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10 March 2000

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

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Dear Sir/Madam

RE: REVIEW OF FOI ACT 1992 DECISION PAPER

I present herein my comments on discussion paper no. 1 relating to the FOI Act 1992. I am currently the FOI Decision Maker at the City of Thuringowa Council, but I am responding as a private individual as my comments were considered too blunt by Council.

FOI Comments - Discussion Paper

1. While the committee welcomes further comment on FOI purposes and principles, their satisfaction and whether (and, if so, how) they require modification, the committee would particularly like to receive comments about the compatibility of FOI purposes and principles with our Westminster-style system of government.

   Response

   The FOI legislation has allowed the electorate the right to seek and participate in the process of government discussion making whether at the local or state level. Ratepayers now have the opportunity to access information which eight (8) years ago was withheld. Government is now more accountable and this is surely compatible with our Westminster-style of government.

   I am of the view that the right to access information of government is an inalienable right which is at the grass roots of our democracy. Without this ability an individual seeking to influence and/or express concern, can and was stone walled by officialdom with the reply "that information is not available to members of the public."
   Open and accountable government can only occur if those to whom have been empowered to rule and set laws, can be checked. To ensure they do not abuse their power, by such pieces of legislation like the Judicial Review Act 1991 and the FOI Act 1992.

   Information is power. Who controls it and to those who have acess can and is used as a method of control. By providing access provisions, parliament has released some of the control it once exercised. It has made itself more accountable and has ultimately furthered the public interest and allowed the public a greater opportunity to effect those operations.

   In conclusion, I support the statement made by the Information Commissioner in paragraph A6 of his original submission.

2. Should the objects clauses of the FOIQ be revised as the IC(Q) suggests?

Response

Agree. The Information Commissioner has made valid comment on the need to amend the object clauses. In particular those relating to including in S.4, the right to amended information relating to personal affairs.

3. I particular, should the FOIQ include:

(a) a provision stating that the Act is to be interpreted in a manner that furthers the Act's stated objects [like the FOIC, s3(2)]/; and/or

(b) a guiding principle or presumption of access?

Response

(a) agree; and

(b) I see nothing wrong if a guiding principle or presumption of access was provided/stated in the legislation.

4. Should the relationship between the exemption provisions and the objects clauses of the FOIQ be made more clear. For example, should the FOIQ provide that the exemption provisions 'operate subject to' or 'are to be interpreted in furtherance of' the objects of the Act/ Alternatively, should the objects clause avoid direct reference to the exemptions?

Response

I personally favour the Act making provision for the exemption provision 'operate subject to'. I see no wrong with the objects clause making direct reference to the exemptions.

5. Alternatively, if the FOIQ is to promote disclosure (in the interest of open government) should the reference to the exceptions and exemptions be removed from the objects clause?

Response

No. You can still promote disclosure on the grounds of open government and keep the exemptions in the objects clause.

6. Should any additional matters be stipulated in the objects clauses, eg, a statement that Parliament's intention in providing a right of access to government-held information is to underpin Australia's constitutionally guaranteed representative democracy; an acknowledgment that information collected and created by government officials is a public resource?

Response

Agree. It reinforces the rights of the citizens to access the information and the elected representatives, and they themselves are therefore, more accountable.

7. Is there a 'culture of secrecy' in Queensland? If so, how is this evident? What can be done to overcome any such culture?

Response

I believe there is still a culture of secrecy in Queensland. One only needs to read the Information Commissioner Queensland's Annual Report to see that several state government departments and some local governments do not enter into the spirit of the Act. Although it is reactive, penalties should be introduced or increased where it is found a department or Council has actively thwarted the Act and their duties therein.

These penalties should be leveled against the individuals to make them accountable and the department/local government for allowing such behavior to exist. An education campaign may have some positive effect but unfortunately it is the senior managers who obstruct or hinder applications, and until they are made accountable the culture can not change.

8. Should the entire approach to FOI in Queensland be 'reversed' so that the onus is on agencies to routinely make certain information public (with the public still having the right to apply for information not already so released)? If so:

(a) How should this be achieved, eg, by statutory or administrative instruction?

(b) What sort of (additional) information should agencies be required to routinely publish?

(c) What (other) considerations are relevant?

Response

No. There are already situations in local government where the resources allocated to FOI are already tight, and a further request may just be 'the straw that broke the camels back'. The use of the internet to make certain documents available, such as policy documents, is fine in thought but difficult in practice.

Not every local government has the internet readily available, nor the technical resources to create and update its presence. How does such a body protect itself when three (3) years down the track an application is made on a development made under the basis of a policy or information that can not be recalled as to what content was in the web pages used? Records management practices have been improving and the Act has had some part to play in this occurring. But many organisations are not placed to handle questions relating to the retention of web pages let alone document/file scheduling. The Act is not merely about accessing documents, it is about accessing information recorded in an agency regardless of the medium used to hold that information.

