QUEENSLAND TREASURY

18 APR 2000

Submission No 158

Ms K Newton
Research Director
Legal, Constitutional and Administrative Review Committee
Parliament House
George Street
BRISBANE QLD 4000

Dear Ms Newton

I refer to the Committee's letter of 7 February 2000, regarding the review of *the Freedom of Information Act 1992 (Qld)* and the second round of public input.

The attached submission is provided in relation to the Discussion Paper. Queensland Treasury's response to the Discussion Paper focuses on several specific issues as well as an additional matter for your consideration.

Once again the main issue of concern is the costs imposed by administering the Act. Treasury maintains that the Act does not adequately balance the right to obtain information against the cost (both direct and indirect) of its provision, including the charges imposed on applicants and the difficulty Departments have in responding to ambit, voluminous applications.

Yours sincerely

(G. Bradley)
Under Treasurer

Queensland Treasury

Submission to the

Legal, Constitutional and Administrative Review Committee

Inquiry into the

Freedom of Information Act 1992

Response to Discussion Paper

April 2000

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 (with the public still having the right to apply for information not already so released)? If so:

- ***(a) How should this be achieved, eg, by statutory or administrative instruction?***
- ***(b) What sort of (additional) information should agencies be required to routinely publish?***
- ***(c) What (other) considerations are relevant?***

No. Any thrust to reverse the current approach on the release of information by agencies should come through the statutes administered by the respective agencies. For example, the Business Names Act clearly sets out how information received under the Act can be accessed by the general public. But not all legislation is drafted with that purpose in mind. Public Servants can only do what their legislation permits them to do and to change the onus as suggested creates confusion for public servants trying to serve two objectives and trying to balance the interests of both. The current mechanisms for disclosure under FOI are preferable as the obligations to disclose are clear enough.

Discussion Point 13

Should sufficient regard to 'the right to access government-held information' be included as an example of a 'fundamental legislative principle' in the Legislative Standards Act 1992 (Qld), s 4?

All legislation with secrecy provisions is subject to full Parliamentary scrutiny during debate. The "right to access to government-held information" is not a fundamental issue, rather it is one which is adequately covered by FOI.

Discussion Point 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?

No. "Public interest" should not be defined. There is sufficient case law on this subject for the term to be correctly interpreted. Defining the term risks narrowing its meaning.

Discussion Point 22

Should the ability of ministers to sign conclusive certificates be revisited?

No. The Minister's ability to sign conclusive certificates should not be revisited, particularly if there is an intention to remove or lessen this ability. Some documents are so sensitive, particularly those relating to law enforcement and intelligence activities, that they should never be released. Moreover, Minister's certificates are able to be used to neither confirm nor deny the existence of a document. The checks and balances contained in s.84 of the FOI Act adequately ensure against misuse of certificates.

Discussion Point 41

If, as T/Ref B(v) queries, the method of 'review and decision' by the IC(Q) is 'excessively legalistic and time-consuming', how in light of the above discussion can the IC(Q) adopt less legalistic and quicker processes? For example, is there more scope for the IC(Q) to use informal dispute resolution mechanisms?

Many issues relating to external reviews could have been resolved through the IC bringing the parties together rather than dealing with the issues through large volumes of correspondence, thereby saving time and money. Treasury notes that the QOGR still has an unresolved external review that commenced in 1993.

Discussion Point 43 & 44

Should there be a statutory time limit imposed on the IC(Q) in which to deal with external review applications? If such a time limit is imposed, what should that time limit be and should it allow for extensions (and, if so, on what grounds)?

Yes - A statutory time limit of 1 year (with provision for extension for 1 year in circumstances acceptable to both applicant and agency) should be included.

Discussion Points 48 to 52

48. ***Should the non-personal information application fee be abolished, remain at $30 or be increased (to what level)?***
49. ***Should a uniform application fee be introduced (ie, should an application fee be introduced for personal information requests)?***
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?)
51. ***What other components of the charging regime need to be addressed (eg, photocopying)?***
52. ***Especially if there are to be any fee increases, should the FOIQ be amended to enable agencies and ministers to waive or reduce fees? On what grounds?***

Queensland Treasury notes the Committee's concerns that the "user pays" principle does not necessarily sit comfortably within the FOI framework. However, Agencies are expected to provide a wide range of services efficiently and effectively within existing, competing resources.

