official purposes is arguably a logical solution, however the current investigation has highlighted how unrealistic an assumption it is. As noted above a high proportion of Minister Bailey's private emails that we have deemed as public records were instigated by a third party not the Minister. Unfortunately, the *Ministerial Handbook* provides no guidance around the management of public records received or created within private email or social media accounts. It arguably assumes, as it is prohibited, it does not occur, unfortunately it is clear that is far from the situation.

It is significant to note that the *Ministerial Handbook* is not consistent with the guidance of the State Archivist in this area which assumes, more realistically, that it may occur. QSA guidance in 2015 stated:

"Capturing emails is simple – save as you would any other record. So whatever recordkeeping application, shared drive, other business or collaborative application you're using, save your emails accordingly and apply any additional metadata as required.

Remember, most email systems are not designed with recordkeeping functionality, so you will likely need to save your emails elsewhere if they are evidence of a business activity or decision. Remember, email archives and back-up tapes are not suitable methods of capture.

In your agency's data entry standard, make suggestions on the creation and capture of emails:

- *include as much detail as possible in the subject field*
- *suggest a standard for capturing emails e.g. Email from [name] to [name] regarding [subject].*

Think about business rules relating to emails:

- *if you are the sender – you are responsible for capture*
- *if you have received an email from an external sender and you are the only recipient in your agency – you are responsible for capture*
- *if you have received an email from an external sender and you are one of many recipients in your agency – the person who is most directly involved in the issue or task is responsible for capture.*

Remember to:

- *capture emails at the end of a thread where possible (rather than every to-and-from)*

- *capture attachments to emails*
- *capture work related emails from your personal email accounts if they are used for business*
- *check the relevant Retention and Disposal Schedule to ensure you don't delete any business emails that are required to be kept for a certain period of time."*

State Archivists have highlighted on a number of occasions inconsistency between the guidance of the State Archivist and the *Ministerial Handbook*. As a key guide for Ministers, this inconsistency in the *Ministerial Handbook* is significant.

The evidence of this investigation is that the use of private email accounts by Ministers is potentially widespread and more significantly, in terms of the results of this investigation, emails from members of the public that are public records are sent to the private email accounts of Ministers on a regular basis. The *Ministerial Information Security Policy* and the *Ministerial Handbook* are both silent on this fact and are both ineffective in terms of guidance on this matter. Minister Bailey's response around the Handbook has validity. The *Ministerial Handbook* provide no guidance on the management of public records received or created within private email accounts, however the *Ministerial Handbook* does highlight that disposal of public records is subject to the authority of the State Archivist.

As a responsible public authority under the *Public Records Act*, Minister Bailey has a statutory obligation to make and keep full and accurate records of his activities and to have regard to any relevant policy, standards and guidelines made the State Archivist about the making and keeping of public records.

Legal advice previously obtained was that the meaning of "have regard to" is that public authorities, in this case the Minister, must take the policies, standards and guidelines made by the State Archivist into account when managing their public records obligations under the Act, and this should extend to "seeking out" the relevant guidance that as a public authority they are required to have regard to. Essentially that they should routinely ensure that any new or relevant guidance is identified and is considered given their statutory obligation to make and keep public records.

In terms of the State Archivist, and QSA and their responsibilities there is a statutory duty to "promote" efficient and effective methods, procedures and systems for "making, managing, keeping, storing, disposing of, preserving and using public records" under section 24(a) of the Act and a statutory duty to "give advice about the making, managing, keeping and preserving of public records" under section 24(f) of the Act, but there is no statutory duty imposed on the State Archivist that requires the State Archivist to ensure that every public authority is aware of their obligations under the Act. The compliance obligation is conferred on the regulated party, being the relevant public authority, the Minister in this instance.

The obligations of a public authority under section 7(1) of the Act are cast in mandatory terms and there is an obligation under section 7(2) of the Act imposed on the executive officer of a public authority to ensure that the public authority complies with section 7(1) of the Act. This means that a public authority cannot legally argue that the reason why it failed to meet its compliance obligations under section 7 of the Act was because the State Archivist failed to ensure that the public authority was aware of its compliance obligations. The relevant offence where a public authority fails to make and keep full and accurate records of its activities is potentially the offence under section 204 of the *Criminal Code*, of failing to do something which a *person* (i.e. the Minister) was required to do under the Act. This matter is explored in detail in the legal section of this report.

The State Archivist guidance, noted above, which as a Minister, Minister Bailey must have regard to, was available during the relevant period of use of the private email account on the Queensland State Archives website www.archives.qld.gov.au.

Minor edits in the State Archivist guidance were made on 3 February 2017, and thus at the time of deletion the guidance stated:

“You should decide which emails to capture using the same criteria as all other records.

Once you have decided that you need to capture an email documenting a business activity or decision, remember to:

- *capture emails at the end of a thread where possible (rather than every to-and-from)*
- *capture attachments to emails*
- *capture work related emails from your personal email accounts if they are used for business*
- *check the relevant retention and disposal schedule to ensure you don't delete business emails that are required to be kept for a certain period of time.*

Most email systems do not have sufficient recordkeeping functionality to properly capture and manage emails. Email archives and back-up tapes are not suitable methods of capture.

Procedures and processes may need to include a standard, and business rules for who, when, where and how to capture emails (e.g. standard naming conventions and detailed subject fields).

Some business rules you could include are:

- *if you are the sender—you are responsible for capture*
- *if you have received an email from an external sender and you are the only recipient in your agency—you are responsible for capture*
- *if you have received an email from an external sender and you are one of many recipients in your agency—the person who is most directly involved in the issue or task is responsible for capture.”*

Minister Bailey's response around processes he had in place indicate a significant lack of understanding of what is required under the *Public Records Act* in terms of his responsibility as a Minister to make and keep full and accurate records of his activities and his statutory obligation to have “regard” to the guidelines made by the State Archivist about the making and keeping of public records. It is clear that Minister Bailey was reliant on Ministerial Services guidance which is unfortunately largely silent on the matter and relied, also it seems, on his prior experiences in this area.

