QUEENSLAND

LEGAL, CONSTITUTIONAL AND ADMINISTRATIVE REVIEW COMMITTEE

MEMBERS: **Mr G. B. FENLON** (Chairman)
Mr D. E. BEANLAND
Ms D. BOYLE
Mrs J. M. GAMIN
Mr F. W. PITT
Dr P. R. PRENZLER

FREEDOM OF INFORMATION

TRANSCRIPT OF PROCEEDINGS

Thursday, 11 May 2000
Brisbane

WITNESSES

The Committee commenced at 1.05 p.m.

The CHAIRMAN: Good afternoon ladies and gentlemen. My name is Gary Fenlon, the member for Greenslopes. I am Chair of the Legal, Constitutional and Administrative Review Committee. I now declare the public hearing of this Committee open. Just briefly, in terms of any media present today, the Committee has resolved to authorise the media to take audio and video file footage of the opening statements of the public hearing both today and tomorrow. The Committee has further agreed to allow journalists to use tape-recorders for the purpose of taking notes throughout the hearing, provided that those recordings are not used as a record of the proceedings.

Before I proceed, may I introduce the other members of the Committee who are present. First of all, on my left are Judy Gamin, who is the Deputy Chair of the Committee and the member for Burleigh; Denver Beanland, who is the member for Indooroopilly; Desley Boyle, who is the member for Cairns; and on my right is Peter Prenzler, who is the member for Lockyer. Our colleague Warren Pitt, the member for Mulgrave, is arriving very shortly on a plane from the north. He will be joining us here as soon as he can.

The Parliamentary Committees Act provides that the responsibilities of this Committee include administrative review reform, constitutional reform, electoral reform and legal reform. On 11 March 1999, the Queensland Parliament referred the Freedom of Information Act 1992 to the Committee for review. The broad terms of reference for the inquiry have been distributed. Given that the Committee's inquiry is the first public review of this particular Act and given the very nature of the legislation itself, the Committee decided from the outset that its inquiry process would involve extensive public consultation. This public consultation has included a widely advertised first round call for public submissions on the inquiry's terms of reference and, second, the release of a discussion paper in February 2000 to stimulate a second round of public input. The paper summarised the broad position taken in submissions received to that date and invited further submissions on select discussion points.

The Committee has received over 160 submissions to date in response to its initial call for public submissions and subsequent discussion paper. The Committee has also met with FOI coordinators from a range of State Government departments, agencies and local governments and this morning visited a selection of FOI units to see systems and processes first-hand. This has helped the Committee appreciate how the Act operates in practice at the departmental and agency decision-making level. The purpose of today's hearing is to provide the Committee with an opportunity to question a number of people who have particular relevant expertise and experience in relation to the current freedom of information regime in Queensland. Further, the public nature of the hearing provides an opportunity for members of the community to observe the evidence given by the witnesses.

I welcome members of the public who are in attendance today. In the event that those attending today are not aware, I should point out that the proceedings are similar to Parliament to the extent that the public cannot participate in the debate. In this regard, I remind members of the public that in accordance with Standing Order 195 adopted by the Legislative Assembly, any person admitted to a public hearing of the Committee may be excluded at the discretion of the Chairman or by order of the Committee itself. I trust that those present will permit all witnesses to give their presentations to the Committee without interruption.

The Committee will be hearing from a number of witnesses during the hearing today and tomorrow. Copies of the program detailing the witnesses have been distributed. By hearing from interested people who represent a variety of views, the Committee hopes to canvass a broad range of issues relating to the freedom of information regime in Queensland. Although the Committee does not require witnesses to give evidence on oath, witnesses should be aware that this does not alter the importance of the hearing in question. The deliberate misleading of the Committee may be reported to the Legislative Assembly.

Before I call the first witness for the day, I would like to let you know that there are toilets at the end of this particular level to the right as we leave this Chamber. You will find them as you go towards the cafeteria. There are also toilets with wheelchair access on the fourth level, which is one level down. The lift operates at the end of the floor. Finally, please turn off your mobile phones while in the conference room today. I will now ask each witness to come forward to present their submissions to the Committee. The first witness we call is Mr Rick Snell.

RICK SNELL, examined:

The CHAIRMAN: I welcome Rick to Queensland from the far end of the Commonwealth.

Mr Snell: Thank you.

The CHAIRMAN: He has arrived this morning from Tasmania. Rick Snell is a senior lecturer in law at the University of Tasmania. He is well known and respected throughout Australia for his work in this field.

