



Submission No 156

Submission by

**The Queensland Chamber of
Commerce and Industry**

**To the Review of the Freedom of
Information Act 1992 (QLD)**

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About the Queensland Chamber of Commerce and Industry

The Queensland Chamber of Commerce and Industry (QCCI) has been working for Queensland business since 1868, when the Brisbane Chamber of Commerce was established. The Queensland Chamber of Commerce and Industry has evolved over an intervening period through a series of mergers between the following Queensland employer organisations. Each of these mergers has broadened and strengthened the collective membership, particularly in regional Queensland and has given QCCI the ability to equal the range of business services offered anywhere in Australia.

The predecessor organisations are:

- the Queensland Employers' Federation
- the Queensland Chamber of Manufacturers
- the Queensland Confederation of Industry
- the State Chamber of Commerce and Industry (Queensland)
- the North Queensland Employers' Association (Townsville)
- the Central Queensland Employers' Association (Rockhampton)
- the Mackay Employers' Federation
- the Toowoomba Chamber of Commerce

QCCI now represents around 60,000 businesses State-wide, with a majority of these businesses being in regional Queensland. It has a direct membership of 4000 businesses throughout Queensland, but also represents the members of 120 affiliated local and metropolitan Chambers of Commerce (40,000) and the members of 30 industry specific employer associations (15,000). About 80 percent of the companies represented are small businesses, with fewer than 20 employees.

This constituency gives QCCI the ability to speak as the undisputed peak employer representative for Queensland business.

The QCCI is a founding member of the Australian Chamber of Commerce and Industry, through which the major State-based employer associations formulate their national strategies. QCCI plays an important role in representing and maintaining the profile of Queensland business issues through its presence at ACCI in Canberra.



**Submission by
The Queensland Chamber of Commerce and Industry
to the Legal Constitution and Administrative Review Committee
Of the Queensland Legislative Assembly
On the Review of the Freedom of Information Act 1992 (Qld)**

Introduction

This paper has been prepared to assist the deliberations of the Legal, Constitutional and Administrative Review Committee (LCARC) of the Queensland Legislative Assembly on its continuing review of Queensland's Freedom of Information (FOI) Act 1992.

In 1999 the Queensland Chamber of Commerce and Industry (QCCI) submitted a paper commenting on the Queensland FOI Act in general. This paper is a response to the direct questions raised in the discussion paper that was prepared based on the submissions received from the 1999 review.

QCCI supports mechanisms such as the Queensland FOI Act which seek to deliver open and transparent government processes. However, mechanisms such as the FOI Act should not be used to allow access to information held by government or the private sector that relate to a private business's commercial dealings. Such information must be protected to ensure confidence within the private sector in its dealings with government and to also protect the intellectual property of business in its dealings with government. If there are times when the release of private sector commercial information held by government can be proved to be in the public's interest, then the information must be assessed on a individual case by case basis. Any private sector entity affected by such a release of information must be given a right of appeal before commercial information pertaining to their business activities is released.

QCCI Response to Discussion Paper Questions

Discussion Point 16

Should the different harm tests that are (or should be) contained in the FOIQ exemption provisions be rationalised and/or simplified? If so, what form (s) should they take?

QCCI believes that the current harm tests are sufficient to protect a businesses dealings with government agencies. The current harm tests should be maintained to ensure that all private sector business dealings are protected from unwarranted scrutiny from a firms business competitors and that a firms intellectual property will not be open to perusal by its competitors. Any harm tests and their guide for application should reflect the sensitivity of information that contains commercial information that is the property of a private sector business entity.

Discussion Point 17

Should the harm tests be made more stringent?

The current harm tests are considered by the QCCI to be adequate. However, government officers should undertake an education process to ensure they recognise the importance of commercial information



pertaining to a particular businesses operations or pricing/costing procedures Information such as this should not be released under a FOI application.

Discussion Point 18

Should there be a general harm test imposed on all exemptions? If not, what exemptions are not suited to the application of such a test and why?

FOI applications that request the release of commercial information relating to private sector dealings with government should be exempt unless the business entity that is related to in the information requested gives its approval for the release of requested information. This proposed exemption would only be void when it could be proven conclusively that the release of such information was for the public good. This would relate only to instances where a business entities dealings with government agencies could be proven to have been of a corrupt nature or where the release of specific information did not jeopardise a business entity's commercial operations or intellectual property.

Discussion Point 24

Should a mechanism be introduced whereby specific bodies to which government provides funding or over which government may exercise control are made subject to the FOIQ? If so, what form should the mechanism take?