The provision of details relating to what contracts were let and to who, and at what cost is a good example of information that is in the public interest and to which the public should be entitled to know. This information should be reported in the Annual Report.

As well the number of FOI's that were received and actioned by a department and/or local government, should also be included in the report and the nature of that information being sought. In the case of local governments, the Queensland Department of Communication and Information, Local Government Planning and Sport, should be reporting on the number of applications made and these statistics,

should be reported in their Annual Report. Agencies are asked to make suggestions on changes to the Act, yet we receive no feedback as to whether action is taking place. Hence the reporting system is considered a waste of time and effort, reinforcing a negative response to FOI. My agency has never received a request for its Statement of Affairs and I would suggest we are not an isolated example.

9. Is the existence of the FOIQ adequately publicised? If not, how could it be better publicised? [For example, through public libraries, on-line, by assigning promotion of the FOIQ to somebody – see T/Ref c(I).]

Response

No. There has been no education campaign of the Act and what it covers. Even in the beginning, the only advertisement consisted of glossy posters and a few TV advertisements telling Queensland residents of the Act. They did not say what you could/could not get. This was left up to the agencies own FOI Officers who had received little to no training in the beginning. Local Government in particular got the raw end of the deal as we had no back up for questions for the legislation and its intention. We were told this FOI Unit was for State Government agencies not local.

Fortunately the quality and caliber of this units' staff did assist the local government FOI Officers. The Act and its interpretations have been a steep learning curve, the decision to cut the units funding damaged the quality of decisions made in local government, as we do not have a support base from which to question the various sections of the Act and their application or relevance.

Again, fortunately Miss Alison George formally of that unit, produced an excellent guide to assist agencies and included some of the Commissioners decision to help us in our decision making process, this is now sadly out of date.

Accessing the Commissioners' decisions is now easier than before, but many agencies I am sure are unaware of his decisions and where to access them. The FOI Act should be in the hands of the Queensland Department of Communication and Information, Local Government Planning and Sport or the Justice Department, and they should be responsible for providing training for FOI practitioners and provide information to the public on what can and cannot be accessed via FOI.

10. In addition to any suggestions made in response to the above discussion points, are there any other ways in which the FOIQ , part 2 provisions concerning the publication of Statements of Affairs and other documents might be improved?

Response

I reiterate the remarks in the final paragraph of discussion point 8 here again, and I am uncertain as to whether or not there is any value in making the Statement of Affairs a part of the Annual Report.

11. Is there scope for performance agreements of senior public officers to impose a responsibility to ensure efficient and effective practices and performance in respect of access to government-held information including FOI requests?

Response

Perhaps in state agencies but I am sure local governments would object at the thought of being told to introduce performance agreements relating to FOI. The Chief Executive Officer is already the principle officer and is 'responsible' for FOI's but unless there are penalties for non conformance, little to no change is envisaged.

12. Should the title of the FOIQ be changed to the *Access to Information Act*?

Response

No. The FOI name is readily recognised as to what it means. That its function is uncertain is due to ignorance based on poor advertising of the Act and how it works. The term Freedom is inherent in what we are trying or should be trying to achieve in government operations. Accessing information does not instill in me that I have a right to information held by government. The seeking of information need not be a 'futile adversarial conflict.'

13. Should sufficient regard to 'the right to access government-held information' be included as an example of a 'fundamental legislative principal' in the *Legislative Standards Act 1992* (Qld), s4?

Response

Uncertain of the significance, so therefore I am unwilling to comment.

14. Should any of the current exemptions be removed from the FOIQ? Should any new exemptions be inserted?

Response

No.

15. What, if any, are deficiencies in particular exemption provisions – eg, are any expressed too broadly, thereby unnecessarily limiting access – and how might their drafting be improved?

Response

I concur with all of remarks made by the Information Commissioner Queensland in his submission to your committee on this point.

16. Should the different harm tests that are (or should be) contained in the FOIQ exemption provisions be rationalised and/or simplified? If so, what form(s) should they take?

Response

I agree with the statement made by the Information Commission Queensland as stated in B5 through to B63 of his submission.

17. Should the harm tests be made more stringent, eg, by requiring decision makers to show that disclosure would result in *substantial* harm?

Response

Surely decision makers are already detailing the harm test in their decision letters. So why institute more stringent requirements? If this not occurring, further decision letter training courses should occur.

18. Should there be a general harm test imposed on all exemptions? If not, what exemptions are not suited to the application of such a test and why?