During your evidence, you may wish to refer to particular FOI applications by way of example. While we would find this useful and relevant to our review, we remind you that this is a public hearing. Therefore, we ask that you avoid making statements which reflect adversely on any identifiable person or entity. Thank you for your cooperation in that respect. Before I call upon members to ask you any particular questions, would you like to make a statement as an opening to supplement the very detailed submission that you have already provided to the Committee?

Mr Snell: Thank you very much. I think the promise of FOI was encapsulated in a video produced by the Queensland Attorney-General's Department called "Forward to the Past". It depicted an energetic and devoted FOI officer carefully applying the legislation to a range of applications. In each scenario, the spirit of the legislation was applied and, in the case of non-disclosure, it had to be significant before information was exempted. Even journalists and other troublemakers were directed to information and further avenues where they had a chance of at least continuing their crusade.

That video, in my opinion, visualised Fitzgerald's concept of information being the linchpin of the democratic process. The vignettes incorporated in the video resonated with the concept that access to Government information is a foundation or democratic principle and right—indeed, an essential prerequisite for citizenship. The Queensland legislation, as with other Australian attempts at achieving the purposes outlined in object clauses of freedom of information legislation, that is, democratic ideals, accountability, participation in and an understanding of policy in decision making, has not replicated what I regard as the modest ambitions of that video. I have argued in previous academic papers that the effectiveness of any FOI legislation is the complicated interrelationship between a number of elements: the design principles of legislation that are put into place, the type and level of administrative compliance that exists within agencies and within jurisdictions, and the type of person making those requests. In my view, flawed design principles of legislation can be offset where you have the goodwill and faith of the FOI coordinators and the Ministers of the day. They can overcome, if you like, defective legislation.

If you get a high level of usage by Opposition members of Parliament and the media for politically sensitive material, that can destabilise an FOI regime based on the best design principles that you can put into place, especially where the administrative compliance is low or at least is needed, where there is destruction of documents, there is the use of yellow sticky labels to hide information, there is the use of time limits to delay requests, etc. However, I think the adoption of certain design principles in conjunction with measures aimed at ensuring administrative compliance and a reasonable exercise of access rights by key users will bring freedom of information in Queensland closer to the vision held by Fitzgerald and others.

I think, given the Fitzgerald inquiry, you started off with a great impetus toward freedom of information. You made some very wise decisions about your choice of legislation. You made some critical decisions about the level of fee access and prices being charged that enabled your legislation to operate fairly well. You put into place a freedom of information unit in the Attorney-General's Department that allowed the FOI officers to be educated and activities facilitated through that process. I think that impetus over time has stalled and as far as I am concerned it has effectively almost come to a standstill. It is still not the worst legislation in operation in Australia, but it has not fulfilled the promise which was so evident at the beginning. That is my opening statement. Thank you.

The CHAIRMAN: You also indicated to the Committee that you would like to comment on a number of specific points, for example, the purposes and principles of the Act and others. Would you like to touch on those?

Mr Snell: As to the purposes and principles of the Act—the first aspect I would like to comment on is that I think freedom of information is compatible with the Westminster system. A number of people seem to think that there is somehow a dysfunction that takes place between

the two. One of the first steps that any Parliament that thinks about bringing in freedom information ought to take is to reconsider what is meant by the Westminster system and how best to achieve some of the promises brought about by open government. That is what took place in New Zealand. I think New Zealand has some of the most effective freedom of information legislation, because on day one they sat down and formed a vision about the type of society and governance that they wanted, not for the next day but for 10 to 20 years' time. They formed a vision about how open government would operate. They made an intentional decision to modify and change the Westminster system to allow that vision to be realised. That has yet to be done in Australia as effectively as it ought to be done. What we did with freedom of information when we brought in legislation was entrench certain conceptual aspects of the Westminster system as it then operated, such as Cabinet secrecy and other aspects of the system that have a lot of the hallmarks of the Yes, Minister series in terms of trying to keep people uninformed. The legislation too strongly gave credence to that view of the Westminster system and did not allow the possibility for the system to be modified over time and for people to grow into an open system of government. For design purposes, I think that is one of the major points I would like to make.

Mrs GAMIN: Can you identify particular advantages of reversing the FOI concept to provide for the routine release of certain information? Would you like to explore that?

Mr Snell: That is what we should be aiming for. We should be aiming for a vision where, if there is going to be a secret zone—and I think there has to be for certain types of information, including personal/private information, collective ministerial responsibility in Cabinet and so on; any society has to have a zone of protected information—we should aim to make that zone as small as possible. We should aim to make sure that the only information in that zone of secrecy is the high-value information and not anything else. We should put into place not just freedom of information legislation and improvements to archive legislation and privacy legislation; every step of the way we should be deliberately trying to make as much information available in the most meaningful way to people. That just does not mean going in and having a look at the files. It means putting together, say, health statistics so that people can look at cross-infection rates between hospitals and so that people can look at police arrest records across various jurisdictions, or whatever it may be. The aim should be to attempt to give people as much information in as meaningful a format as possible.