In terms of the State Archivist and QSA, we must also acknowledge our own failures. Prior to 2015, the State Archivist or the Minister responsible for QSA wrote to incoming Ministers around their responsibilities in recordkeeping. This guidance was not provided by the Acting State Archivist when the current Government commenced in February 2015. A later Acting State Archivist subsequently made a number of attempts in 2015 and 2016 to engage with Ministerial Services to provide Ministers more guidance in this area, however no progress was made in facilitating this.

From August 2016, onwards the current State Archivist has highlighted significant concern in the standard of government recordkeeping across all of the public sector in Queensland and the ineffectiveness of QSA services in seeking to address this. It is important to note responsibility for effective recordkeeping doesn't lie with the State Archivist, it lies with the executive officers

of public agencies and Ministers. QSA's role is largely to provide guidance to which public authorities must have regard to in order to manage public records effectively. Based on agencies own self-assessment of their recordkeeping practices, in biennial surveys conducted by QSA, less than 15% of public agencies meet what QSA would deem a minimum standard of recordkeeping practice. The executive officers of the main State government departments were informed of this in October 2016 at a meeting of the CE Leadership Board.

QSA has been actively looking to transform the quality of guidance it provides over the last twelve months, however significant progress is likely to take several years with current resources available to QSA. QSA recognised over a year ago that its guidance needs to become more practical and relevant and that more effective means to communicate this guidance need to be developed. However, the single biggest factor, in the view of the State Archivist, in the current poor standard of government recordkeeping, of which Minister Bailey's action is arguably just a symptom, is that QSA guidance is not expressly mandatory in key areas, it doesn't really matter how good QSA guidance actually is if it is optional whether to follow it or in this case even to have regard to it. The *Public Records Act* itself is a major factor in the poor standard of recordkeeping in Queensland. The review of the Act is a priority for the State Archivist.

As noted, above compliance with the *Public Records Act* in terms of making and keeping full and accurate records is a statutory obligation for public authorities, including Ministers. However, following the guidance of the State Archivist is only something that a public authority has to show "regard" to. Essentially the guidance of the State Archivist is frequently "optional" under the Act and not actively monitored, yet to comply with the statutory obligation to make and keep full and accurate records it is extremely likely that a public authority will need to comply with the guidance of the State Archivist. It is a significant contradiction in the Act and from the perspective of the State Archivist is the most significant factor in the poor standard of government recordkeeping across many public agencies. If Ministerial Services and Minister Bailey were required to follow the guidance of the State Archivist in this area it is possible that this issue would have been avoided. The Queensland *Public Records Act* is extremely weak in this regard. It is notable for example that New South Wales and New Zealand recordkeeping legislation does require mandatory compliance with certain guidance issued and it is actively monitored and enforced by the respective archival authority.

Whilst acknowledging that the support for Minister Bailey was potentially inadequate it is the State Archivist's view that as a Minister of State, Minister Bailey must be held accountable for his own actions. Minister Bailey had a statutory obligation to make and keep full and accurate records. The *Ministerial Handbook* makes it explicit that public records can only be disposed of under the authority of the State Archivist under the *Public Records Act*. The *Ministerial Information Security Policy* is further explicit that private email accounts should not be used for official ministerial business. Yet Minister Bailey failed to do this or seek guidance around what he should do. Minister Bailey or his ministerial office at no time during the last two years sought advice or guidance from the State Archivist or the staff of QSA on appropriate processes to manage his ministerial records. There is no evidence that the Minister gave "regard" to any relevant policy, standards or guidelines made by the State Archivist in this area. It is also apparent that Minister Bailey made no attempt to apply the appropriate retention and disposal schedules prior to the deletion of his private email account. Ignorance of a statutory obligation is not a valid excuse for a Minister of State and there is perhaps a reasonable and even greater expectation on a Minister to be an exemplar of good practice in areas such as recordkeeping. In this instance Minister Bailey was not compliant with the guidance of the State Archivist or Ministerial Services.

Whilst the investigation focused on the private email account of Minister Bailey it was extremely clear that the receipt and creation of public records in the private email accounts of other Ministers and ministerial staff was widespread. Denise Spinks and David Shankey, both at the time key members of the Minister's office, were frequently engaging directly with the Minister and correspondents to the Minister via their private email accounts on matters that were clearly related to the Minister's official portfolio responsibilities throughout the almost two-year time period of email use relevant to this investigation.

There is clear evidence of widespread use of private emails for official purposes by the Minister's key staff often directly with the Minister and on occasion dealing with portfolio matters referred by the Minister to their private email accounts rather than their official ministerial email accounts. The widespread nature and frequency of this practice was disturbing. The Minister's staff, Spinks and Shankey, are very experienced public officials they clearly would have known that this practice was against the official policy as outlined in the *Ministerial Information Security Policy* and elsewhere. It is again important to stress however that the use of private email accounts for official purposes is not a breach of the *Public Records Act*, if the individuals involved had appropriate processes in place to transfer these records to official ministerial systems and that they were not disposed of without appropriate authority. The State Archivist has not at this point sought confirmation on these processes in regard to other Ministers and ministerial staff, in order to avoid compromising the CCC investigation, however that confirmation will be an urgent follow up action for the State Archivist.

In terms of other Ministers, from the evidence of this investigation the use of private email accounts by Ministers for official purposes could be relatively widespread. Minister Curtis Pitt's private email account was frequently a notable recipient of the same emails sent to Minister Bailey's private email account from the ETU and emails from the private email account of Minister Pitt were part of a number of conversation threads we have deemed public records. Again, it is important to stress that whilst this maybe a breach of the *Ministerial Information Security Policy* it is not per se a breach of the *Public Records Act*, if the Minister had appropriate processes in place to manage these emails and did not dispose of them without appropriate authority.

