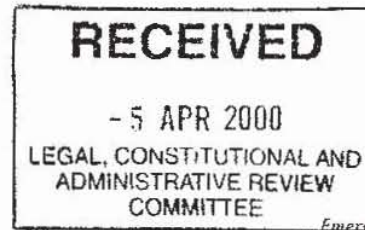




DEPARTMENT OF  
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4 APR 2000

Submission No 125  
Spec 14.

Mr Gary Fenlon MLA  
Chair  
Legal, Constitutional and Administrative  
Review Committee  
Parliament House  
George Street  
BRISBANE QLD 4000

Dear Mr Fenlon

I refer to your letter of 7 February 2000, addressed to the Honourable Stephen Robertson MLA, Minister for Emergency Services, requesting submissions on the Legal, Constitutional and Administrative Review Committee's *Freedom of Information in Queensland Discussion Paper No. 1*.

It is apparent that the Committee has received some quite detailed and pertinent submissions in relation to the initial call for submissions into the review of the *Freedom of Information Act 1992* (FOIQ). I have read with interest the issues raised in the discussion paper and would like to offer further comment on a number of the discussion points contained within the Discussion Paper which are outlined below.

**Discussion point 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 ...].**

It is apparent from the applications received by this agency that the existence of the FOIQ is known to the community and used by it. There appears to be a general awareness within the community that the FOIQ exists however, this awareness is limited to just that, an awareness. Contact with the Freedom of Information (FOI) applicants of this agency often proves that whilst the applicant is aware that the FOIQ provides for access to documents, there is a limited knowledge of other aspects of the Act.

The awareness of those members of the community who chose to use FOI may need to be raised to a level where it is understood that the right to access provided by the Act can at times be conditional and is not an absolute right of access.

### **Discussion point 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 and agency; by leave of the IC(Q)?]**

The internal review process should remain a prerequisite to external review under the FOIQ. The internal review process currently provides for a very important step in the FOI processes available to aggrieved FOI applicants. The internal review of initial FOI access decisions provides for a number of positive opportunities. Firstly it provides the opportunity for senior staff within the agency to ensure that FOI decision making within the agency is of a very high standard and is being conducted in a professional manner.

Secondly, it provides for an opportunity to allow the applicant access to further material should the internal reviewing officer consider such release is warranted. Internal review can also provide the FOI applicant with a better understanding of a decision and may satisfy the applicant that the document is exempt. This may have the effect of removing any need to pursue the documents through external review which can be a time consuming and sometimes costly affair for the agency and applicant alike.

The FOIQ could be amended in relation to the conduct of internal review. These points however, are more pertinent to discussion points raised later in the paper and I will address them at the relevant discussion point.

### **Discussion point 43**

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

This agency has few FOI matters which proceed to external review with the Information Commissioner (Queensland). Accordingly the timelines of the Information Commissioner's office with regard to the finalisation of external reviews has not had a large impact on this agency.

I understand that the Office of the Information Commissioner (Queensland) has previously experienced resourcing problems which now appear to have been eased somewhat and that cases are now being processed at a much quicker rate.

It may be opportune at this time to implement similar timeframes for the Office of the Information Commissioner as those under which this agency must comply. The Information Commissioner deals with a number of complex legal issues during the external review process in a number of cases. These cases require detailed research, complete consultation with the parties involved and can be quite time consuming. However, the Information Commissioner has, through published decisions, established a vast amount of precedent in the interpretation of the FOIQ which now provides invaluable guidance to Queensland FOI decision makers.

This being the case, the Information Commissioner may have the capacity to process some external review requests within a predetermined timeframe. This may assist to provide applicants with a more timely final outcome regarding their FOI requests and reduce anxiety in some cases which are of a highly personal nature.

#### **Discussion point 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)?**

The discussion paper on this point mentions a suggested timeframe of between 60 days to six months. Sixty days may not be an adequate timeframe in which the Information Commissioner can fully consider all facts relevant to any documents which are the subject of an external review.

Consideration could be given to the Information Commissioner setting service standards for the timeliness of external reviews. Any other more rigid method of setting time limits may prevent the Information Commissioner properly considering issues in complex appeals.

The Office of the Information Commissioner could then report on its performance measured against the agreed standards in its Annual Report.

#### **Discussion point 49**

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

The budget for the administration of the FOIQ within this agency for the 1999/00 financial year is approximately \$150,000. It is anticipated that the agency during this financial year will process approximately 1,500 requests for access to documents under the FOIQ of which a large percentage are personal affairs requests. One benefit of a uniform processing fee is the removal of the administrative burden of having to distinguish personal from non-personal information in order to determine whether any application fee is payable and which documents a copying charge is applicable to.

This agency would support a charging regime which collected a larger percentage of the cost of administering the FOIQ. An application fee for personal information requests would also be supported provided it was set at a level which did not act as a real deterrent to applicants wishing to access personal information. An ability to waive the fee in cases of hardship may also be desirable.

#### **Discussion 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?)**

If a cost recovery model is not adopted, a processing fee which includes all fees and charges and is simply worked out on a charge per the number of pages disclosed has some appeal. The proposed approach by the Information Commissioner appears to be the best option for this agency. That is applicants are only charged for the documents disclosed and on a scaled charging regime which would prescribe a steeper proportionate rise in the charging for applications involving more than 200 pages. This could be capped at a specific amount to allow bona fide applicants to make full use of the legislation at a reasonable cost.