Response

No. s.44.1 is a clear example of an exemption that does not need a harm test. This would provide more work on the decision maker unnecessarily. The provision of the harm test across the board will not endear the legislative branch to the troops who make the decisions. This is one of the hardest parts in the decision makers process of making a decision – the weighing up of the public interest test. It does not require an additional 'harm test.'

19. Should there be a general public interest test imposed on all exemptions? [For example, the FOIQ could instead express the exemptions as a list of interest and documents to be protected, all of which are subject to the one public interest test (perhaps in addition to being subject to a single harm test: see above.] Are any exemptions ill-suited to the application of a public interest test and why?

Response

No. Refer to answer on discussion point 18.

20. Should be 'public interest' as it relates to exemptions be defined in the FOIQ? Alternatively, should the FOIQ deem any specified factors as relevant, or irrelevant (eg, embarrassment to government), for the purpose of determining what is required by the public interest?

Response

Yes. A definition and/or guidelines on what to consider when dealing with public interest, would be advantageous for the FOI Decision Maker.

21. If the 'public interest' is to remain undefined in the FOIQ, should more guidance be provided on how to apply the public interest test by other means? [For example, through guidelines issued by the IC(Q).]

Response

Yes. A definition cannot be provided, the Information Commissioner or an FOI Unit should provide guidelines.

22. Should the ability of ministers to sign conclusive certificates be revisited?

Response

Yes. The Information Commissioner should be empowered to review a decision to issue a conclusive certificate. He therefore, acts as the watch dog on a possible abuse of this exemption.

23. Should – and, if so, what – action be taken to prevent the exclusion of agencies, or part thereof, from the application of the FOIQ by: (a) regulation; and (b) legislation other than the FOIQ?

Response

I agree with the Information Commission Queensland on his recommendation as to exclusion of certain agencies from the legislation. These agencies should be made accountable unless a detailed analysis of their operation is considered for them to achieve an exclusion.

24. Should a mechanism be introduced whereby specific bodies to which government provides funding or over which government may exercise control (and which are not otherwise 'agencies' within the meaning of the FOIQ) are made subject to the FOIQ? If so, what form should that mechanism take?

Response

Again I agree with the comments and recommendations of the Information Commissioner Queensland.

25. Should GOCs and LGOCs, as a matter of policy, be excluded from the application of the FOIQ in relation to their (competitive) commercial activities? Why/why not?

Response

No. The Information Commissioner Queensland succinctly points out the reasons for them being subject to FOI.

26. If GOCs and LGOCs are to be so excluded, is the manner of exclusion effected by ss 11A and 11B appropriate? If not, how should they be excluded?

Response

If!! they are to be excluded, it should be done as recommended by the Information Commissioner Queensland by repealing the current legislation and naming them in separate paragraphs of s.11(1).

27. Should the government be able to, by regulation, prescribe GOC community service obligations in relation to which documents are not accessible under the FOIQ?

Response

No.

28. Should there be additonal controls in respect of documents of LGOCs being excluded from the FOIQ given the IC(Q)'s concern about LGOCs' method of creation?

Response

These documents should not have the blanket protection they have merely because they come from LGOC's.

29. What arguments, if any, are there for extending the FOIQ to the private sector generally?

Response

If the private sector included the medical and legal fraternity, there are several arguments in favor – particularly relating to a person's own affairs. Having consulted a medical or legal practitioner, an individual should have the right to see their own files and have copies of documents created in relation to their own affairs. In relation to cases involving emotionally disturbed or unstable parties, can be handled as they are in s.44(3).

30. Should the FOIQ be extended to cover contractors performing functions 'outsourced' by government? If so, why and how should this be effected?

Response

I refer to the Information Commissioner Queensland's report and support his arguments when they are involved with a state and/or local government. These bodies are being paid by the public purse, and should be accountable to the public. If they were afraid of being held accountable, then they should not contract for public works.

31. Do the current commercial exemptions in the FOIQ – principally, ss45 and 46 – require amendment to ensure that an appropriate balance is struck between disclosure of information in the public interest and the protection of legitimate business interests? If so, what amendments need to be made?

Response

S45 could be reviewed in line with the Victorian Governments' definition of commercial in confidence. S46 is cumbersome but the Information Commissioner Queensland has released some decisions which make it pretty clear what has to be considered if a decision maker is going to try and use S46. So therefore, I do not believe any amendments are necessary.

32. What more can or should be done to try to ensure that agencies do not inappropriately claim that documents fall within the ss45 and 46 exemptions? [For example, should the IC(Q) or some other body issue guidelines or otherwise have a monitoring role in relation to agencies invoking the exemptions?)

