

Queensland Police Union of Employees

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LEGAL, CONSTITUTIONAL AND
ADMINISTRATIVE REVIEW
COMMITTEE

Submission No 140
Spec 1.4

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

Dear Sir,

Re: Review of the Freedom of Information Act 1992 (Qld)

Thank you for your letter dated February 7, 2000 affording the Union an opportunity to submit a submission in relation to the Review of the Freedom of Information Act 1992 (Qld).

I enclose herewith our submission on this matter.

Yours faithfully,


M.J. MELLING
ASSISTANT GENERAL SECRETARY

Enc.
MJM:jg

QPUE SUBMISSION

TO LEGAL CONSTITUTIONAL & ADMINISTRATIVE REVIEW COMMITTEE

The Union thanks the Committee for the opportunity to respond to the Freedom of Information in Queensland Discussion Paper No. 1

The Union raises the following concerns.

SUBMISSION 1

The Union urges that a process be established which will protect the identity of informants and witnesses whose safety may be affected by the release of either their identity or the nature of information passed onto police.

Background

Freedom of Information Act (the "FOI Act")

Section 42(1)

Matter is exempt matter if its disclosure could reasonably be expected to-

- (b) enable the existence or identity of a confidential source of information, in relation to the enforcement or administration of the law, to be ascertained; or
- (e) prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law (including revenue law);...

Section 46(1)

Matter is exempt if:-

- (1) it consists of information of a confidential nature that was communicated in confidence, the disclosure of which could reasonably be expected to prejudice the future supply of such information, unless its disclosure would, on balance, be in the public interest.
- (2) Subsection (1) does not apply to matter of a kind mentioned in section 41(1)(a) unless its disclosure would found an action for breach of confidence owed to a person or body other than-
 - (a) a person in the capacity of-
 - (i) a Minister; or
 - (ii) a member of the staff of, or a consultant to, a Minister; or
 - (iii) an officer of an agency; or
 - (b) the State or an agency.

Proposed Exemption Mechanism

The Union urges that a register be established by amendment of the FOI Act to quarantine such identities and/or information from disclosure. The Union supports a process whereby

witnesses/informants can sign up to a declaration that the information they provide is done so in circumstances where sections 42 & 46 are operative and that the signing of such declaration will operate as an absolute bar on the release of information.

SUBMISSION 2

The Union's concern is that its membership be able to:-

- (a) ascertain the name of those making complaints against officers or providing supportive evidence when such investigations of alleged misconduct subsequently prove to be groundless; and
- (b) expunge from their file documentation relating to groundless complaints.

Background

The QPS has stated the rationale for the current exemptions being as follows:

"It would not be possible to successfully investigate breaches of discipline if they were not reported or if people refused to assist in the investigation. Likewise, it would not be possible to successfully investigate future breaches of discipline if it was known by any person who was interviewed or provided information that their names and information which they provide will be provided to the person under investigation. Failure to protect these sources of information would severely undermine the entire internal investigation process.

The QPS accepts that not all information provided to the QPS can remain confidential. There has always been a view that confidentiality, either implied or expressed, will attach to both the giver and the information given to the QPS unless the processes of the law dictate that the confidences cannot be maintained.

The public expect all breaches of police discipline, including misconduct, to be investigated fully and without fear or favour. The person being interviewed must have faith in the process and, similarly, the person providing any information must also have faith that the information, including any subsequent release of it, will not unduly cause them hardship."

See decision of N. Albiet in McCann at Queensland Police Service Decision No. 97011 at Page. 8.

The average police officer simply has to wear on the chin the making of baseless or malicious complaints. An officer's file can be littered with baseless complaints which sully their careers.

Though the FOI Act provides for the correction of records this tool does not remove from the officer's file the fact of the complaint and its subsequent investigation. The QPS has not been prepared to charge those persons found to be making malicious complaints. The only avenue left to the membership is to pursue a Common Law action.

Furthermore, it has been a tool of Defence Lawyers to FOI police officers' records and attempt to discredit the evidence on the basis of alleged misconduct. The Union rejects this practice as being both an unacceptable invasion of our members' right to privacy and a disgraceful attempt to pervert the course of justice.

The Union submits that in cases of alleged misconduct which are found to be baseless:-

- (1) full access be granted to the police officer of the subject file; and
- (2) such records not be available for release pursuant to the FOI Act.

SUBMISSION 3

The Union has had the opportunity to consider the submission of Mr Brendan Butler for and on behalf of the Criminal Justice Commission. We note particularly his submission that the Database of the Intelligence Division of the CJC be excluded from the operation of the FOI Act, by virtue of regulation made pursuant to s.11(1) of the Act.

The Union strongly opposes such action on the basis that the CJC will then be in the unhealthy position of being able to remove from scrutiny documentation or information simply by placing it within their data base.

Your Committee is well aware of the general community concerns and the Information Commissioner's attitude relating to the current cabinet exemption. To act on Mr Butler's submission would create a further cloak of secrecy being placed in the hands of persons outside the cabinet process and would be contrary to the FOI fundamental concept of transparency.

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