As to what I take the Committee to mean by "reversing FOI"—we should rely quite heavily on electronic access and on Government departments making available information on CD-ROM, through the Internet or whatever else it may be. I fully support the measures set out in your discussion paper. A number of submissions made by your Government departments took to that idea very strongly—that type of access.

I strongly disagree with Victor Perton from the Victorian Parliament, because he sees reversing FOI as effectively replacing freedom of information. It is an absolute necessity that you keep freedom of information in place whereby individual citizens and groups have the legal right to access information, just in case the regime and Government changes and the attitude changes within Government departments. Yes, if we can replace having to rely on freedom of information to try to dig out bits and pieces of information—fragments of information—with much more holistic and well informed information, that is to be applauded and supported. But in my view we should never see that solely as a replacement for freedom of information.

Ms BOYLE: I am interested in the impact of FOI within departments or agencies in Queensland. My understanding is that at present in different agencies the requirements to provide information have led, in several instances, to the information now being routinely provided through other sources. That has been good. Also, there is some indication that, where there has been a pattern of requests about a particular matter or issue within a department, sometimes that has led to some sort of administrative reform, but it has been fairly informal and patchy and it is different from department to department. Is there a system that we could build into or associate with the FOI Act to ensure that that feedback process from FOI takes place more effectively?

Mr Snell: These concepts of alternative access to information adopted by Government departments—where they think that has made records and information accessible—is one of the intangible benefits gained from having FOI legislation in place. I do not think it would have happened outside of having that right. In fact, avoiding the costly procedures of FOI has been one of the key incentives for agencies to try to find new ways of giving people access to

information. If you do not have some body or organisation that monitors the process and ensures that the individuals who are supposed to be getting the so-called benefits of this alternative access actually get that access—that it is not just a doctored document that has been provided to them by the department, with the key information still being retained in a secret location—you have not gone through FOI, you do not have your review rights and you have not got any legal entitlements through the process. Unless you have some type of monitoring and compliance organisation that has responsibility for that, you will have some problems.

One of the models that you could be looking at is the Queensland Information Commissioner model, where the Information Commissioner not only has the power over external reviews but also has policy and public awareness functions, including the training and education of public servants within Western Australia. I think that has been a highly successful mechanism, as was your Queensland FOI unit in the Justice or Attorney-General's Department and as were such units in New South Wales, the Commonwealth, Tasmania and South Australia. But because they were not put into legislation, they have withered away and not been replaced. In each of those regimes the absence of those types of bodies has been a critical factor in respect of compliance with and adherence to not only the legal requirements of freedom of information but also the intention and spirit of the legislation.

The CHAIRMAN: Rick, you mentioned the "Queensland Information Commissioner model". I assume you meant to say "Western Australian"?

Mr Snell: I am sorry. Yes, the Western Australian Information Commissioner.

Mr BEANLAND: How do you believe Government owned corporations should be treated under the FOI legislation? This is always a contentious issue in so many respects.

Mr Snell: My view is not all that contentious. My views are well known in public. I regard that they ought to be under the operation of freedom of information. In fact, most of the law reform suggestions that have been made around Australia both at the Commonwealth and State levels have made strong recommendations that they be incorporated back within FOI coverage. The Victorian parliamentary accounts committee report into commercial-in-confidence information made similar types of suggestions only a couple of weeks ago. The basic thesis that I hold to is that where you have Government corporations they are still largely publicly funded and have built on public assets to be in the position they are now. To the extent that their commercial operations are not interfered with in any unreasonable way, and providing community service obligations are served, they ought to be incorporated.

I looked at one of the submissions of one of the Government agencies this morning. It said that in their view even the community service obligation requirements of a Government owned corporation ought to be excluded from freedom of information. I find it incredible that an agency can put across that type of view, when the whole idea about community service obligations is to ensure that people are getting a dividend back from giving this organisation this type of structure. We should be flexible in the type of structures that we use to deliver services and which use taxpayers' money. But the basic questions about accountability do not change. Freedom of information legislation itself may not be necessarily the right mechanism to ensure that accountability and transparency, but in my view it is as good as any. The exemption provisions within the Act are suitable enough for almost any type of situation in which we want to keep information exempt.

Dr PRENZLER: You are making statements that all individuals should really have complete and open access to information?

