QUEENSLAND GOVERNMENT

QUEENSLAND TRANSPORT

Queensland Department of Transport

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

Dear Sir

I refer to your letter of 7 February 2000 requesting submissions on the Committee's Freedom of Information in Queensland, Discussion paper No.1.

Thank you for the opportunity to comment on the issues paper and also for the opportunity for Mr Graeme Healey, Manager (Administrative Law) to address your committee as part of the review process. Mr Healey has informed me the discussions the committee had with the various FOI coordinators were very productive.

Below are comments from Queensland Transport in response to a number of the discussion points contained within the discussion paper.

Discussion Point Numbers	Discussion Point Details
6	**Should any additional matters be stipulated in the objects clauses, eg, a statement that Parliament's intention in providing a right of access to government-held information is to underpin Australia's constitutionally guaranteed representative democracy; an acknowledgment that information collected and created by government officials is a public resource?** A statement such as above would help reinforce the objective of the Act and that the objectives have the full support of the government. However, the purposes for which agencies collect and hold information requires that some form privacy principles be adhered to. The term 'Public Resource' would require careful definition as Queensland Transport for example does not accept that confidential disclosures made with respect to employee counselling services are categorised as a public resource and are outside of the public domain.
7	**Is there a 'culture of secrecy' in Queensland? If so, how is this evident? What can be done to overcome any such culture?** Within Queensland Transport, there is little evidence of a culture of secrecy. The extent of community consultation that is undertaken by QT means that little of our processes are "closed" in nature. However there is a view that caution needs to be taken with recording information that could be assessed by FOI.
8	**Should the entire approach to FOI in Queensland be 'reversed' so that the onus is on agencies to routinely make certain information public ?...** It is not felt that this scheme would improve access to a wide range of information unless it was by statutory instruction. The cost of such an activity would have to be addressed as electronic storage and band width requirements would prove to very costly. In the early years of the FOI Act, QT spent thousands of dollars for the production of its Statement of Affairs with only a limited number being requested by members of the public. It may also be beneficial to see requests for information more tightly specified to overcome "fishing expeditions". Reasons for wanting information should be articulated.
10	**In addition to any suggestions made in response to the above discussion points, are there any other ways in which the FOIQ, part 2 provisions concerning the publication of statements of affairs and other documents might be improved?** All of the reporting requirements should be built into the departmental annual report so as to avoid the unnecessary duplication of information and the additional expenditure. Queensland Transports statement of affairs is currently published in our annual report and only increased costs by approximately 2 to 5 cents per copy.
12	**Should the title of the FOIQ be changed to the Access to Information Act?** No, this change could create a false impression that any perceived 'freedoms' are being taken away.

15	**What, if any, are deficiencies in particular exemption provisions — eg, are any expressed too broadly, thereby unnecessarily limiting access — and how might their drafting be improved?** There is a need for clarification with regards to section 36 so the exemption provision is brought into line with the Cabinet handbook.
19	**Should there be a general public interest test imposed on all exemptions? [For example, the FOIQ could instead express the exemptions as a list of interests and documents to be protected, all of which are subject to the one public interest test (perhaps in addition to being subject to a single harm test: see above).] Are any exemptions ill-suited to the application of a public interest test and why?** A single public interest test in a "one size fits all" approach would lessen the flexibility of a response to an FOI application, particularly in cases where we have a duty to prevent possible harm to other persons.
20	**Should the 'public interest' as it relates to exemptions be defined in the FOIQ? Alternatively, should the FOIQ deem any specified factors as relevant, or irrelevant (eg, embarrassment to government), for the purpose of determining what is required by the public interest?** There appears to be merit in the suggestion that definitions of what the public interest is should be included in the FOIQ. It would benefit both the public and the community and may go some way to removing some of the negative public perception about Government being able to block applications by relying on 'public interest' for withholding information. The act should be amended to remove 'embarrassment to government' as a relevant factor in determining whether documents should be withheld under the guise of 'public interest'.
23	**Should—and, if so, what—action be taken to prevent the exclusion of agencies, or part thereof, from the application of the FOIQ by: (a) regulation; and (b) legislation other than the FOIQ?** Generally exclusion is undesirable in the interest of open government.
24	**Should a mechanism be introduced whereby specific bodies to which government provides funding or over which government may exercise control (and which are not otherwise 'agencies' within the meaning of the FOIQ) are made subject to the FOIQ? If so, what form should that mechanism take?** As a principle, FOI should not be limited by means of contracting out, or funding another agency to carry out a function. To limit FOI would be to limit accountability.
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. The review provides a very important step in the whole FOI process. It allows an aggrieved applicant to have a review of a decision undertaken by a more senior officer. This process also allows the senior officer the opportunity to ensure that FOI decision making within their agency is of the highest standard.