Other Ministers noted from evidence in this investigation as using their private email accounts for official purposes included Ministers Miles and De Brenni. The evidence of the widespread use of private email accounts for official purposes, and more significantly the receipt of public records within the private email accounts of Ministers and their staff without their instigation is a significant concern for the State Archivist.

The main purposes of the *Public Records Act* are:

"to ensure the public records of Queensland are made, managed, kept and if appropriate preserved in a useable form for the benefit of present and future generations; and

public access to records under this Act is consistent with the principles of the Right to Information Act 2009 and the Information Privacy Act 2009".

The failure to adequately capture the public records of a Minister and his or her office is a significant omission and arguably attacks the transparency and accountability of government. It is perhaps the most significant finding of this investigation from the perspective of the State Archivist.

The conclusion in terms of whether there were any public records within the private email account of Minister Bailey at the time of deletion is overwhelming. There were 1199 public records within the private email account at the time of deletion. Many are administrative and

somewhat trivial, arguably of little long term value, however there are a number of significant public records in that they were required to be retained for a considerable period of time under approved retention and disposal schedules. These records document factors in decisions the Minister has made, the decisions made, attempts to influence his decisions, how he made those decisions and how those decisions were implemented. Public records are a cornerstone of accountable government and allow scrutiny from the public of the decisions of those who were elected to act on their behalf, the failure to manage them effectively is of significant concern.

The volume of public records deleted is such that it can't be explained through simple mistake or ignorance. It is unreasonable to accept that a Minister and his experienced staff are so ignorant of their obligations to fail to recognise that the emails in this account were likely to be public records. A number are of a significant nature and the view of the State Archivist is that any reasonable person would have assumed that they were likely to constitute public records. There are 69 records identified as having permanent value to the State and a further 355 which must be retained for over 7 years. These are not trivial or minor records. Their loss would certainly undermine key principles of the *Right to Information Act* which the *Public Records Act* seeks to support. These include that in a free and democratic society:

- (a) there should be open discussion of public affairs; and*
- (b) information in the government's possession or under the government's control is a public resource; and*
- (c) the community should be kept informed of government's operations, including, in particular, the rules and practice followed by government in its dealings with members of the community; and*
- (d) openness in government enhances the accountability of government; and*
- (e) openness in government increases the participation of members of the community in democratic processes leading to better informed decision-making; and*
- (f) right to information legislation contributes to a healthier representative, democratic government and enhances its practice; and*
- (g) right to information legislation improves public administration and the quality of government decision-making.*

Following determination that public records did exist in the private email account at the time of deletion and that 660 were not authorised for disposal, the next stage of the investigation sought to answer whether the actions of Minister Bailey were indicative of a breach of the *Public Records Act*. Detailed and extensive legal and archival expert advice was sought on assessing potential breaches of multiple sections of the Act.

8. KEY LEGAL CONSIDERATIONS

BREACH OF SECTION 13 OF THE *PUBLIC RECORDS ACT* – DISPOSAL OF PUBLIC RECORDS

Section 13 of the Act states:

“A person must not dispose of a public record unless the record is disposed of under

- a) an authority given by the archivist; or*
- b) other legal authority, justification or excuse”*

Schedule 2 of the Act states disposal of a record includes:

- a) destroying or damaging the record, or part of it; or*
- b) abandoning, transferring, donating, giving away or selling the record, or part of it*

The investigation determined that Minister Bailey had appropriate authority under the various disposal schedules to dispose of 539 of the public records identified. He had however no authority to dispose of 660 of the records.

The key question therefore is whether the act of deletion of the account meets the definition of disposal. The terminology used by Minister Bailey in his responses and statements are notable. On a number of occasions when first questioned on his actions Minister Bailey states his action was “deletion” at a later date the action is described as “deactivation”. The change is not insignificant. Deletion is widely perceived as permanent removal, effectively destruction. Deactivation arguably doesn’t imply permanent destruction at all. Though not legally relevant, the State Archivist’s view is that Minister Bailey’s likely purpose when deleting his account on 5 February was permanent destruction, however Yahoo’s deletion process does not result in immediate destruction. When it became clear that Minister Bailey’s actions were of significant public interest, it is notable that the description of his actions change to deactivation. Throughout this document the State Archivist refers to the action as deletion as he considers that it is likely that deletion was the original purpose, however clearly deactivation could also be accurately used given the later actions of Minister Bailey.

Minister Bailey’s private email account was a Yahoo UK account. When deleting the account on 5 February 2017 the Yahoo guidelines around the deletion of a Yahoo email account referred to the “practice” as “deletion or termination” of a Yahoo account. Somewhat contradictory is that whilst Yahoo refers to deletion of data and the account, it also states on the same webpage that the account can be reactivated within 40 days. The Yahoo closure page highlights “before closing the account make sure you download any info you need. Once the account is deleted we can’t recover any info or restore access.” Immediately following “click yes terminate this account” – is another statement “your account will be reactivated if you sign in to it within approximately 40 days of closing it, with longer hold periods for accounts registered in Australia or New Zealand (approximately 90 days)”.

As a UK registered Yahoo account the relevant reactivation period was 40 days. It is reasonable to assume that from the Yahoo account deletion web page that Minister Bailey would have known that if he desired he could have recovered the account within 40 days of deletion. However, the RTI application of The Australian newspaper, of 19 January 2017, was refused because of the closure of the account. The exact wording of the RTI refusal was “As a result of the deactivation of the email account, a search of the email address could not be undertaken, accordingly, no responsive documents were identified or located in response to the scope of your RTI application”. This potentially implies that despite arguably knowing that he could have retrieved the account he had no desire at that time to do so, which is perhaps significant in

terms of breach of the *Right to Information Act* and also as to whether Minister Bailey considered the deletion of the account permanent or merely a temporary deactivation.