Mr Snell: That is not the total issue. As a general principle, I think we should aim towards complete openness of and access to information. But I accept, as everyone must, that there has to be in certain areas a zone of secrecy or confidentiality—for witness protection schemes, for individual personal privacy or sensitive Cabinet documents. My contention, though, is that the total operating environment should be aimed at trying to make as much information available as quickly as possible and in circumstances that do not devalue that secrecy.

Dr PRENZLER: If so, what protective mechanisms do you envisage should be placed in the system to prevent vexatious serial-type applicants who keep tying up agencies, often for malicious or mischievous reasons?

Mr Snell: As to my view on vexatious applicants—I have been labelled as a serial FOI applicant in Tasmania. I am a former Commonwealth FOI officer so I have played both sides of the field. I was named as a serial FOI applicant in Tasmania because I put in a total of 16 requests over three years to about seven different Government agencies—an average of about two requests per Government agency. In Tasmania that threshold is enough for you to be seen as a vexatious applicant. Reading some of the Government's submissions, the threshold for a person who is a vexatious applicant is fairly low compared with that in some other jurisdictions. For example, in Canada a journalist has put in 10,000 freedom of information requests. The Canadians do not regard him as a vexatious applicant because of the way he uses the information. You need measures and provisions in place such that, if you want to deal with the concept of the vexatious applicants, you can differentiate between applicants not just by the sheer number of requests and not just by the reaction of the agency to that person at that time. Effectively, it has to look at the type of information they are seeking. For me, a vexatious applicant is a person who comes back continually asking for the same information time after time, hoping that the agency or the information commissioner will change their mind over that period. Partly, I am of the view that in the majority of cases the level of vexatious applicants is not as negative as some of the agencies claim it to be. I know that for the individual agencies processing requests it can be a time consuming process. As a former FOI officer, I wished that some applicants would go away and I wished that I had the power to make them go away from the process. But the benefits you get from freedom information and the democratic dividend that comes from the process perhaps allow us to have a degree of tolerance to deal with the misfits in society who treat the legislation as another means of getting back at a Government department or a particular area as well. I have no strong objection to some measures being put in place to deal with vexatious applicants, but we have to be careful how we identify them and how they are given a review right to challenge that type of decision. We have to be careful that they have the ability to change their approach. Whilst they may have been vexatious because they had a bee in their bonnet about their own personnel file, they may then make another request to that agency which has great merit as far as a public interest claim goes. It makes it very difficult to deal with those vexatious applicants.

Mr PITT: You have no thoughts or basic rules of thumb that we could place in the legislation to help agencies determine who is a vexatious applicant at all?

Mr Snell: I am happy to think about it, and I have read some of the submissions where some good ideas appear to come up. I think that, unless you address some of the other problems in areas of freedom of information, the vexatious applicant problem is a minor one if you can offset it by some changes in other areas which make information much more open. If much more information is open, theoretically the number of vexatious applicants should drop to a degree because the information they are trying to seek is actually in the public arena.

The CHAIRMAN: We are interested in the type of criteria that might be applied in relation to various documents that might be released routinely. Perhaps if you could comment on that in relation to whether that is best achieved by setting down specific criteria in legislation for that, or is it something that is better done by setting in place appropriate administrative practices, or is it both in some combination?

Mr Snell: Are you looking at, say, the detailed provisions and the exemption provisions in legislation? What do you mean by "the criteria"?

The CHAIRMAN: I suppose exemption provisions on one end, but I think the Committee is also looking at what positive incentives, what positive application can be put to the process in terms of encouraging agencies to embark on that routine process and what sort of criteria might be applied to that issue of routineness.

Mr Snell: One is that the bottom end, the routineness of allowing information—the idea that you have in your discussion paper about performance standards and incorporating them into the performance of, if you like, appraisal standards of managers, etc., was a fantastic idea because leadership comes from the top down in freedom of information. FOI officers are normally low level officers in Government departments. They take their attitudes to the legislation, the process and requests effectively from either what they have been directly told or what they guess is the expected response that comes down. So from a ministerial level down, if a message is "where in doubt release as much as possible but apply the Act to take account of necessary

secret provisions or people's personal affairs"—if you have that attitude from day one and it is coming from the top down, then you will get most of that being approached.

The other key concept to use is the idea of harm to the agency and to make it a substantial harm test. Is the release of this information going to cause substantial harm to the agency—not a degree of bad publicity, not effectively a little bit of angst at the ministerial level about the press getting hold of certain information for the public the next day, etc., but: is it going to substantially harm the operations of the agency or individuals affected by that information? If you raise the threshold that high, then I think the information has to come out in the process.