Response

If an agency incorrectly uses an exemption, the Information Commissioner Queensland will overturn their decision on that exemption. This is his role and should be maintained and no interference is necessary. If however, he is aware that an

agency or officer is abusing this exemption, even with his earlier decision overturning previous decisions, then the Information Commissioner Queensland should be able to take action.

It is all fine to say that the Information Commissioner of Queensland's office can report to parliament on his views as to the inadequacies of certain departments/officers. There should be a penalty for blatant abuse. Those agencies or officers going against the spirit of the Act, should fear some action being taken against them personally or their organisation.

33. Should the FOIQ confer a general right of access to *information* instead of a right to documents? If so, what should 'information' encompass?

Response

The Act makes reference to documents and the definition of documents should be expanded to include electronically stored information. If information is recorded in an organisation, it is therefore a record, and if a record it should be available under FOI, regardless of its format or the medium used to store it.

34. If the FOIQ is to continue to provide for access to documents, can the definition of *document* be improved? (For example, by clarifying that it includes data?)

Response

Yes. The importance here should be on the definition of a 'word'. It is the record which shows the transaction of an agencies operation. Whether or not that a transaction was done in paper, voice, electronic and is stored on tape, paper or CD rom.

As stated in discussion point 33, the definition of a document should be expanded along the lines proposed by the Information Commissioner Queensland. But what we are really discussing is the record detailing some action or activity that has taken place.

35. What more can be done by agencies to assist FOI applicants in accessing *all* relevant documents (ie, including electronic documents, and, in particular, electronically provide access to documents)?

Response

Decision Makers should be issuing requests which make the agencies personnel detail 'the sufficiency of search' parameters required by the Information Commissioner Queensland. This way the officer makes a statutory declaration stating where they have searched for the information sought. This would include electronic files in an attempt to satisfy the request for information.

36. How can agencies improve the efficiency and thoroughness of their procedures to create, manage and retrieve electronic documents, and, in particular, electronically provide access to documents to FOI applicants?

Response

Establish procedures that puts the officer's searching under an obligation to truly search for the information sought. As to the provision of electronically providing access raises issues relating to security. The data that is stored electronically may contain exempt information but may via s32 be allowed access to non exempt matter. In this instance, the electronic document will have to be reproduced in a manner to allow the deletion of exempt matter and provision of the non exempt data. This is fraught with danger in tampering with the original electronic record. It is easier to reproduce in a paper copy where exempt matter is deleted.

37. Which documents should be considered in the possession of an agency for the purposes of the FOIQ? Need the Act's definitions of 'documents of an agency' and 'official documents of a Minister' be amended in this regard? Alternatively, how might the FOIQ charging regime account for agencies' identification and retrieval of documents potentially relevant to an FOI request that are 'documents of an agency' but not in the agency's physical possession?

Response

I believe the current definition of 'documents of an agency's' sufficient. As to the charging regime for accessing documents of an agency not in their possession, one needs to be careful. An agency could claim that its records are stored off-site with a commercial operator who charges for the access to documents/records it holds on an agencies behalf.

An agency should not be able to charge for this type of identification and retrieval of documents to handle an FOI application. Otherwise agencies may well use off-site storage facilities as another method to decrease FOI applications if they can charge this FEE to an applicant. As to the concerns of the Health Professional Board, they should have an arrangement with their legal practitioners, where they may have to access these documents in relation to an FOI application. If the legal firm is unwilling to provide resonable access to the boards documents, two (2) avenues lie open to the board.

(a) The board should have a copy of all documents created by the firm in relation to an item sent to them for review. In which case they do not have to access the firms records and no fee applies; or

(b) Go to a firm who will be reasonable over access provisions

It is obvious that option (a) should be chosen. The record keeping practices of the board should be improved if necessary, to ensure that material forwarded to or received from their legal advisors is restricted to specific individuals therefore, protecting confidentiality considerations.

38. Should internal review necessarily be a prerequisite to external review? If not, should there be conditions attached as to when and how an applicant can proceed directly to external review? [For example: agreement of both the applicant of both the applicatnt and agency; by leave of the ic(q)?]

Response

Yes. The internal review process should be a prerequisite to external review. I agree with the submission from the Information Commissioner Queensland. The internal review process is free to the applicant. There has to be a decision made within

fourteen (14) days. The Review Officer can alter the original decision rather than it going to external review where a decision for amendment if issued will take longer than fourteen (14) days.

39. Is there a case for any other model or a variation of the existing model of external review under the FOIQ?

Response

No. The current Information Commissioners model is a more than effective model for external review.

