

7 April 2000



The Research Director

Legal, Constitutional and Administrative Review Committee
Parliament House
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28.4.2000.

Submission No 149

Dear Madam

REVIEW OF THE FREEDOM OF INFORMATION ACT 1992 (QLD)

In response to your invitation to make a further submission to the Committee's inquiry into the *Freedom of Information Act, 1992 (Qld)*, ("FOI Act"), the Association comments as follows.

AMAQ is concerned with issues relating to the discovery of quality assurance documentation arising from FOI access. The Association submits that protection for medical practitioners against such discovery should be gazetted to override FOI legislation. Quality assurance documentation from a public facility should be exempt from the provisions of the FOI Act. As well, the Association submits that quality assurance documentation from private hospitals should be granted legal privilege such that any other statutes would be overruled by this statutory provision. Protection should be afforded to reporters as well as members of Committees. The Association refers the Committee to interstate jurisdictions where such precedents exist.

It is also submitted there should be no jurisdiction of FOI into the private sector and that officers who are employed in both the public and private sectors should be provided with protection against discovery of documentation held within the public sector which was drafted in a private capacity.

The FOI legislation has applicability to the current review of the Health Act. The Association submits that where registrants are practicing under conditional registration, details of such registration, or sanctions, should not be accessible under FOI. The Association also feels strongly that the publication of names of registrants before tribunals should not be discoverable under the legislation. As well, investigation of complaints against medical practitioners by the Health Rights Commission within the investigation should be exempt from access, particularly during the investigative stage and prior to any definitive decision having being made.

With regard to specific discussion points, the Association comments as follows:-

Discussion point 8

Should the entire approach to FOI in Queensland be "reversed" so that the onus is on agencies to routinely make certain information public?

The Association does not support this approach with regard to health-related issues.

Discussion Point 11

Is there scope for performance agreements of senior public officers to impose a responsibility to ensure efficient and effective practices and performance in respect of access to government-held information including FOI requests?

The Association does not believe it necessary to include this specific responsibility in performance agreements of senior public officers.

Discussion Point 12

Should the title of the FOIQ be changed to the Access to Information Act?

The Association submits that such a change would imply a philosophy of free access to sensitive and confidential information. It is submitted that it would not be unreasonable to assume that this would cause subsequent difficulties in refusing access under exemptions and could become politically disadvantageous in the long term.

Discussion Point 14

Should any of the current exemptions be removed from the FOIQ? Should any new exemptions be inserted? What are deficiencies in particular exemption provisions?

The Association submits it is in the public interest for the FOIQ to retain at the least exemptions falling under S42 (Matter relating to law enforcement or public safety), s43 (Matter affecting legal proceedings), s44 (Matter affecting personal affairs), and s46 (Matter communicated in confidence). The removal of any current exemptions should only be undertaken after further extensive public consultation.

The Association submits that the following exemptions should also apply under the provisions of FOIQ:-

- a) Quality assurance documentation from a public facility;
- b) Documentation held within the public sector which was drafted by medical practitioners in a private capacity;
- c) Where medical registrants are practicing under conditional registration, details of such registration, or sanctions
- d) Identifying details of medical registrants before Tribunals
- e) Investigation of complaints against medical practitioners by the Health Rights Commission during the investigative stage and prior to any definitive decision having being made.

With regard to (d) and (e), it is submitted that it is not in the public interest to have the public assailed with sensationalised media stories which strike at the public's confidence in the medical profession. It is also not in the public interest, nor does it afford natural justice to the registrant to have frivolous or vexatious complaints made public. The Association also argues that allowing public identification of such registrants will undermine one of the stated objects of the Health Act; maintaining public confidence in the health professions. It is not intended, of course, that details of such proceedings be exempt from discovery in cases where the practitioner has been found guilty by Tribunal or the Commission.