40	**Should the same person hold the offices of Queensland Ombudsman and Queensland Information Commissioner?** In the interests of justice, it does not seem appropriate for the offices to be held by the same person. There may be occasions where the Ombudsman may be required to some point to inquire into the actions of the Information Commissioners Office.
45	**Should the IC(Q) have the power to: (a) enter premises and inspect documents; and/or (b) punish for contempt?** In cases where agencies refuse to hand over all relevant documents subject to an appeal, or the Commissioner believes more documents exist the power to inspect or enter premises may be appropriate.
46	**Should the IC(Q) be empowered to order disclosure of otherwise exempt matter in the public interest?** No, this may cut across a duty of care to protect persons from reprisals etc.
48	**Should the non-personal information application fee be abolished, remain at $30 or be increased (to what level)?** The fee should remain at a similar level.
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?)** Charges for supervised access should be established in a similar way as in operation under section 134A of the Evidence Act 1977. Under the Evidence Act applicants are charged $30.00 per hour or part thereof. To avoid "fishing expeditions" users should be charged a processing/search charge that commences after two hours have been expended in processing an application. Only 20% of our applications on current time allocation figures would have charges imposed for searching.

55	**In relation to s 28(2) concerning voluminous applications, should:** **(a) the word 'only' be deleted from the last paragraph of s 28(2) to widen the factors that agencies may have regard to when deciding whether to refuse to deal with an application because it would substantially and unreasonably divert agency resources;** **(b) agencies be required to consult with the IC(Q) before refusing an application under the provision; and/or** **(c) the provision be redrafted to emphasise the importance of agencies consulting with applicants about their applications?** The provision in its current format is more than adequate, however emphasising to agencies the importance of consultation with applicants is important. Queensland Transport consults under section s28 with many of its applicants in order to clarify their application and in some instances to narrow its scope.
57	**Should the FOIQ contain a general provision enabling an agency to refuse to deal with frivolous and vexatious applications? If so, how should this provision be drafted and what provisos should it contain?** Under the FOIQ agencies do not have a right to enquire with an applicant as to why they require the requested information. It may be appropriate for the legislation to be amended so as to enable agencies to seek reasons for the application. If no valid reason can be given for the application then an agency should be able to refuse it. The applicant would then be able to seek a review with the Information Commissioner.
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?** The time limit of 45 days should not be reduced to 30 as proposed by the Information Commissioner. Queensland Transport currently has an average of 28.5 days per application. Some applications are processed and finalised with 10 days, however many applications take right up to the 45 days, particularly the larger applications. If the time frame was reduced it would have resource implications for Queensland Transport and the Office of the Information Commissioner as many of the applications would become deemed refusals and automatically be refereed for their attention. Queensland Transport makes every effort to keeps its applicants informed on the current state of their application and very few applicants have ever had a problem with the time taken to finalise the application.
65	**Should there be provision for the processing of applications to be expedited in circumstances where a compelling need exists? If so, in what circumstances? (For example, imminent threat to public safety, public health or the environment.)** This proposal has merit. Queensland Transport already has in place practices where by, in most instances where there is a need for an application to be expedited, it is.
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)?** Yes. Queensland Transport has had many instances where applicants expect the agency to hold copies of documents in excess of 5 months before they make arrangements to inspect the relevant documents.

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?** It should be stipulated in the FOIQ that agencies are able to undertake section 51 consultations at time of internal review.
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 days should be reduced to 28 days in line with the 28 days for a internal review Applicants applying for a Statement of Reasons under the provisions of the *Judicial Review Act 1991* are required to do so within 28 days, why should the FOIQ be out of sequence.

Finally I would again like to thank the committee for the opportunity to have input into your review.

Yours sincerely

(C W JORDAN)
EXECUTIVE DIRECTOR (CORPORATE GOVERNANCE)