40. Should the same person hold the offices of Queensland Ombudsman and Queensland Information Commissioner?

Response

Yes. If for no other reason than to allow the incumbent to dedicate themselves to doing one role instead of being divided between two. I think the current incumbent has done a masterful job in handling both tasks with equanimity, fairness and ability. I do not believe there could be seen to be a conflict of interest as the Information Commission does not review any of the Ombudsman cases. He and his staff are professional and therefore, they can wear two hats if the situation arises.

41. If, as T/Ref B(v) queries, the method of 'review and decision' by the IC(Q) is 'excessively legalistic and time-comsuming', how in light of the above discussion can the IC(Q) adopt less legalistic and quicker processes? For example, is there more scope for the IC(Q) to use informal dispute resolution mechanisms?

Response

Unbelievable – the Information Commissioner Queensland has stated that 75% of his reviews are made during an informal dispute resolution and only if they fail does he go to a formal decision making process. The system used by the Information Commissioner Queensland, has to be legally based. It is not excessive. He gives the reasons for his findings succinctly and makes reference to what he used in his own decision making process.

Doing so in this manner, makes it easier for a higher court to review his decision under an application brought through the Judicial Review Act 1991. Furthermore, the decisions allow the decision makers the opportunity to see the Act through the Information Commissioner Queensland's eyes as most decision makers are not trained in the legal field.

His decisions form the basis for our own decisions as we know on what grounds the Information Commission Queenland's has agreed or refuted an exemption used in a decision maker's response. This will lead to better decisions by the decision maker and maybe fewer applications being referred for internal or external review.

42. Given the importance of providing FOI administrators guidance on the proper interpretation and application of the FOIQ:

(a) Should the IC(Q) [or some other body responsible for overseeing the administration of the FOIQ: see T/Ref C(I)] be responsible for preparing guidelines to assist agencies and applicants to understand, interpret and administer the Act?

(b) Should there be a statutory provision requiring the IC(Q) to publish all decisions in either full or summary form (as in Western Australia)?

Response

42(a) Yes. The old FOI Unit in the Department of Justice, can act in this role, and they should be created and funded again to do so.

42(b) Yes. These decisions are invaluable to the decision makers and it should be possible to access a full decision if the summary is insufficient.

43. Should there be a statutory time limit imposed on the IC(Q) in which to deal with external review applications?

Response

No. We are looking for quality decisions with standing so they could stand up in court. Many of his decisions do not get to the formal stage.

44. If such a time limit is imposed, what should that time limit be and should it allow for extensions (and, if so, on what grounds)?

Response

No.

45. Should the IC(Q) have power to: (a) enter premises and inspect documents; and/or (b) punish for contempt?

Response

Yes. If an agency or officer is acting against the requirements of the Act, the office needs the power to enter premises and some form of punishment must be available.

46. Should the IC(Q) be empowered to order disclosure of otherwise exempt matter in the public interest?

Response

If the Information Commissioner Queensland decides that a matter is in the public interest, then the office should be able to order its disclosure. He would of course, have to set out the reasons he has come to in requesting the release of an exempt document.

If the agency disagrees, then they should take it to the Supreme Court for a review of his decision. This should occur before the matter is disclosed to the applicant. A period of fourteen (14) to twenty-one (21) days should be given to the agency to appeal his decision. If no appeal is instituted, the matter should be disclosed forthwith.

47. Should the scope of the IC(Q)'s decision-making powers in relation to conclusive certificates signed by a minister under ss36, 37 or 42 be expanded? (In this regard, refer to discussion point 22 regarding the need for conclusive certificates.)

Response

Yes as stated in 22, he can therefore act as a watchdog in case the ministerial certificates clauses are being abused.

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

Response

There should definitely be a fee for non-personal applications. It is the level of the fee that is the problem. A fee does reduce the possibility of getting a flood of applications which will exhaust the resources allocated to FOI. I would suggest a fee increase to $50.

This is sufficiently high enough to stop all but the most determined of applicants wherein, their applications are used to interrupt an agencies operations. But not too high as to stop a legitimate application.

49. Should a uniform application fee be introduced (ie, should an application fee be introduced for *personal* information requests)?

Response

No. Personal applications and fees attached thereto, should remain free. We are talking about documents relating to the applicant. Why should they have to pay for information about themselves.

I can see the benefits of having uniform fee and thereby, reducing one type of review that would be put before an internal review officer and the Information Commissioner Queensland. But then an applicant who is making a personal information request, is then going to pay for copies and they gain an additional fifteen (15) days in which a decision can be made if the documents sought are pre 19 November, 1987.

This is unfair. My Council considers an applicants request, looking at complaints relating to their property/dog as a personal application. Although technically the dogs do not meet the personal affairs criteria – many people consider them as such. Council gets much mileage on taking this stand. True we receive a large number of these types of complaints 50% of our applications. The applicants are told they will not receive identifying material of the complainant and although unhappy about this in most cases, are still satisfied when they receive those documents released.