The Department of Justice and Attorney-General estimates that the annual cost to the State Government of administering FOI is over $6M, whereas revenue generated amounts to $0.152M. Whilst these figures are only estimates, they do provide a very clear indication that Departments are providing a significant service to applicants at a very small proportion of the cost of delivery. Other States and the Commonwealth have sought to address this issue, and all charge search and production fees.

The provision of an FOI service does represent an opportunity cost for Government. $6M would purchase a wide range of services for delivery to the Queensland community. Currently fees charged for non-personal applications and photocopy charges are retained by agencies and used to offset the significant recurrent costs associated with FOI. Any increase in such revenue would assist Departments in continuing to provide a FOI service, whilst at the same time releasing funds to be directed to core service delivery.

Specifically, Queensland Treasury does have concerns about the cost for Agencies of implementing FOI, particularly with regard to non-personal, voluminous, applications. Such applications have significant resource implications, and on occasions involve numerous officers across an Agency in researching, collating and reviewing documents.

In such cases experienced by Queensland Treasury, the applicants have been approached with a view to reducing the scope of the application to find that, in many cases they are unwilling to do so. Queensland Treasury is of the view that a fair fee structure would at least encourage applicants to carefully assess the scope of the application, both prior to lodgement and upon discussion with the Department. A focussed application can save Agencies significant resources, both in terms of financial outlays and time allocation, and would also assist Agencies to respond to applicants within the designated time frames.

As discussed in Queensland Treasury's submission, this Department supports, in addition to an application fee which escalates every year by CPI, the introduction of charges for processing, decision-making and access time. To further encourage applicants to lodge focussed personal and non-personal requests, consideration could be given to having an initial, limited "no charge" period.

With regard to personal applications, there is no discernible difference in the way Departments assess such requests. However, costs per request are lower for personal applications which, in most cases, is due to smaller quantities of documents which are more easily identified. Queensland Treasury supports the introduction of processing charges for personal applications. It is expected that charges for most personal applications would be minimal, particularly if a "no charge" period is provided.

In summary, Queensland Treasury does acknowledge that access to information is an important aspect of accountability in government. Whilst Queensland Treasury recognises that to raise charges to fully cover the annual cost of implementation is not reasonable, consideration should be given to raising fees and charges to ensure applicants contribute more significantly to the cost of the service they access.

Discussion Points 55 to 58

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?*

56. *Should s 28(3) of the FOIQ be repealed? If s 28(3) is to be retained, should it be amended to require the agency to: (a) identify the exemption provision(s) purported to be applicable; and (b) explain why all the sought documents are exempt thereunder?*

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?*

58. *Alternatively (or additionally), should the FOIQ contain a provision enabling an agency to refuse to deal with serial/repeat applications? If so, should it be in the form suggested by the IC(Q) in the above text?*

Queensland Treasury supports changes to Section 28 of the Act, that would limit the amount of unnecessary work that is currently being undertaken by agencies in processing applications.

Specifically Queensland Treasury supports the suggestions of discussion point 55 (a)(b) and (c), discussion point 57 and discussion point 58. Queensland Treasury does not support the suggested repealing of Section 28(3) of the Act. In relation to discussion point 57, it is suggested that an agency be allowed to refuse to deal with vexatious or frivolous applications by providing the applicant with a statement of reasons for this refusal. This matter could then be referred to the Information Commissioner to make a decision based on that statement of reasons and any additional information supplied by the agency and the applicant.

Discussion Point 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?

No. In some instances, and particularly where the instructions or intentions of the applicant are unclear, documents take time to locate.

Discussion Point 61

Should the 15 day extension for third party consultation when required under s 51—in s 27(4)(b) of the FOIQ—be extended to 30 days?
Yes.

Discussion Point 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. It is a burden on agencies to need to indefinitely maintain documents in readiness for viewing or copying.