Many organisations, including the QCCI, receive government funding for various projects or reasons. To make the availability of government funding conditional upon an organisation being open to FOI requests could see many non government organisations no longer participate in government funded projects. Such a decline in participation could see many valuable government funded projects fail. Potential participants in important government funded projects may choose not to take part in projects due to their fears of their internal operations and decision making processes being exposed to undue public scrutiny. Organisations controlled by government agencies would need to analyse this proposal on a organisation by organisation basis. QCCI would expect that GOC's operations would be where it is in the public interest, be open to requests under the Queensland FOI Act.

Discussion Point 25

Should GOC's and LGOC's, as a matter of policy, be excluded from the application of the FOIQ in relation to their (competitive) commercial activities? Why/Why not?

Whilst the QCCI recognises that the commercial operations of GOC's and LGOC's require a level of protection from indiscriminate FOI applications it also believes that the operations where GOC's and LGOC's are in competition with the private sector must be open to scrutiny. The commercial operations of GOC's and LGOC's must be transparent enough for the community to satisfy themselves that where they are in competition with the private sector that they compete on a even basis. QCCI has received many complaints from its membership regarding unfair competition from government owned agencies where it is suspected that the GOC or LGOC's pricing structures or terms and conditions are not based on sound commercial practices and in particular not allowing for private sector levels of profit margins.



Discussion Point 29

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

QCCI agrees with the findings of the ALRC/ARC review which concluded that “*the democratic accountability and openness required of the public sector (under the FOIC) should not be required of the private sector.*” QCCI, with no evidence to the contrary, does not believe that there is any supportable argument for extending the FOIQ to the private sector.

Discussion Point 30

Should the FOIQ be extended to cover contractors performing functions outsourced by government? If so, why and how should this be effected?

Whilst the QCCI does not support extending the FOIQ to any sections of the private sector it can recognise the need for government accountability to be protected in terms of services outsourced by government to the private sector. As such if a recommendation was made for the FOIQ to be extended to contractors performing outsourced government functions there would need to be significant protections extended to protect the contractors business and personal interests. These protections should include:

- Only documents in a contractors possession that relate directly to the performance of their contractual obligations be accessible under an FOI application.
- No documentation that would prejudice the intellectual property or trade secrets of a contractor be made available under an FOI application. This would include information held by government agencies either conjointly with or separately to a contractor.
- Any costs incurred by a contractor in making documentation available under a FOI application will be redeemed.

Discussion Point 31

Do the current commercial exemptions in the FOIQ – principally, ss45 and 46- 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? If so what amendments need to be made?

The current exemptions contained within the FOIQ Act are adequate if they are applied within the spirit of the Act. Government agencies including GOC's should be prevented from using these exemptions to disallow information requests only if the request directly hazards the commercial operations of a agency or GOC. A constant concern of the private sector is that when government agencies or GOC's compete with the private sector for either government or private sector business that its basis of tendering may be uncompetitive. Procedures must be put in place where the private sector can satisfy itself that where a government controlled or owned body is competing against privates sector bodies for business that these government bodies are competing fairly.



Other Points for Consideration

There is a wealth of information that is contained within government circles that is not of a confidential nature and its release or ready accessibility would prove of great benefit to the private sector and the community at large. Efforts should be made in conjunction with a consultation process with industry associations and community groups to ensure that pertinent government information is provided to sections of the private sector and the community that would benefit through the release of this information. Examples of such information would include:

- Economic data collected throughout the Government Statisticians office or through Treasury.
- Trade data and opportunities from the Department of State Development.
- Agricultural commodity market prices and weather data from the Department of Primary Industries.

An effective way of distributing such data would be via e-mail subscription to government electronic newsletters that could be released on a regular basis. QCCI would be willing to further discuss this issue and the opportunities it presents.

With the rise of GOC's competing in the marketplace with the private sector for market share it is inevitable that scrutiny will be applied to their operations. Government should be prepared to provide concrete and transparent measures to allay the fears of private sector organisations that GOC's compete fairly. Reliance purely upon national competition authority measures or the ACCC to ensure fair market practices by GOC's will not satisfy the private sector. Government would do much to allay private sector fears if it could establish a simple and speedy process to deal with such inquiries.

Conclusion

QCCI does not believe that there is any need or imperative to extend the FOIQ to the private sector. It can also be said that there is no support evident among QCCI's membership for the FOIQ to be extended to cover their commercial activities.

QCCI supports all attempts and mechanisms aimed at providing an open and transparent system of government for Queensland. However, it must not be forgotten that the reason FOI legislation was enacted at the Commonwealth and State levels of government was to ensure accountability in the public sector, not in the private sector.

Much information held by government is not of a confidential or commercial nature and should be freely available to interested parties. Government could well service Queensland's population if it made available information that would aid community or economic development. QCCI would support initiatives by government to make economic or business information available especially via e-mail subscription or other on line services.