50. Should charges be introduced for:

(a) processing (for retrieval of documents, decision making and/or consultation); and/or

(b) supervised access;

Response

(a) A fee should be introduced where the number of documents exceeds a certain number, for example two hundred (200). This fee should be high enough to make the applicant be more specific on the documents being sought and not just 'I want to look at everything'. I remember an application I did in Mulgrave Shire Council that numbered in excess of five thousand (5,000) pages.

That application included documents the applicant received from meetings he himself attended as a representative of a committee. Even though he was a member and had receive the papers of this one working group, he refused to have them out of the application. We had no choice but to include them and make a decision on all of the documents sought.

This involved in excess of ninety (90) hours of my time reviewing the documents and making a decision. All of this for thirty dollars ($30.00). Local governments do not have the same resources as a state, so my own work suffered because of this one application. To make things even more exasperating and discouraging, was the applicant to this day has never come in to look at the documents released.

S28 does not allow an agency to refuse an application merely because there are a lot of documents. It is quite possible to make a sufficiently detailed request for only one subject , but that subject has hundreds if not thousands of documents attached to it.

In these instances, an agency should be entitled, subject to the Act, to levy a higher fee unless the applicant narrows the terms of their application.

Otherwise I agree with the Information Commissioner Queensland's view that FOI is a piece of legislation which should be with few financial restrictions. Some type of user pay system could be beneficial to reduce the vexatious and nuisance applicants. But it would have to be limited on cost and scope and if something is found which is in the public interest and has only been made available because of an FOI. The applicant should be able to approach first the Internal Review Officer for the waiving of all fees associated with the application. If no success at this stage, they can then seek the Information Commissioner Queensland's decision.

(b) A fee schedule as submitted by the Information Commissioner Queensland is considered appropriate, but the ten dollars ($10.00) per hour fee should be increased to twenty five dollars ($25.00), a more reasonable figure for someone involved in the supervision role. This fee would come in at the two (2) hour mark.

This is considered more than sufficient time to review most documents released and again encouraging more specific information requests, rather than some of the 'fishing expeditions' which arise in some applications.

51. What other components of the charging regime need to be addressed (eg, photcopying)?

Response

The current photocopying fee of 50 cents is considered appropriate without needing to be increased.

52. Especially if there are to be any fee increases, should the FOIQ be amended to enable agencies and ministers to waive or reduce fees? On what grounds?

Response

Yes the Act should be amended to allow the waiving of fees. Those grounds can be –

(a) personal affairs;

(b) public interest; and

(c) compassionate/welfare

Although the actual wording should be introduced to give discretion to the agency as suggested by the ALRC/ARC review.

53. Are any of the arguments for the introduction of application fees for internal and/or external review valid? If so, which ones and why?

Response

Yes there are arguments for the introduction of application fees for internal and external review. Whether they are valid is the true question. In my view, there is no valid reason for a fee to review the FOI decision makers decision. It has been the case at my Council, that only two (2) applications did the Internal Review Officer not uphold the original decision in total. If the decision was incorrectly made or the wrong exemptions applied, why should the applicant have to pay for the right result.

Similarly for external review applications. I agree wholeheartedly with the Information Commissioner Queensland's view as stated in B213 of his submission. A citizen has a legal and moral right to access government held information if available. I realise there is a push to reduce the number of vexatious or malicious applications to get better value out of the Information Commissioner Queensland's area, if the number of applications were to be reduced by the imposition of a fee.

But really, how many applications are made to the Information Commissioner Queensland which meet this category of applications. I would suggest very few, and therefore, why should the minority mess up this system for the majority.

54. If application fees are introduced for internal and/or external review:

(a) at what level should those fees be set; and

(b) should they apply to reviews of decisions concerning both personal and no-personal information?

Should provision be made for:

(c) waiver of those fees and, if so, in what circumstances;

(d) refunds of those fees where proceedings are decided (wholly or partly) in favour of the applicant; and/or

(e) the fees extending to applications relating to a deemed refusal?

Response

No fees should be set as remarked in discussion point 53. There is no real justification and it deters from the spirit of the Act. If a fee was incorporated, subject to a refund of the application which was partially or in wholly successful at internal or external review, the cost to refund the fee is a cost that has not been considered. It is not economically viable or justifiable to place a fee of $50.00 as suggested by the Information Commissioner Queensland in paragraph B215. Too high a fee will disadvantage legitimate enquirers of their rights to seek redress if they believe they have been wronged. Too low a fee just increases the unnecessary cost in administering the act. Therefore, do not introduce a fee.

