



SOCIAL ACTION OFFICE

Conference of Leaders of Religious Institutes, Queensland

28 March 2000

RECEIVED

29 MAR 2000

LEGAL, CONSTITUTIONAL AND
ADMINISTRATIVE REVIEW
COMMITTEE

Mr Gary Fenlon MLA
Chair
Legal, Constitutional and Administrative Review Committee
Legislative Assembly of Queensland
Parliament House
George Street
Brisbane Qld 4000

2004.
Submission 120

Dear Mr Fenlon

The Review of the Freedom of Information Act 1992 (Qld)

Enclosed is a copy of the response of the Social Action Office, Conference of Leaders of Religious Institutes, Queensland, to issues raised in *Discussion Paper No. 1*.

As a small, community-based agency we have been pleased to participate in this review of the *Freedom of Information Act 1992 (Qld)*. Thank you and the Committee for this opportunity.

Yours sincerely

Coralie Kingston
Research and Education Coordinator
Social Action Office

Encl.

Street address: 84 Park Road, Woolloongabba Qld
Carpark address: 5 Abingdon Street, Woolloongabba Qld
Postal address: PO Box 3246, South Brisbane BC Qld 4101
Webpage: www.uq.net.au/socialactionoffice

Phone: (07) 3891 5866
Fax: (07) 3891 6944
Mobile: 0417 715 717
Email: sao@uq.net.au

Submission No 120

**Freedom of Information in Queensland
Submission**

on

**Discussion Paper No. 1
Legal, Constitutional and Administrative
Review Committee**

from

Social Action Office
Conference of Leaders of Religious Institutes,
Queensland



March 2000

RECEIVED

29 MAR 2000

LEGAL, CONSTITUTIONAL AND
ADMINISTRATIVE REVIEW
COMMITTEE

Overview

This submission focuses on a number of the discussion points raised in Discussion Paper No. 1. It does not comment on all the points raised but on those which fall within the interest and competence of the Social Action Office.

Point 1

In relation to the compatibility of Freedom of Information (FOI) purposes and principles with the Westminster-style system of government, it is important to note that the government of the State of Queensland is not altogether consistent with the Westminster system anyway. For example, there is no Upper House in Queensland. Therefore, there is no structure to review legislation and provide an alternative voice to the Legislative Assembly which generally rubber-stamps the Executive.

Further, Queensland does not have a good Parliamentary Committee System which opens up government policy and practice to community scrutiny and consultation. Certainly, this has improved in the wake of the Fitzgerald reforms but there is vast room for further improvement. The present regime is limited.

Consequently, to argue that a pure form of the Westminster system of government operates in Queensland is fallacious. It has been modified significantly already.

A further point to make is that the Westminster system of government originated in an era when only a select group was able to vote. Since then we have seen this system of government adopt universal franchise - a sign that it can and will adapt to changing times. The notions of open and accountable government and citizen participation are now generally accepted ideas. The grafting of FOI onto a Westminster-like system of government is further evidence of the capacity of this model of government to adapt to the times and reflect new ideas.

Overall, we see no incompatibility of FOI principles and purposes with the operation of government in Queensland. In fact, FOI enhances democracy and accountable governance in this State. This is the central reason why the politicians and bureaucrats who find it 'an inconvenience' should not further dilute FOI legislation.

Points 2 and 6

Our earlier submission indicated satisfaction with the objects clause of the FOI legislation. However, having read the Discussion Paper we are persuaded that the objects clause should be extended to include reference to (i) public participation; (ii) open and accountable government; and (iii) the presumption of access. We would also support a statement along the lines of that articulated in Point 6.

The value of extending the objects clause in this way is that it strengthens the 'democratic intent' of such legislation and puts this beyond dispute.

Point 9

The FOI legislation is not well publicised and this should be improved. A promotional and community education strategy could be developed across government to improve awareness of this legislation and acquaint citizens with their rights to access public information.

Point 12

The title of the legislation should, ideally, fit the objects of the legislation. If the objects clause is extended to encompass public participation, openness and accountability in government and the presumption of access, then a title change as suggested by Rick Snell and Paula Walker is logical.

On the other hand, 'freedom of information' does stand in the long tradition of political freedoms, which many have struggled for over the years. Continuing with using 'freedom' in the title maintains a link with this - it is a powerfully symbolic word.