#### Discussion point 60

##### **Should the basic 45 day time limit for processing access applications – in s 27(7)(b) of the FOIQ – be reduced to 30 days?**

A sample of all FOI requests processed within the month of December 1999 within this portfolio reveals that the agency currently has an average of 15 days in which it provides a decision regarding access to FOI applicants. However, of the 57 cases sampled, 11 would exceed the proposed 30 day timeframe.

I note the comments of the Information Commissioner in which a view is put forward that in light of agencies' six years experience in the administration of the FOIQ, it is appropriate that the basic time limit for processing an access application be reduced from 45 days to 30 days. With this comment in mind I am mindful that there is a high turnover rate of FOI decision makers within Queensland Government agencies. As such the established practices and knowledge base of an agency's FOI decision maker can be significantly reduced should that officer take up employment in a different line of work within the Government or elsewhere. With the limited FOI training facility available to new FOI decision makers within Queensland it may be impractical to impose reduced timeframes on these new FOI decision makers.

While this agency would not be adversely affected by the conditional reduction of the current 45 day timeframe, I am mindful that agencies like the Queensland Police Service and Queensland Health who experience a large volume of requests sometimes involving complex documents will experience difficulty with any such reduction.

#### Discussion point 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?**

If the timeframe in which agencies are to provide an access decision is to be reduced to 30 days, or reduced at all, it is imperative that suitable amendment be made to enable FOI decision makers to negotiate extensions of time with the FOI applicants in appropriate cases. If this was not provided for, a much higher number of FOI cases would proceed to internal and external review, unnecessarily tying up the resources of this agency and the Office of the Information Commissioner.

I believe the situation currently exists where FOI decisions makers who are unable to comply with the timeframes set out in the Act are negotiating extensions of time with the FOI applicants even though there is no legislative basis for doing so. I understand that this approach has met with marked success.

#### Discussion point 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?**

Deemed access would inevitably provide for access to documents which would quite correctly be classified as exempt matter, simply because the FOI decision maker has been unable to meet the statutory timeframe in which they are to give an access decision. This inability could be for a number of quite legitimate reasons such as staff on leave, heavy case load involving large volumes of complex documents, etc.

The abovementioned approach could have quite a substantial impact within agencies like Queensland Health, the Queensland Police Service and those other agencies which experience a high volume of access requests and a back log of "out of time" FOI access requests.

#### **Discussion point 64**

**Should s 27 be redrafted to provide that an agency or minister must decide an application and notify the applicant 'as soon as is reasonably practicable' but, in any case, no later than the relevant time limit?**

It is normal practice for this agency to process all FOI access requests as soon as is reasonably practicable. If the Act was amended to include a provision of this type, it would simply be unenforceable and, therefore, meaningless.

#### **Discussion point 66**

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

The documents and files of this agency are often taken out of their business or operational units for the purposes of processing an access request under FOI. These files and/or documents are often "live" documents being applicable to projects or tasks underway within the agency at the time. Some of these documents play a key role in the progressing of these projects and tasks and having them removed for the purposes of processing an FOI request can delay these tasks. Photocopying the records and providing those to the FOI decision maker alleviates this problem in some instances, however, in the past FOI applicants have requested access to the original documents to which I believe they are entitled under section 30 of the FOIQ.

In addition, the storing of documents pending any inspection by the FOI applicant can often pose problems for the FOI staff of this agency. Current office space conditions do not allow for the long term storage of documents pending an FOI inspection.

A provision which seeks to have the FOI applicant access documents within a set timeframe would enable the case to be dealt with and closed in a proper and timely manner. It may also have the effect of further deterring potential vexatious applications as the FOI applicant would not have the ability to tie up the documents for an overly extended period of time.

#### **Discussion point 67**

**Should the 14 day limit for dealing with internal review applications for access and amendment decisions – as set out in ss 52(6) and 60(6) – be extended? If so, what should the period be?**

Section 52(4) of the FOIQ states "*An application under this section is to be dealt with as if it were an application for access to a document under section 25.*".

With this in mind it appears that there is some inequity in allowing the original decision maker a period of 45 days in which to deal with a request and only allow 14 days to the internal review officer. In the processing of the original FOI access application, the FOI decision maker must acknowledge the request, gather relevant documentation from throughout what are now more commonly decentralised agencies, conduct relevant research into what at times can be complex issues, evaluate all documents, and draft decision letters with adequate reasons to support the FOI access decision. The internal review decision maker must carry out all of the same steps except the acknowledgment within 1/3 of the time given to the original decision maker.



It is accepted that further documents will not always be required, however the process of detailed research, the evaluation of all documents provided for the request and the drafting of a detailed internal review decision letter is still quite a task to be undertaken within 14 calendar days.

As mentioned above a 30 day time limit in which to give an FOI applicant a decision regarding their access request may be considered appropriate with the provision for negotiation of time extensions with the applicant. This time limit should also be applied to the internal review decision maker with the same proviso.

The result of this may be more considered internal review decisions with perhaps better outcomes for the agency and the agency's FOI customers.

**Discussion point 68**

**Should the 60 day period for lodging an application for external review – as set out in s 73(1)(d)(i) of the FOIQ – be reduced? If so, what should the relevant time period be?**

The 60 day period for lodging an application for external review should not be reduced. FOI applicants who have been refused access to certain matter through the initial FOI access request and subsequent internal review decision must have every opportunity available to them to formulate an appropriate request for external review. This may involve the FOI applicant seeking legal advice and having their legal representative research the case, research case law in the area and develop a proper submission.

The current 60 day time limit does not have any particular adverse effect on this agency.

In closing, I would like to thank the Committee for the opportunity to have input into this review. I look forward to further input into this important initiative.

Yours sincerely



**MICHAEL KINNANE**  
Director-General