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;

(b) agencies be required to consult with the IC(Q) before refusing an application under the provision; and/or

(c) the provision be redrafted to emphasise the importance of agencies consulting with applicants about their applications?

Response

(a) Yes 'only' should be deleted from s28(2);

(b) No. Why should the agency consult prior to the decision. If the applicant is unhappy with the decision, they can utilise the current internal and external processes to review the decision; and

(c) No. The provision currently provides that the agency must consult prior to using this exemption.

56. Should s28(3) of the FOIQ be repealed? If s28(3) is to be retained, should it be amended to require the agency to :

(a) identify the exemption provision(s) purported to be applicable; and

(b) explain why all the sought documents are exempt thereunder?

Response

It is probably easier to repeal s28(3) than amend the section as to detailing what exemption provisions would be involved and why they would be exempt. As the Information Commissioner Queensland has remarked, it is rarely used and on those occasions it has been the majority have been cases when it has been improperly used.

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?

Response

Yes there should be a provision which would enable a vexatious or frivolous application to be refused. Guidelines from the Information Commissioner Queensland should be established as to what is considered to be vexatious and frivolous. Once a decision has been made that it fits these provisions, a formal decision is then considered to have been made. The applicant should still be able to seek internal and external review of the decision.

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 test?

Response

Yes a provision to deal with serial repeat applications as provided by the Information Commissioner Queensland's submission B249 should be enacted.

59. In addition to having (relevant and not unduly onerous) data collection and reporting requirements. is there a need for an entity (other than the relevant minister) to be responsible for:

(a) ensuring the timely, accurate and consistent reporting of that data;

(b) undertaking a meaningful analysis of that data once collected; and

(c) ensuring that, as a result of that analysis, any appropriate remedial action is taken?

Response

(a), (b) and (c) No.

The relevant Minister in my Council's case, the Minister for the Department of Communication and Information, Local Government, Planning and Sport should be responsible for ensuring timely, accurate and consistent reports. This Minister should be responsible for undertaking an analysis of the data collected and ensuring any relevant remedial action required is taken.

60. Should the basic forty five (45) day time limit for processing access applications – in s27(7)(b) of the FOIQ – be reduced to thirty (30) days.
Response

No. My Council does not employ a full time FOI decision maker. The incumbent has other tasks to perform in addition to FOI. Therefore the forty five (45) days is necessary in case other work commitments take precedence over an FOI application.

61. Should the 15 day extension for third party consultation when required under s51 – in s27(4)(b) of the FOIQ – be extended to thirty (30) days?

Response

Have no position either for or against increasing the third party consultation to thirty (30) days.

62. Should provision be made for agencies (or ministers) and applicants to agree to extend response times rather than incur an automatic deemed refusal? Should any such amendment be subject to the requirement that a partial or interim decision be made within the prescribed time limits on as many documents as possible?

Response

Yes. Provision should be made for agencies and applicants to agree for extended response times rather than it be deemed a refusal. But I am not in favor of partial or interim decisions. A decision should be made when all of the documents have been considered. You could have a internal review come in on the interim decision, this would then suspend the final decision.

63. Should an agency's (or minister's) failure to decide an access application and notify the applicant within the relevant time period be taken to be deemed access instead of deemed refusal?

Response

Yes.

64. Should s27 be redrafted to provide that an agency or minister must decide an application and notify the applicant '*as soon as is reasonable practicable*' but, in any case, no later than the relevant time limit?

Response

Most agencies would be trying to handle applications now '*as soon as is reasonable practicable*' without it being referred to in the legislation. So see no need for s27 to be redrafted.

65. Should there be provision for the processing of applications to be expedited in circumstances where a compelling need exists? If so, in what circumstances? (For example, imminent threat to public safety, public health or the environment.)

Response

No. An agency should act within the current legislative time frames and no "appeal circumstances' provisions should be available. If there were reasons as those suggested in your examples, the agency staff has a duty of care and responsibility to act on such instances. I as a staff member of Council, we try to handle applications as quickly as possible and have on certain occasions assisted in fast tracking an application for an applicant who sought information for a court hearing. These are rare occasions and are very dependent on the workload of the FOI decision maker at the time.

66. Should a statutory time limit be applied for applicants viewing or seeking copies of documents to which access has been granted (say, sixty (60) days)?

Response

Yes the time frame should be no longer that twenty eight (28) days after the decision is made. In line with their appeal rights for internal or external reviews. Some agencies provide original documents for accessing – documents which maybe current documents being used in their agency. Having them out of the system per se for sixty (60) days is unfair on the agency. Furthermore space considerations need to be considered in instances where an agency receives many requests.