Minister Bailey knew of the RTI application reportedly the day after he deleted the account, 6 February 2017. Yet he refused to fulfil the RTI application despite the fact that he would have had the ability to do so if he so desired. This is inconsistent with an act of simple temporary deactivation or a temporary desire to restrict access, this is more likely, in the opinion of the State Archivist, indicative of a desire to permanently destroy the documents within the account. On 3 March 2017, almost a month after account deletion and following media and parliamentary questioning Minister Bailey reactivated his account with assistance from CCC in order for CCC to undertake its investigation into allegations of corrupt conduct. Ironically in doing so that may well have undermined the ability to effectively argue that Minister Bailey's actions amounted to disposal under the definitions of the Act. It is legitimate to argue that as the account ultimately was able to be reactivated permanent destruction of the records did not occur.

The definition of disposal that includes abandonment is perhaps the most significant. Between 5 February 2017 and 3 March 2017 Minister Bailey arguably abandoned the public records within his deleted private email account. Minister Bailey made no attempt whatsoever to recover the documents until the referral of the matter to the CCC, despite a lawful request to do so via the 19 January 2017 RTI application. Minister Bailey's response to the 19 January 2017 RTI application indicated that he considered it impossible to provide records from it or even search it. There is no suggestion that Minister Bailey considered his action to be temporary or that his account was simply temporarily deactivated at that time.

The State Archivist in his consideration of the matter reflected on a scenario of a person who placed thousands of documents in a rubbish bag, knowing that some of the documents were likely to be public records and dumped them at a private rubbish tip with the full intent that they were to be permanently disposed of. The rubbish tip had a sign on the gate saying that all rubbish would be secure and that it would be automatically buried within 40 days. However, 26 days later following extensive pressure to retrieve the documents the person returns to the rubbish tip and reclaims the documents.

The State Archivist considers the actions of this hypothetical person as similar to Minister Bailey's, both relate to essentially the abandonment of public records. Minister Bailey's actions in deleting the account were consistent with an action of abandoning the documents with a likely purpose that this would result in permanent destruction of the documents. It is the view of the State Archivist that between 5 February 2017 and 3 March 2017 Minister Bailey "abandoned" the public records in the deleted account. The remedy of this through reactivation of the account is certainly notable, however it does not completely remedy the abandonment of the records that occurred between 5 February 2017 and 3 March 2017. The act of retrieval was a separate action to the act of abandonment and was a separate consideration entirely from the act of initial deletion. It is the State Archivist's view that Minister Bailey's action constituted abandonment of the public records for 26 days from 5 February 2017 to 3 March 2017 and thus given the 660 records previously noted this amounted potentially to unauthorised disposal of public records.

The State Archivist does recognise however the difficulties in proving beyond a reasonable doubt that Minister Bailey's purpose was permanent destruction of the records or even that disposal occurred given the subsequent reactivation of the email account on 3 March 2017. There is a legitimate view that as the Minister could theoretically retrieve the records by reactivating the account within 40 days and therefore had not lost control of the records, had

not given access to the records to another or put the records at risk of being removed by another person that he had not abandoned the records.

The State Archivist's view is that Minister Bailey's likely purpose on deletion was permanent destruction of the records, however he does recognise the difficulty in proving beyond reasonable doubt the Minister's state of mind or intent at the time the account was deleted. Minister Bailey's early statements in Parliament described his action as "deletion", and thus destruction, however a legal view expressed is that statements made by the Minister in the Legislative Assembly to the effect that he "deleted" the account may not be admissible in proceedings against the Minister for a breach of section 13 of the Act.

Of further relevance is that the State Archivist does not accept that Minister Bailey did not put the records at risk. Yahoo state on their account closure page "before closing the account make sure you download any info you need. Once the account is deleted we can't recover any info or restore access." By closing or "terminating" the account, as the Yahoo closure page states, Minister Bailey would clearly have known that he was putting the records at risk, particularly as his responses indicated that he took no back up of the account before the deletion of the account, which is again perhaps of more relevance to breach of sections 7 and 8.

A final consideration under the definition of disposal is whether Minister Bailey's action also could be deemed unauthorised transfer of records and once again breach of section 13 of the Act. It could be argued that the act of deleting the account transferred effective "control" of the records to Yahoo as control of final deletion of the records was largely out of Minister Bailey's control following the decision to "terminate" the account. Unless Minister Bailey took the additional action of reactivating his account, Yahoo would have destroyed the records permanently without seeking any further permission from Minister Bailey. Clearly Minister Bailey re-established control following the reactivation of the account with CCC assistance on 3 March 2017. However, it could be argued that unauthorised transfer of public records occurred between 5 February 2017 and 3 March 2017. It is the State Archivist's view Minister Bailey's actions potentially could have constituted unauthorised transfer of public records and thus meet the definition of unauthorised disposal of public records.

However, the State Archivist does acknowledge that there are clear difficulties in arguing disposal through transfer occurred given the subsequent reactivation and thus recovery of the records by Minister Bailey on 3 March 2017. Yahoo's terms of services for example do not suggest that ownership rights transfer to Yahoo on deletion of an account. They do however state that cancellation of a Yahoo account may include deletion of information and user content in the account, which again supports the reckless management view of the actions that Minister Bailey took.

The State Archivist considers that there are multiple grounds to argue that the actions of Minister Bailey are consistent with breach of section 13 of the *Public Records Act* and are of such significance in terms of number and importance of the records to consider prosecution under the *Public Records Act* and any other relevant legislation. However, the State Archivist also recognises the difficulties in prosecution given the fact that the records were recovered when the account was reactivated on 3 March 2017. The significant irony is that in quite appropriately seeking to recover the records to undertake their investigation, CCC may well have made it difficult to prosecute Minister Bailey for unauthorised disposal of public records under section 13 of the Act.