With regard to (a) and (b), it is submitted that it is not in the public interest to have medical registrants serving on public Quality Assurance committees participating under an awareness that their right to confidentiality could be breached through abuse of the FOIQ legislation. Such a situation has obvious implications.

Finally, with regard to (c), the Association submits the the conditions of a doctor's registration should be confidential between the registrant and the Medical Board and that the registrant should, in such cases, be afforded the natural justice of having their confidentiality protected by the legislation.

Discussion Point 17

Should the harm tests be made more stringent, e.g. by requiring decision makers to show that disclosure would result in substantial harm?

The Association does not support this position. It is felt that with regard to health-related issues, the degree of harm which disclosure of certain records would cause could not always be quantified and it would be almost impossible to determine a definition of "substantial" harm which would apply equitably to all decisions related to clinical records.

Discussion Point 25

Should GOCs and LGOCs as a matter of policy be excluded from the application of the FOIQ in relation to their (competitive) commercial activities?

The Association submits that as long as GOCs and LGOCs are players in a competitive market, they should **absolutely not** be excluded from the application of the FOIQ in relation to their competitive commercial activities. As Government owned bodies, they enjoy certain privileges in a competitive market which cannot be matched by privately owned bodies. With the privileges come responsibilities, such as public accountability, which such corporations must address.

Discussion Point 29.

What arguments, if any, are there for extending the FOIQ to the private sector generally?

The Association submits there are no valid arguments for extending the FOIQ to the private sector generally.

Discussion Point 31

Do the current commercial exemptions in the FOIQ require amendment to ensure that an appropriate balance is struck between disclosure of information in the public interest and the protection of legitimate business interests?

S46 has a clinical as well as a commercial focus. From the clinical perspective, the Association submits this exemption requires no amendment.

Discussion Point 33

Should the FOIQ confer a general right of access to information instead of a right to documents? If sho, what should information encompass?

The Association submits that from the medical perspective "information" communicated in confidence or relating to a person's medical history must remain in confidence. The Association therefore does not support the conferring through FOIQ of a general right of access to "information".

Discussion Point 45

Should the IC(Q) have the power to: (a) enter premises and inspect documents; and/or (b) punish for contempt

Because of the special nature of medical records, to protect the right of the medical practitioner to maintain patient confidentiality and to protect patients or third parties from harm arising from disclosure, the Association does not support the vesting of either of these powers in the IC(Q).

Discussion Point 46

Should the IC(Q) be empowered to order disclosure of otherwise exempt matter in the public interest?

Because of the special nature of medical records, to protect the right of the medical practitioner to maintain patient confidentiality and to protect patients or third parties from harm arising from disclosure, the Association does not support not support discussion point.

Discussion Point 69

Is there a need to implement further measures to ensure that, where appropriate, public servants can claim exemptions in respect of their names and other identifying material?

The Associations supports the issuing of guidelines setting out general principles regarding the release of public servants' personal information and the circumstances in which exemption from disclosure may be justified. However, from the Association's perspective, such guidelines will be no substitute for the introduction of new exemptions identified in response to Discussion Point 14. Personal information is only one of many indicators that could identify a specific member of a QA Committee, for example, or a doctor who is the victim of a series of vexatious complaints which go before the Health Rights Commission.

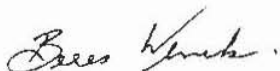
Discussion Point 73

Should the personal affairs exemption (s44) be amended to provide that, in weighing the public interest in disclosure, an agency may have regard to any special relationship between the applicant and a third party? If so, on what basis should such a provision operate?

Any amendment to S44 should be drafted to protect the right of the medical practitioner to utilise their clinical expertise to determine whether disclosure would be in the best interests of the applicant or a third party.

We thank you for the opportunity to consult on this issue. Inquiries on the content of this submission should be addressed to Mr Kerry Gallagher, AMAQ CEO (07 3872 2222) or Policy and Planning Manager, Susan Wareham (3872 2203). We look forward to further consultation in due course.

Yours sincerely



DR B WENCK
President