67. Should the fourteen (14) day limit for dealing with internal review applications for access and amendment decisions – as set out in ss52(6) and 60(6) – be extended? If so, what should the period be?

Response

Yes the time frame should be extended for an internal review. It should be extended to twenty one (21) days. This gives the internal review officer greater opportunity to review the application.

68. Should the 60 day period for lodging an application for external review – as set out in s73(1)(d)(I) of the FOIQ – be reduced? If so, what should the relevant time period be?

Response

Yes I believe the period for lodging an external review application should be reduced to forty five (45) days.

69. Is there a need to implement further measures to ensure that, where appropriate, public servants can claim exemptions in respect of their names and other identifying material? For example:

(a) Should the IC(Q) (or some other body) issue guidelines setting out general principles regarding the release of public servants' personal information and the circumstances in which exemption from disclosure may be justified?

(b) Alternatively, should the FOIQ specify categories of personal affairs information of public servants that is not exempt under s44?

Response

No. As public servants, our actions or inactions are open to public scrutiny and should stay as such. As remarked by the Information Commissioner Queensland, there are other exemptions available to withhold a person's name even a public servant.

(a) No – current provisions are fine and any additions would interfere with the Acts' intention.

(b) No – as per (a), there are sufficient exemption provisions already in the Act.

70. Is the balancing of the public interest required by s44(1) of the FOIQ sufficient to protect the evidence of children/adult victims of serious offenses from use outside court processes? Does it provide sufficient certainty?

Response

Unable to comment with authority, but would have thought that s44(1) provided coverage.

71. If not, should 'personal affairs' be defined in the FOIQ to include recordings of evidence of children/adult victims of serious offenses from use outside court processes? Does it provide sufficient certainty?

Responses

As per 70, not in a position to make a definitive statement either way.

72. What particular deficiencies in the FOIQ might the proposal in T/Ref B(ix) seek to overcome? Does the proposal adequately overcome these deficiencies? Are there any alternative ways by which theses deficiencies might be addressed?

Response

I am unaware of any deficiencies to which this proposal is sought to overcome. Therefore, I am not in favour of the proposal.

73. Should the personal affairs exemption (s44) be amended to provide that, in weighing the public interest in disclosure, an agency may have regard to any special relationship between the applicant and a third party? If so, on what basis should such a provision operate?

Response

No. s44 should not be amended to give weighting to a special relationship between the applicant and the third party. If there is such an arrangement, the third party could be contacted and approval sought to release the various documents requested.

74. Should a person/entity be (statutorily) responsible for generally:

(a) monitoring compliance with, and the administration of, the FOIQ; and

(b) providing advice about, and ensuring a high level of agency and community awareness of, the FOIQ?

Response

Yes. Somebody should be responsible for monitoring compliance with and the administration of the FOI Act. In this role they should also provide advice and promote the Act.

My Council has remarked in each of its Annual Reports since 1996, expressing concern over s51. Council consulted a party over 2 documents totaling 7 pages, yet the third party objected to the release of all documents associated with the application.

In consultation with the third party, Council pointed out that over seven hundred documents were Council's own documents or documents such as AMCORD which are in the public domain. Council was of the view that these types of documents could not be included in their all encompassing objection, however, another two hundred (200) pages of documents still had to be withheld from the applicant, in the Council's decision letter as the s51 party consulted, is afforded twenty-eight days to appeal Council's original decision. This means that the applicant is forced to seek an internal review.

Under internal review, this situation can arise again if the party consulted under s51 was obstinate in their decision to object to all the documents being released. It should not be forgotten that the consulted party in this case was consulted over two (2) documents totaling seven (7) pages, and were unaware of the nature of an additional two hundred (200) pages of documents considered in the application, yet they were able to object to the release of all documents relating to the application.

Fortunately in this instance, Council was able to get the s51 consulted party to view all documents proposed for release and they formally advised Council they would not seek a review of the original decision.

But the situation could have gone to the Information Commissioner Queensland if they had instituted an internal review. It is therefore requested that s51 and its appeal time frames be reviewed.

75. If so, who should perform this role:

(a) the IC(Q);

(b) unit within the Department of Justice and Attorney-General;

(c) a new independent (statutory) enity; or

(d) some other existing person/enity?

Why?

Response

I am of the view, a body similar to the original FOI Unit with the Department of Justice is necessary. Who that Unit resides under is unimportant as long as it receives the resources necessary to support all agencies not just the state agencies.
As I have mentioned in earlier discussion points, the level of knowledge in the community on FOI is poor at least. Still today, new decisions are being released and agencies are unaware as to their whereabouts. Somebody needs to coordinate this and act as a support party to the FOI decision makers and applicants.

I hope these comments are of some value to the Committee.

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FOI DECISION MAKER