There are obvious difficulties in prosecution for unauthorised disposal due to abandonment. The view of the State Archivist is that Minister Bailey was arguably responsible for a deliberate attempt to dispose of 660 public records, 69 of which were of permanent value, for which he

had not authority to do so. The deliberate destruction of public records is an attack on a fundamental principle of a democratic society – accountability. The question of whether it is in the public interest to prosecute for unauthorised disposal given subsequent recovery of the records on reactivation is however a valid consideration which must be made.

Whilst the question of unauthorised disposal is a complex one, there is little doubt at all that Minister Bailey's actions in managing the public records within his private email account are at best negligent of his obligations as a Minister to make and keep accurate public records.

BREACH OF SECTION 7 OF THE PUBLIC RECORDS ACT – MAKING AND KEEPING OF PUBLIC RECORDS

Section 7 of the Act states:

“A public authority must

- a) make and keep full and accurate records of its activities; and*
- b) have regard to any relevant policy, standards and guidelines made by the archivist about the making and keeping of public records*

The executive officer of a public authority must ensure the public authority complies”

As a Minister, Minister Bailey is deemed a public authority. As a result of Minister Bailey's actions in poorly managing and then deleting the account it is the State Archivist's view that Minister Bailey has breached section 7 of the Act. The view of the State Archivist is that Minister Bailey's actions is a breach of this section of the Act and are perhaps the most significant of all.

Pursuant to section 7(1)(a) of the Act, a public authority is required to make and keep full and accurate records of its activities. Where the public authority is a natural person such as a Minister, section 7 of the Act imposes this as a statutory obligation on the relevant Minister as well as persons who are concerned with or take part in the Minister's management, such as the Minister's Chief of Staff and/or Deputy Chief of Staff.

This statutory obligation imposes a statutory duty on the Minister personally to make and keep full and accurate records of his activities as a Minister and has significant consequences in terms of what actions can then be undertaken in response to an alleged breach of section 7(1)(a) of the Act. While section 7 of the Act does not itself impose criminal sanctions or penalties for a breach of this provision, section 7(1)(a) of the Act establishes a statutory duty which, when read in conjunction with section 204 of the *Queensland Criminal Code* (the Code), can lead to the establishment of a criminal offence.

Section 204 of the Code establishes the offence of "disobedience to statute law" which provides as follows:

“Any person who without lawful excuse, the proof of which lies on the person, does any act which the person is, by the provisions of any public statute in force in Queensland, forbidden to do, or omits to do any act which the person is, by the provisions of any such statute, required to do, is guilty of a misdemeanour, unless some mode of proceeding against the person for such disobedience is expressly provided by statute, and is intended to be exclusive of all other punishment. The offender is liable to imprisonment for 1 year.”

Legal advice provided to the State Archivist states that to enliven the application of section 204 of the Code, there must be an act forbidden by, or an omission in relation to an act required by a public statute in force in Queensland. In the *Public Records Act*, there is an express statutory requirement in section 7 of the Act which requires a public authority to make and keep full and accurate records of its activities.

The view of the State Archivist is that the Minister has failed to make and keep full and accurate public records, specifically those public records that were stored in his private email account during the period 16 February 2015 to 5 February 2017, by not storing those public records in the applicable Ministerial recordkeeping system and that a breach of section 7(1)(a) of the Act has occurred. Consequentially, a breach of section 204 of the Code may also have occurred.

In relation to this issue, it is his failure to make and keep full and accurate public records as is expressly required under section 7(1)(a) of the Act that is relevant. As already stated the use of a private email account by a Minister is not a breach of the Act, the issue is whether there was a failure to properly make and keep full and accurate public records by not systematically transferring those records into the official recordkeeping infrastructure of the Ministerial Office on a regular basis and by not keeping those records in a wider sense. The definition of what is on a regular basis is significant the legal advice provided to the State Archivist refers to section 38(3) of the *Acts Interpretation Act 1954* (AIA) which states that:

"if no time is provided or allowed for doing anything, the thing is to be done as soon as possible, and as often as the relevant occasion happens".

Section 38(3) of the AIA operates subject to any contrary intention in the home legislation i.e. in this case in the Act. The legal advice provided indicates that there does not appear to be a contrary intention exhibited by section 7 of the Act which would prevent the application of section 38(4) of the AIA in this instance. Therefore, there is an argument that the "keeping" of public records, for the purpose of section 7 of the Act, should have occurred as soon as possible and as often as the relevant occasion happened. It clearly was inappropriate for any emails which are public records to have been stored and maintained in a private email account for a long period of time. As noted previously the majority of the public records within the account were created in the initial 6 months of Minister Bailey's time as a Minister, and thus have been within the private email account for almost 2 years. Recent US legislation imposes that the transfer of public records from a private email account to official systems must occur ideally immediately, but no later than 20 days, following creation or transmission of the public record.

It must be recognised that many of the emails that we have identified as public records were transitory or were required to be kept for relatively short periods such as 2 or 3 years, however there are also 355 records which were required to be kept for over 7 years and 69 that are deemed of permanent value. It is these records that the significance of Minister Bailey's actions is related to.

There is, it appears, no lawful excuse for the Minister's conduct in not making and keeping any public records; and as section 7 of the Act does not itself contain a penalty provision this means that section 204 of the Code may well be enlivened as section 7 of the Act or any other provision of the Act does not confer a penalty for the relevant "disobedience".

Clearly the final decision around prosecution of this matter sits elsewhere as section 204 of the *Criminal Code* potentially involves the prosecution of an indictable offence and beyond the jurisdiction of the State Archivist. A further consideration is whether the Minister's conduct in this area in failing to make and keep full and accurate public records also could constitute "corrupt conduct" within the meaning of section 15 of the (*Crime and Misconduct Act 2001* (CC Act)).

The State Archivist's view is that there is serious argument that the Minister may have committed a misdemeanour through a combination of section 7(1)(a) of the Act, section 38(4) of the *Acts Interpretation Act 1954* and section 204 of the *Criminal Code* by using a private email account to receive and store public records the way that he did. Of relevance however is the

fact that it is likely that Minister Bailey's actions and practices are not unique and the question again arises of whether it is in the public interest to prosecute Minister Bailey.

