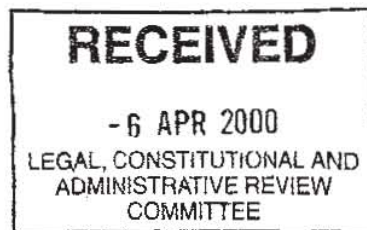


Response to Legal constitutional and  
Administrative Review Committee Freedom  
of Information in Queensland

Discussion Paper No. 1



Submitted by; Billy Jant

Submission No 134

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Discussion Point 1

As for any organisation, government must, to be sustainable, be an evolving dynamic entity guided but not retarded by established rules or policy. In my view Queensland

differs from the traditional Westminster system in many respects, and, must embrace and further enhance the objectives of existing freedom of Information legislation until the existing regulatory and procedural anomalies, defects or other points of contention are resolved or otherwise negated.

### Discussion Points 2-6

The reference in ss 4 and 5 to "information" must be retained and not replaced with "documents"<sup>99</sup>. Far better to provide

definitions providing that; "information"<sup>99</sup>  
"includes documents, documentation, whether  
as hard copy, in electronic format, or,  
otherwise"<sup>99</sup>; and; "documents includes  
all documentation whether as hard copy,  
in electronic format, or, otherwise"<sup>99</sup>.

The presumption of access appears to  
already exist in law and perhaps it  
would be a more equitable and fair  
policy to increase legal aid funding  
to provide for more detailed  
examination of this principle to  
be carried<sup>out</sup> in the courts at  
this stage.

Freedom of information is of two distinct forms, if it seems  
that a balance is required where the two interact or  
are subjects of the one proceeding. Information collected  
and created by government may be a public resource,  
however, constitutional freedom to communicate that  
information shall only be guaranteed under particular  
circumstances. pg 3 (see eg. Lange v Australian Broadcasting



Operation (1997); unreported High Court case that establishes a two part test for such circumstances)

### Discussion Point 7

Information can be manipulated for financial or other gains and accordingly it seems there may always be an incentive to promote a culture of, or use of, secrecy. Perhaps, to encourage freedom of communication, inspection of disputed information may be permitted by legislation to the party affected upon their agreement to allow the secret to extend only (to) to themselves and their legal advisors.

### Discussion Point 8

Statutory instruction of a general nature should ensure that particular agencies release information quickly, efficiently and in a manner that is equitable. The <sup>of</sup> Internet and access to name are primary.

Discussion Points 9-10-11-12-13

The FOIA and matters relating to its modern usage are not adequately published, and, what is required is a short intensive advertising campaign to raise awareness, as well as wider ranging sustainable public exposure campaigns for the long term. Agencies should include their statement within their annual report.

Performance agreements of senior public officers should be publically available as should the level of each officers performance.

I doubt changing the Acts name would have any significant beneficial effect.

The "right to access government-held information" must only extend to political material released in the public interest, and, personal information should only be released with the affected parties consent.

## Discussion Points 14-15

Exemptions on information which is of a "political" nature - i.e. in a legal sense, must be repealed or abolished as soon as is practicable

## Discussion Points 16-18

There needs to be greater public awareness & debate regarding "harm" tests and their use and effects.

## Discussion Point 19-22-23-24

A public interest test imposed by legislation must be flexible so as to allow the courts some discretion to overrule unreasonable applications of the test.

The Act must be applied to all agencies, or business of agencies, which receive any government funding. Government Owned Corporations must be subject to inquiries and the availability of judicial review of same must be extended

## GOCs

Information about

interorganizational activity between all government, political, and social movement organisations must be freely available at the earliest opportunity.

All Community Service Obligations performed by GOCs must be available under the FOIA. Competitive commercial activities must only be exempt on additional grounds which may justify such exemption and not "commercial activity" grounds alone.

### Discussion Point 29

Private organisations which potentially bear on the processes of governments must be brought under FOIA legislation at least to some significant degree.



Discussion Points 30-32-33-34-35-36

'Outsourced' contracts must attract the same disclosure requirements as government held information.

Legislation must ensure that in all probability non-disclosure of "commercial-in-confidence" exemptions err in favour of disclosure.

(4) 'Information' should encompass all ~~data~~ data or other information held <sup>by</sup> or which has been in the possession of, an agency.

The internet must be made more accessible & available to all persons and information distributed via that network.

P28



### Discussion Point 37

All documents that an agency has had physically in its possession or had access to must be considered "in possession of an agency".

### Discussion Point 38-40-41-42

Internal review should not be a prerequisite to external review so as to ensure that applicants are less susceptible to reviewer fatigue.

The Ombudsman and Information Commissioner Offices must be held by different persons at all times to avoid any potential for perceived or actual bias.

The proposed "informal dispute resolution mechanisms" must be an independent process preferably under the Queensland Dispute Resolution Centre Legislation. Questions of law should be ~~not~~ decided by judges in courts.

## Discussion Points 43-44

There should be a time limit of 28 days extendable by only 28 days in particular extenuating circumstances

## Discussion Points 48-52-54

To reduce nuisance inquiries the application fee should be increased to some hundreds of dollars, however, this must be contingent on there no longer be a fee required for applications made in the public interest.

Photocopying should be charged at a standard reasonable rate - eg. 25c / A4 page, and, only if a maximum of - eg \$40, is <sup>not</sup> paid in total for photocopying charges to individuals and non-profit organisations.  
no fee, for reviews, at all !!!







Sign it to

The Research Director

Legal, Const & Ad New Committee

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### Addendum!

Persons being requested to give consent for personal information to be released should be entitled to be informed as to where that information is going and how it may be used.

(2)