



MAREEBA SHIRE COUNCIL

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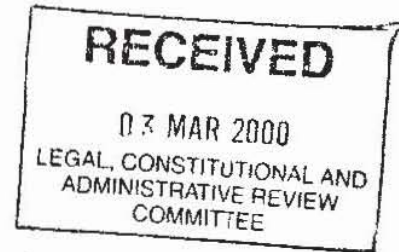
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29 February 2000

The Research Director
Legal, Constitutional and Administrative
Review Committee
Parliament House
George Street
BRISBANE QLD 4000



Submission No 111

Dear Sir

REVIEW OF THE FREEDOM OF INFORMATION ACT 1992 (QLD)

I refer to the letter dated 7 February 2000 from the Chair of the Legal, Constitutional and Administrative Review Committee forwarding Discussion Paper No 1 regarding the submissions received for the above and advise that Council wishes to make a further submission in respect of the discussion points detailed below.

Application Fees for non-personal information

Discussion Points 48 and 50

Point 48

“Should the non-personal information application fee be abolished, remain at \$30 or be increased (to what level)?”

Point 50

“Should charges be introduced for:-

- (a) processing (for retrieval of documents, decision making and/or consultation); and/or
 - (b) supervised access;
- and if so, at what levels and in what form? (For example, per hour spent, per page disclosed or dealt with, a sliding scale, with caps on fees?)”

The FOI Act 1992, in its preamble and in Sections 4, 5, and 6, sets out the reasons for the Act and indicates that the Act is intended to strike a balance between competing interests by giving members of the community a right of access to information with limited exceptions for the purpose of preventing a prejudicial effect to the public interest.

The statutory support to enable individuals to access information relating to their personal affairs is to be commended. Individuals can, without cost, now cut through “red tape barriers” to access personal information previously “locked up” in “bureaucratic controls”.

In respect of non-personal information other factors need to be considered. If the Act is to “strike a balance” between information access and public interest, then the cost factor should also be taken into consideration. Some FOI applications necessitate a considerable amount of work in processing, reviewing and supervising access to documents. There is a cost involved as the officers engaged in processing the application are non-productive from the point of view of the agency. This cost has to be absorbed by the agency or budgeted for by passing on to the consumer (eg higher rates etc.) This latter aspect is surely not in the “public” or “community interest”.

The current government attitudes of “user pays” and “competitive efficiency” would appear to be contradictory to providing information at a considerable cost to the agency without some reasonable repayment by the applicant. It is stressed that this is “non-personal” information. In order to strike a favourable balance, as indicated in the early sections of the Act, a more equitable solution would be to charge the applicant for the cost of providing the information. There would be no impact on the community whilst at the same time an applicant would still have access to information.

The following fees are suggested:-

1. Application fee remain at \$30.
2. A charge of \$35 per hour be imposed for the processing, reviewing, and/or supervised access of documents.

The amount of the hourly charge is based on the rate of the Council Officer currently dealing with FOI applications, consequently this non-productive time, from the agency viewpoint, should be paid for by the applicant and not be passed on to the consumer. At this rate the costs will just be covered. The Review Committee may consider that a higher hourly rate may be more practical to cover the costs of agencies who may use higher paid officers.

The purpose of the hourly rate is to be consistent with the Act in striking a balance between providing information and the public interest.

A further impact, which has not yet been determined, is GST. At the time of writing, it had not been clarified whether Freedom of Information applications would be non-taxable. This is a further matter to be considered in respect of whether the tax is to be charged to the applicant.

Vexatious or frivolous applications

Discussion Points 55(a), 57, 58

Point 55

“In relation to S28(2) concerning voluminous applications should

- (a) the word ‘only’ be deleted from the last paragraph of S28(2) to widen the factors that agencies may have regard to when deciding whether to refuse to deal with an application because it would substantially and unreasonably divert agency resources?”

Point 57

“Should the FOIQ contain a general provision enabling an agency to refuse to deal with frivolous and vexatious applications. If so, how should this provision be drafted and what provisos should it contain?”

Point 58

“Alternatively (or additionally) should the FOIQ contain a provision enabling an agency to refuse to deal with serial/repeat applications? If so, should it be in the form suggested by the IC(Q) in the above text?”

In its first submission dated 24 March 1999 the Mareeba Shire Council highlighted a connection between the low application fee and frivolous or vexatious applications. The submission suggested a higher fee may reduce such unnecessary applications.

The Review Discussion paper has clearly indicated that other agencies have problems from serial/repeat applications which by nature of their repetition are vexatious to the agencies receiving them. The imposition of the aforementioned fee structure may have some impact on reducing such applications, as a side effect, although the suggested fee structure is submitted for the reasons outlined in that section of this submission.

The discussions raised in the paper regarding Section 28 continue the theme of the legislation in endeavouring to provide a balance between the interests of applicants and the public/agencies.

The suggestion contained in Discussion Point 55(a) is sound in that by the deletion of the word “only” from the last paragraph of S28(2) agencies are given grounds on which to refuse an application without having to allocate costly resources to identify large volumes of documents. Many such applications are caused by the applicant using very general terms to describe the information sought. Approaches to an applicant in an attempt to more specifically identify the information can sometimes prove beneficial for both the applicant and the agency. Where an applicant refuses to be more specific and appears to be on a “fishing expedition” for information the amendment to S28 would assist the agency in reducing the amount of non-productive time to deal with a totally unreasonable application.

The suggestion in Points 57 and 58 to provide a general provision to enable an agency to refuse to deal with frivolous and vexatious applications is welcome. Resources can be wasted by having to retrieve the same documents for applications by the same person for the same information, mainly because the applicant does not like the decision and is constantly looking for an excuse to have that decision overturned.

The introduction of a provision similar to that suggested at Point 58 would most certainly be helpful to agencies trying to overcome such applications.

General

The opportunity to comment on the submissions previously received and the discussions which they have prompted is much appreciated.

The FOI Act affords members of the community an opportunity to access information which affects them. In a democratic society this is an important part of the democratic process. In providing access to such information, it is equally important to ensure that such opportunities are not abused. In this respect the “democratic rights” of the agencies providing the information also need to be considered.

The intent of the FOIQ Act is to strike a balance between the interests of applicants and the public/agencies. The comments made in this submission are forwarded with this principle in mind.

Should you have any queries regarding the above matters please contact Noel Briggs on 4030 3907 or David Weight on 4030 3910.

Yours faithfully



for CC McDowall
CHIEF EXECUTIVE OFFICER