BREACH OF SECTION 8 OF THE *PUBLIC RECORDS ACT* – CUSTODY AND PRESERVATION OF PUBLIC RECORDS

Section 8 of the Act states:

“A public authority is responsible for ensuring the safe custody and preservation of records in its possession”.

The Minister had a statutory obligation to ensure the safe custody and preservation of records in his possession. His actions in using a private email account and in deleting the account are inconsistent with this obligation. It is the State Archivist's view that Minister Bailey has breached this section of the Act.

Pursuant to section 8 of the Act, a public authority, including the Minister, has a statutory obligation and is responsible for ensuring the safe custody and preservation of records in the relevant public authority's possession. In the view of the State Archivist there is a sound legal basis to support the view that the Minister potentially may have breached section 8 of the Act by storing public record emails on a long-term basis in a private email account. Whether this can be successfully argued will depend on the terms and conditions applicable to the Yahoo email account as to whether it can be said that there were provisions in those terms and conditions regarding the safe keeping, proper preservation and return of the emails that were public records.

In addition, a breach of section 8 of the Act may also have occurred in deleting the email account. It could be argued that by closing the account without mechanisms being in place to transfer any stored public records out of the Yahoo email account prior to it being closed may well be seen as an action contrary to the requirement to preserve public records. He certainly would have seen through Yahoo's terms on the closure page, that deletion could have caused permanent damage or loss of the records.

In terms of penalties the *Public Records Act* is not explicit and therefore the question as to whether section 204 of the Code above could also be enlivened by a breach of section 8 of the Act, is perhaps not clear. It could be argued that section 8 of the Act only requires public authorities to be responsible for ensuring the safe custody and preservation of records in its possession and it does not, for example, declare that a public authority must ensure the safe custody and preservation of public records. The legal advice given to the State Archivist states that section 204 of the Code is only enlivened where the relevant statute expressly requires the persons concerned to do a particular act and does not, for example, apply to a failure generally to take reasonable care. However, in a similar way as matters relating to section 7 above this may be a matter more appropriately considered by the Director of Public Prosecutions and the CCC and again whether it is in the public interest to prosecute Minister Bailey given that his actions are unlikely to be unique and that ultimately the records were recovered.

BREACH OF SECTION 14 OF THE *PUBLIC RECORDS ACT* – PUBLIC AUTHORITY MUST ENSURE PARTICULAR RECORDS REMAIN ACCESSIBLE

Section 14 of the Act states:

“This section applies if a public record is an article of material from which information can be produced or made available only with the use of particular equipment or information technology

The public authority controlling the record must take all reasonable action to ensure the information remains able to produced or made available”

The Minister's actions in deleting his email account may have involved a failure by the Minister to take reasonable action to ensure that the emails remained able to be produced or made available. Specifically, between 5 February 2017 and 3 March 2017 the records were clearly not accessible. His actions in deleting the account rendered the information inaccessible as he indicated in his response to the 19 January 2017, RTI application by The Australian newspaper. The public records within the private email account were only accessible after the reactivation of the account on 3 March 2017.

In terms of penalties, similar comments related to section 204 of the Code apply. Legal advice to the State Archivist states that as section 14 of the Act does not contain a penalty for a breach of the provision, in order for any action to be taken for a breach of the provision, it would be necessary to rely on section 204 of the Code. Section 204 of the Code is only enlivened where the relevant statute expressly requires the persons concerned to do a particular act and does not, for example, apply to a failure generally to take reasonable care. Although the obligation to take reasonable action is cast in mandatory terms, the required act for section 204 purposes is to take "reasonable action" which may not be sufficiently clear to enliven the operation of section 204 of the Code. Furthermore, assuming that section 204 of the Code is enlivened it may then be difficult to establish, to a criminal standard of proof, that the Minister failed to take such reasonable action.

BREACH OF THE *RIGHT TO INFORMATION ACT 2009*

The *Right to Information Act* is clearly not the responsibility of the State Archivist and consideration of breach of the *Right to Information Act* (RTI Act) should be a matter for the Office of the Information Commissioner (OIC). However, the State Archivist did consider it relevant to highlight that at the time of deletion, on 5 February 2017, Minister Bailey would have been aware that he was able, if he so desired, to reactivate the account. On receiving the RTI application of 19 January 2017 made by The Australian newspaper, Minister Bailey would have known reactivation was possible to fulfil the RTI application if so desired.

Minister Bailey's avoidance of the RTI application is potentially a breach of the *Right to Information Act* and it is the view of the State Archivist that this matter should be considered by the Information Commissioner in terms of potential breach of the *Right to Information Act*. Minister Bailey was able to supply the information requested in the RTI application at any time following the deletion of the account through the reactivation of the private email account and he would have been aware of this at the time of deletion of the account. The view of the State Archivist is that there were certainly public records within the account relevant to the RTI application.

BREACH OF THE *INFORMATION PRIVACY ACT 2009*

The *Information Privacy Act* (IP Act) is concerned with the fair collection and handling of personal information in the public sector environment. As an agency, the Minister is required to comply with the IP Act, including the Information Privacy Principles (IPPs). Legal advice provided to the State Archivist has stated that the OIC may wish to consider if breach of the IP Act has occurred, in particular:

IPP 4 which requires that an agency having control over a document containing personal information must ensure that the document is protected against: loss, unauthorised access, use, modification or disclosure and any other misuse. The protection provided must include security safeguards that are adequate to provide the level of protection that can reasonably be expected to be provided. The OIC has previously interpreted this requirement as requiring an analysis of the nature of the personal information in the document and the risk of a security breach occurring.



The OIC may consider that Information Standard 18 (Information Security) (IS18) is relevant in determining what security measures are required. In relation to communications and operations management, IS18 requires agency to ensure the Network Transmission Security Assurance Framework (NTSAF) is used to ensure the security of data during transportation over communication networks; and methods for exchanging information within the agency, between agencies, through online services and/or with third parties are compliant with legislative requirements and consistent with the Queensland Government Information Security Classification Framework (QGISCF).

