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OFFICE OF THE INFORMATION COMMISSIONER

Your ref.
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Spec is

9 February 1998

Mrs J M Gamin MLA
Chairman
Legal, Constitutional & Administrative
Review Committee
Parliament House
George Street
BRISBANE Q 4000

Dear Mrs Gamin

I refer to your letter of 2 December 1997 in which you invited my comment on the *Criminal Law (Sex Offenders Reporting) Bill 1997*.

Basically, there are two methods which Parliament may use to prevent disclosure of a particular class of information under the *Freedom of Information Act 1992* Qld (the FOI Act): s.11 of the FOI Act or s.48 of the FOI Act.

The proposal contained in the *Criminal Law (Sex Offenders Reporting) Bill 1997* is to make use of s.48 of the FOI Act to prevent disclosure of details from a proposed Sex Offenders Register by making s.8(4) of the Bill a qualifying secrecy provision for the purposes of s.48(1).

It is worth noting that use of s.48 does not provide a guaranteed way of preventing disclosure of information under the FOI Act. Firstly, s.48 allows a person concerned to obtain access to information that concerns their own personal affairs. Use of s.48, then, would permit a person whose name and details are on the Sex Offenders Register to obtain access to that information because of s.48(2).

Secondly, matter can be disclosed under s.48 if required by a compelling reason in the public interest. It is possible that some difficult questions could emerge as to whether disclosure of information from the Sex Offenders Register to a particular applicant could be required by a compelling reason in the public interest, e.g., where a principal of a school wishes to know whether there are any persons on the Register resident in the area surrounding a school. There could be occasions when it is difficult to predict the outcome of the application of the public interest balancing test within s.48.

Thirdly, s.48 means that a secrecy provision in schedule 1 takes effect according to its own terms. Section 8(4) of the Bill is not a strong secrecy provision. The provision limits disclosure by the Commissioner of Police only, and not some other recipient of information from the Sex Offenders Register. For example, there is no bar provided by s.8(4), to disclosure of information from the Sex Offenders Register that might be received by the Children's Commissioner. If an FOI access application was made to the Children's Commissioner, then s.48 would not apply, because s.8(4) of the Bill is only a bar to disclosure by the Commissioner of Police.

The alternative method of preventing disclosure of particular information under the FOI Act is s.11, which allows the FOI Act not to apply to certain bodies or parts of bodies, or to whatever class of information is described in s.11. The operation of s.11 is final, in the sense that there is no public interest balancing test which could require disclosure of information in some cases.

I regret the lateness of my response but trust my comments will assist the Committee in its report to the Parliament.

Yours sincerely

F N Albietz
Information Commissioner