Points 14 and 15

Concern about exemption matters was raised in our earlier submission. The two areas in which concern was expressed were those outlined in the legislation, Part 3, Division 2, Sections 36, 37, 38, 45-47. These concerns remain.

The only point we wish to add is to point out that in February this year, at the height of the *Virgin Airlines* euphoria, the Auditor-General called for the secrecy provisions

on the State's commercial dealings to be exercised as an exception rather than the rule. This call should be heeded and guidelines developed to limit a government's use of commercial in-confidence provisions to impede the public's right to know.

Points 19 - 21

The question of what is in the public interest when exemptions are concerned is a vexatious one. It is accepted that there are good reasons to withhold information and many of these are itemised in the current legislation. However, the determination of what is in the public interest is the critical issue. In our original submission we referred to the cynical manipulation of the current FOI legislation in s.36 and s.37. This clearly exceeds the bounds of protecting Cabinet secrecy for the purposes of good and stable governance. We support the Information Commissioner's concerns expressed in the 1997-98 Annual Report and strongly suggest that this be corrected in the public interest.

We also affirm the point made above regarding the use of commercial in-confidence provisions to withhold information from the public about business activities such as *Virgin Airlines* and other similar business conducted between the private sector and the State Government. For example, as tax payers, citizens have a right to know what incentives are offered to business to induce them to locate in Queensland. Citizens also have a right to know about various social and environmental impacts that such transactions might involve.

It is desirable that the legislation either define the public interest in some of these exemption areas or establish guidelines which would make this concept more concrete than it is.

Point 25

As a general rule, *GOCs* and *LGOCs* should be subject to FOI scrutiny in relation to their commercial activities although there would be times and situations where this general rule should not be applied. We refer to the recent statement by the State Government Auditor-General in relation to the use of commercial in-confidence provisions needed to be subject to guidelines. The same principle applies for these *GOCs* and *LGOCs*.

The fact that these entities now operate in a market environment and that many supply essential services to the community makes this more imperative. It is in the public interest to know how cost reductions and staff downsizing are impacting upon the quality and sustainability of essential services. The application of cost-reducing risk management strategies to essential services is affecting the delivery of services and these organisations should be in the full light of public scrutiny. Further, many have community service obligations to meet and information is required to determine *if and how* adequately these are being met.

Point 30

Yes, FOI legislation should encompass contractors to whom government functions are outsourced.

Point 40

Whatever model is adopted, the independence of the Information Commissioner (IC) and the objectivity and independence of review process must be paramount. On balance, the separation of the Ombudsman and the IC is desirable as this would overcome any real or perceived conflict of interest where the IC is required to review an FOI decision of the Ombudsman.

Points 48 - 52

FOI has emerged as a key component of citizen participation in the process of government in many social democracies. As such, access to information should be made as easy and as simple as possible for all citizens. The application of the 'user-pays' principle to FOI is acceptable as government agencies do have to expend resources to implement FOI. However, charges should be kept at a minimum in keeping with the democratic nature of FOI. Application fees and other costs should not become a barrier for people and prevent them from applying. The Hon Justice Kirby's words cited in the Discussion Paper 1 (p. 38) capture the spirit with which FOI services should be supplied to the community:

It is important for governments, whatever their political complexions, to understand that some basic activities of governments simply have to be provided at the general costs of the taxpayer. They represent the price of

governing a civilised community. To expect the user to pay fully for basic government services, such as a day in court, is surely wrong. The same is true for FOI services.

In this spirit, the existing fee arrangements should remain and not be increased. People on pensions and benefits should be exempt from any application fees. Photocopies should be reduced to a market rate.

While strongly endorsing the need for making access as easy and simple as possible, we also recognise the nuisance value of so-called vexatious and serial applications. On the other hand, we also recognise that subjective judgements by agencies about "problematic" applicants could cause the FOI system to be abused.

We would support fair, reasonable and flexible means to deal with such applications and suggest that the advice of the Information Commissioner would best serve a fair and reasoned resolution to this matter.

Conclusion

This response to Discussion Paper No. 1 reflects an appreciation of FOI legislation as a new entrant into the configuration of laws and institutions that make up political democracy in Queensland. FOI has become an important part of the democratic process and plays a key role in enabling greater citizen participation in the processes of government. The Queensland Parliament plays a crucial role in ensuring that this legislation is effective and not diluted - in the public interest. It is our primary interest that Queensland has effective FOI legislation that services the wider public interest.

Social Action Office
March 2000