The NTSAF and QGISCF are technical documents and certainly beyond the capability or remit of the State Archivist. A determination of whether or not the Minister has complied with the requirements in these documents when using the email account would need to be performed by a technical expert in the area of information security.

Section 33 of the IP Act limits the circumstances in which an agency may lawfully transfer an individual's personal information to an entity outside Australia. The fact that Minister Bailey's email account is a UK account is potentially significant. The OIC has reportedly taken a broad view of the meaning of "transfer" beyond the legal meaning. There is potential that the OIC would consider that the sending and receiving of emails on a server outside of Australia would amount to a transfer of any personal information in those emails to an entity outside Australia.

It should be noted that an agency may lawfully transfer an individual's personal information to an entity outside Australia in a number of circumstances, including if the individual agrees to the transfer and it could certainly be argued that by sending an email to an email address with a .co.uk domain, a person has impliedly consented to any of their personal information in the email being transferred outside Australia.

These matters are not unique to Minister Bailey and have wider implications and thus should perhaps be considered by the OIC.

9. CONCLUSIONS

This investigation from the perspective of the State Archivist sought to answer a number of core questions:

- Were there public records within the private email account of Minister Bailey at the time of the deletion of the account on 5 February?
- If there were public records present, were any disposed of without appropriate authorisation?
- Did the actions of Minister Bailey in managing the public records contained within this private email account result in a breach of the *Public Records Act*?
- What actions, if any, should be taken in response to breach of the *Public Records Act*?
- What other actions in regard to fulfilling the purpose of the *Public Records Act* are required to be undertaken by the State Archivist or others as a result of this investigation?

In conclusion I have summarised the view of the State Archivist in regard to each of the above and included a set of recommended actions to be taken by the State Archivist and others.

WERE THERE PUBLIC RECORDS WITHIN THE PRIVATE EMAIL ACCOUNT OF MINISTER BAILEY AT THE TIME OF THE DELETION OF THE ACCOUNT ON 5 FEBRUARY?

There are to date 1199 public records identified within the account at the time of deletion which had been created or received between 16 February 2015 and 5 February 2017.

IF THERE WERE PUBLIC RECORDS PRESENT, WERE ANY DISPOSED OF WITHOUT APPROPRIATE AUTHORISATION?

Of the 1199 public records identified:

539 were able to be disposed of without additional authorisation, as they were deemed as transitory public records and were not required to be retained beyond their business use.

Minister Bailey had authorisation to dispose of these 539 public records.

660 were required to be retained for periods ranging from 2 years to permanent. 69 records were deemed as having permanent value and were required to be retained permanently. 355 records were required to be retained for 7 years.

Minister Bailey had no authorisation to dispose of these 660 public records and their disposal, if actioned, would be deemed as occurring without appropriate authorisation which would be a breach of section 13 of the *Public Records Act*.

DID THE ACTIONS OF MINISTER BAILEY IN MANAGING THE PUBLIC RECORDS CONTAINED WITHIN HIS PRIVATE EMAIL ACCOUNT RESULT IN A BREACH OF THE *PUBLIC RECORDS ACT*?

The State Archivist's view is that Minister Bailey's actions in managing the public records within his private email account are likely to have resulted in multiple breaches of the *Public Records Act*. Specifically:

Section 7 – Making and keeping of public records

Section 8 – Custody and preservation of public records

Section 13 – Disposal of public records

Section 14 – Public authority must ensure particular records remain accessible

WHAT ACTIONS IF ANY SHOULD BE TAKEN IN RESPONSE TO BREACH OF THE *PUBLIC RECORDS ACT*?

At the most basic level the allegation that Minister Bailey deleted 660 public records from his private email account without appropriate authorisation is an attack on the accountability of

government. These records document potentially decisions he has made as a Minister of State, the factors influencing his decisions and how those decisions were implemented. Public records are a cornerstone of accountable government and allow scrutiny from the public of the decisions of those who are elected to act on their behalf. The position of the State Archivist is that the allegations against Minister Bailey are significant as they relate to a senior official of the Queensland Government bypassing a statutory measure to promote accountability. The *Public Records Act's* purposes are to ensure that the public records of Queensland are made, managed and preserved for the benefit of present and future generations and significantly that the public have access to records to support the Right to Information Act and Information Privacy Act. The Right to Information Act is explicitly in place to support the accountability of government.

The volume of public records within the account that were deleted are such that it can't be explained through mistake or ignorance. The State Archivist's view is that it is unreasonable to accept that Minister Bailey is so ignorant of his obligations to fail to recognise that the emails in this account were likely to be public records. Many are of a significant nature and it is the view of the State Archivist that any reasonable person would have assumed that they were likely to constitute public records. It is difficult however to avoid some sympathy for Minister Bailey given that over 90% of the public records in the private email account were sent to him by others in relation to his role as a Minister, rather than being created directly by him. Minister Bailey's assertion that he can't control who contacts him via his private email account has some validity. However once they were within his account he is absolutely responsible for their management and safety. The retention and disposal schedules authorised by the State Archivist are solely in place to ensure nobody destroys records which are of permanent or long term temporary value to Queensland. In this case Minister Bailey's actions relate to the failure to effectively manage 660 records of value to Queensland, including 69 deemed to have permanent value.

There are however likely to be difficulties in successful prosecution of the breaches of sections 13 and 14 due to Minister Bailey's reactivation of the email account on 3 March 2017.

The breaches of section 7 and 8 are potentially more significant. These breaches both potentially could result in Minister Bailey breaching section 204 of the *Criminal Code*. They also potentially set a significant precedent as there is potential other Ministers and their staff could also be in breach of these sections of the Act if they are using their private email accounts without appropriate processes in place to manage public records created or received within them.

