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Submission No 165

QUEENSLAND RAIL

The Chair
Legislative Assembly of Queensland
Legal, Constitutional & Administrative Review Committee
Parliament House
George Street
BRISBANE QLD 4000

Dear Sir/Madam

I refer to the Committee's Discussion Paper No 1 into its review of the Freedom of Information Act.

Application to Government Owned Corporations

Section 20(1) of the Government Owned Corporations Act provides that Government Owned Corporations are to be commercially successful in the conduct of their activities. It is therefore imperative that the exemption for Government Owned Corporations remains:

a) to ensure that their commercial documentation is not available to competitors or potential competitors, thus limiting the organisation's ability to compete effectively in the market-place; and

b) to ensure that there is no disparity between government owned corporations and other organisations in relation to the competitive neutrality rules that apply.

Discussion Points 25-28 suggest that there may be some justification for excluding access to documents concerning the GOC's commercial activities, "particularly those which are competitive". The addition of those words appears to place an extra onus on the GOC to prove that, not only is an activity commercial, but it is also competitive.

If GOC's are to compete on a "level playing field" with private entities, they should be afforded the same legal and administrative rights and protections as those corporations.

Often GOC's, in their commercial activities, are involved in sensitive confidential negotiations or receive confidential commercial information. Companies will be unlikely to contract or hold commercial negotiations with QR if the information or material they provide may be disclosed to the public.

One of the arguments raised in favour of the FOI Act applying to GOC's is that "GOCs are publicly funded and therefore should be publicly accountable for those

funds". The present situation is that the FOI exclusion relates only to *commercial activities*. Therefore, documents brought into existence that relate to CSO obligations are still bound by the provisions of the FOI Act.

Other arguments raised in favour of GOC's complying with the FOI Act are:

- GOCs are accountable to ministers and the public has a democratic interest in their workings;

- FOI and other administrative laws provide (cheap and accessible) benefits in public accountability and administrative justice that private sector mechanisms cannot match (and citizens should not lose these benefits merely because of the government's choice as to the structure of the service deliverer).

GOC's provide an annual report that is analogous to the annual report presented to shareholders of a company. However, this report is widely available to the public, unlike the reports of proprietary companies. Thus, the public are placed in as good a position in terms of information as the shareholders of a listed company and in a better position in terms of proprietary companies.

Costs

The costs incurred in complying with the Freedom of Information Act are substantial and are a substantial additional cost that GOC's have to bear that private corporations do not.

The minimum amount of time required to deal with a *very simple* application is approximately 3 hours. This includes the Coordinator's time and the relevant divisional officer or records management officers' time in locating the files or documentation. In responding to complex applications, the time required is extensive. The $30.00 fee for non-personal applications is grossly inadequate to cover any of the direct or indirect costs that are incurred.

It would be appropriate to require payment of a fee for personal applications as well as non-personal applications. QR's experience is that, because no fee is payable:

- Applicants and their solicitors make no effort to consider and be specific about the material they require, meaning that a lot of material is obtained and considered that is not, in fact, required for the applicant's purpose;

- Applicants and their solicitors do not inspect the documents but simply ask that copies of all documents be supplied, resulting in direct costs to the agency in providing copies of documents that are not, in fact, necessary for their purpose; and

- Because there is no incentive to carefully consider the request, Applicants and their solicitors often put in numerous applications.

The photocopying fee has also not kept pace with inflation or labour costs. It would be appropriate to increase the fee periodically, perhaps by linking it to the Supreme Court scale of fees for photocopying.

The direct costs of responding to FOI applications, photocopying material and paying registered postal charges is not recoverable. This is not compatible with QR's mandate, as a GOC, to act as a commercial organisation.

Protection of the names of "Public Servants"

Discussion Point 69 addresses the protection of the names of "public servants" acting in the course of their official duties. If this amendment is made, the right should specifically include employees of GOCs who, under the Government Owned Corporations Act, are not "public servants".

Decision

A suggestion has been made (Discussion Points 60-66) that the 45-day time limit be reduced to 30 days. My experience is that it is often difficult and time-consuming to locate and arrange for receipt of all the documents that may be requested in an application. Upon receipt, often a great deal of time needs to be put into reading all the documents and considering whether there are any exemptions under the Act. Given that failure to respond within 45 days is deemed to be a refusal, forty-five days is the minimum amount of time that should be required for compliance.

Where consultation is required with a third party, an extension of 15 days is allowed. Often where multiple consultations are required, 15 days is inadequate. A three-week extension would be more practical.

Discussion point 66 raises the issue as to whether applicants should be given a time period of 60- days in which to view documents. This would be highly desirable. Often documents have to be kept in the FOI Coordinator's area for a long period of time because the applicant does not come to view the documents and does not respond to letters inviting them to view or advise if they do not wish to view.

Internal Review

Discussion Point 38 queries whether internal review should be a prerequisite to external review. I believe that the Internal Review process provides a valuable opportunity for material to be reviewed by a senior member of the agency. The internal review process provides an opportunity for material to be released without burdening and adding to the costs of the Information Commissioner.

However, to be able to discharge the duties appropriately, the internal reviewer must have sufficient time to read all the documentation relating to the application, including the decision maker's file, consider the issues, the legislation and the case law, make a decision and draft an appropriate response. The legislation requires that the internal reviewer must be a person senior in the organisation to the decision maker. My experience is that the fourteen-day time limit is often difficult to meet because of

other responsibilities that have to be fulfilled. I believe it would be appropriate to extend the time for internal review to 21 or 30 days.

I would be happy to meet with you to discuss these issues.

Yours faithfully

Vince O'Rourke
Chief Executive

31 March 2000