A further consideration must also be whether it is in the public interest to seek the prosecution of Minister Bailey for breach of the *Public Records Act*. The breaches of sections 13 and 14 are likely to have been for a period of around 26 days – 5 February 2017 to 3 March 2017, and arguably were remedied by the reactivation of the private email account.

There are clearly considerations around principle and in particular the message sent to others if Minister Bailey's actions go unpunished, however there is also a question of equity in terms of whether the punishment of Minister Bailey greatly exceeds the "crime".

The investigation also highlighted potential breach of other legislation outside of the *Public Records Act*. Specifically the *Right to Information Act* and the *Information Privacy Act*. The State Archivist considers these are matters best explored by the Office of the Information Commissioner.

A further learning from this matter relates to the independence of the State Archivist and the ability to undertake his statutory functions without external interference. As an Executive Director of the Department of Science, Information Technology and Innovation (DSITI) and also the incumbent of the statutory role of State Archivist, the potential for conflict of interest

emerged a number of times. It must be stressed there was no attempt to interfere with the investigation itself, there were however instances where the ability of the State Archivist to undertake statutory functions was impeded, in particular the issue of guidance around recordkeeping practices. The ability for the State Archivist to undertake his statutory functions without interference must be enhanced.

WHAT OTHER ACTIONS ARE REQUIRED TO BE UNDERTAKEN BY THE STATE ARCHIVIST OR OTHERS AS A RESULT OF THIS INVESTIGATION?

The investigation has highlighted the potential for widespread creation of public records in the private email accounts of Ministers and their staff. Whilst the State Archivist has always recognised the potential for this to occur, the investigation has highlighted to an unexpected level how significant this practice can be. Minister Bailey's practices highlighted that significant numbers of public records can be created in the private email accounts of Ministers without being instigated by the Ministers themselves. Without appropriate processes to manage public records created and received within the private email accounts of Ministers there is a significant risk of further breaches of the *Public Records Act* by other Ministers. Previous legal advice provided to the State Archivist has indicated that to use powers of investigation provided in the Act the State Archivist must have "reasonable suspicion" to undertake an independent investigation under the powers of the *Public Records Act*.

In the case of Minister Bailey reasonable suspicion clearly was present and thus an independent investigation of Minister Bailey's management of public records within his private email account was instigated by QSA on 1 March 2017. This investigation was postponed at the request of CCC whilst the matter was under consideration by CCC. There have been a number of other allegations made into the use of private email for official ministerial purposes against Ministers Miles and Lynham. The State Archivist considered both matters and felt there was no reasonable suspicion to justify an investigation at the time. As highlighted in this report use of a private email account for official purposes is not a breach of the *Public Records Act* if there are appropriate processes in place to manage any public records in a private email account. In both cases appropriate places were indicated to be in place.

However the number of public records within the private email account of Minister Bailey, Minister Bailey's poor management of the records and evidence of widespread use of private email accounts for official purposes outside of Minister Bailey has highlighted that this matter must be investigated further. This investigation has provided reasonable suspicion that there may be widespread creation and capture of public records within the private email accounts of Ministers and their staff. As a result the State Archivist as a matter of urgency will be reviewing the processes in place to capture and manage public records within the private email accounts of all Ministers and their offices. In addition the State Archivist will be contacting Ministers from the last two governments to request they review their private email accounts for public records that should be transferred to the State Archivist.

How this matter has arisen has highlighted that significant changes are required in the *Public Records Act* and the support Ministerial Services, QSA and others give to Ministers in the area of recordkeeping. The State Archivist will be making recommendations to improve all of these areas.

Minister Bailey must be accountable for his own actions in how he managed the public records within his private email account, however it would be appropriate to highlight that support for Minister Bailey in undertaking this task was clearly ineffective and the support given to Minister Bailey will be indicative of what is currently in place for all Ministers and their staff and this needs urgent action.

10. RECOMMENDATIONS

- The State Archivist considers whether prosecution is appropriate for multiple breaches of the *Public Records Act*
- The Office of the Information Commissioner review this matter to consider if breaches of the *Right to Information Act* and *Information Privacy Act* have occurred.
- The State Archivist undertakes an urgent review of the processes in place for all current Ministers and Ministerial staff in managing public records created or received within their private email accounts
- The State Archivist contacts former Ministers of the last two Governments to request that they review their private email accounts for Public Records that may be in their possession
- The State Archivist reviews urgently the guidance it provides on the management of public records within email, private email and social media accounts
- DPC reviews urgently the training and support it provides Ministers and their staff in managing public records. DPC should work closely with the State Archivist in developing and delivering this training and support.
- DPC reviews urgently the guidance it provides via the Ministerial Handbook and Ministerial Information Security Policy around the management of public records within the private email and social media accounts of Ministers and their staff. This needs to comply fully with QSA guidance
- Urgent amendment of the *Public Records Act* to include a requirement that all public authorities must comply with mandatory guidelines issued by the State Archivist
- The State Archivist develop a priority set of mandatory guidelines for implementation
- The State Archivist develops a team to undertake monitoring of compliance with mandatory guidelines. Additional resources and budget will be required for QSA to undertake these tasks.
- Urgent amendment of the *Public Records Act* to include a requirement that all public authorities must ensure public records created or received in private email and social media accounts are forwarded to official systems within 20 days of creation or transmission or the inclusion of this requirement as a mandatory guideline.
- The State Archivist reviews all guidance and disposal schedules relevant to Ministers
- The State Archivist to review recordkeeping systems and processes in key departments supporting Ministers.
- An alliance of integrity agencies is established including the State Archivist, Information Commissioner, Integrity Commissioner, Auditor-General, Ombudsman, Crime and Corruption Commissioner and Public Service Commissioner to raise awareness and promote the importance of recordkeeping for good governance and government accountability.
- Measures to protect the independence of the State Archivist in undertaking statutory functions must be enhanced.

ATTACHMENTS:

- Methodology