Freedom of information legislation now has the opportunity for agencies to provide alternative access to FOI; it allows them to allow it outside the provisions of the Act. It is the attitude of the officers which is one of the key aspects of compliance mentality, if you like. In Queensland I think that has changed to a degree compared to what it was when I first visited about two years after the FOI legislation was in operation, because FOI officers were still motivated by provisions of Fitzgerald. It was new legislation; they had all received positive training; the messages coming from Ministers and from their senior public servants were that this legislation was to be fully supported coming through the process; and you had the FOI training unit. When you went around and you had the information commission model working fairly effectively—and when I went around talking to those individual FOI officers, they were taking a fairly proactive approach to the release of information. I think that has changed to a degree.

Mrs GAMIN: We were talking before about the Government owned corporations. On another angle, are there any arguments for extending freedom of information to the private sector generally and also, following from that, to those contractors performing functions outsourced by Government? Governments are increasingly prone to outsourcing their operations.

Mr Snell: Taking the outsourcing issue first, it has been the recommendation of most law reform bodies in Australia, Great Britain, New Zealand and elsewhere to make the outsourcing function subject to accountability mechanisms—not only the Ombudsman but also including freedom of information on the basis that people who deal with Government are expending public funds; effectively the service would have been provided by a Government department previously; and it is the same service being provided and the same people being affected. If you like, their democratic rights should effectively be the same. As a matter of principle I think it ought to be extended to the outsourcing regime. It should be encapsulated in the contracts that take place. That is one of the recommendations of the Australian Law Reform Commission, that we make it part of the explicit contracting process and that a provision be put in that the records of that body be deemed to belong to the agency subject to freedom of information.

To the first part of your question about extending to other areas including the Privacy Commissioner, yes, I think very strongly. When you look at some of the areas where information takes place—for example, hospitals is a classic example of that type of process. If you have a public hospital it is subject to FOI, but if you have a private hospital they are not, but the same patients, the same treatment and the same problems are apparent within both systems that take place there. The extent to which it is extended is more problematic. The white paper approach in Great Britain before they drafted their current freedom of information legislation extended the concept of FOI to a very wide extent. I think we can do that in Australia as well.

Ms BOYLE: I must say that in the process of this, I have met quite a number of freedom of information officers in different agencies and departments and they do, indeed, have a very open and positive attitude. I am impressed with how clear they are about who they are serving, which is not actually the Queensland Government but the people of Queensland, and about how we can provide it. They do express in a very delicate way, however, some frustration, particularly with trawling applications. There are three different kinds that I would like you to attend to as to whether or not we should aim for any kind of limitation or direction of trawling applications from, one, the media; two, for legal or prelegal purposes; and, three, from whoever is in Opposition at the time.

Mr Snell: My general response to that is: no. I have no objections to the, if you like, trawling operations. I think, given the nature of freedom of information, given the way that Government information is held and this whole process operates, you cannot but expect trawling or fishing operations to take place. If you do not know what information is held, if the Government or the bureaucracy is not totally committed to the operations of the Freedom of Information Act or

the Act is restricted in such a way that quite clear areas mean that you will never get access to them, such as a wide Cabinet exemption provision or very generous interpretation of internal working documents, etc.; if you take that type of approach it is not surprising that you would have those types of fishing expeditions.

I have often been critical of politicians and journalists who do make those sweeping fishing expeditions on the basis that high profile and high level users of freedom of information have just as much an obligation to the legislation as do the people who administer it. Effectively, people like myself can have a negative impact on Government departments if I put in 40 requests at the same time requesting information all over the place, knowing full well that there is only one FOI officer in operation at the particular time. I have a responsibility as an applicant to, if you like, dole out my response to allow that to be a manageable aspect that takes place. As a general principle, given the way that we have set up the legislation, you cannot help but expect the individuals to effectively do those types of trawling and fishing operations.

What we ought to be doing is trying to assist those individuals. Some of the better agencies and some of the better freedom of information officers do it as part of their day-to-day daily business. They will advise the journalist, "This is a trawling operation and it will take months and get you nowhere. If you only go and look at file X or ask for that file, then you might be denied access to it, but then the real fight about the real access to that information can take place", or, "If you want comparative health data, we will provide you with it. We will not provide you with all the boxes where you have to sit down and try to put the comparative health data together. We will put it together for you knowing full well that you are going to write a negative story in the Courier-Mail tomorrow about the use of that data."

If you do that, you are then putting the responsibility on the users of FOI to make better use of their information. You cannot blame journalists and Opposition MPs for conducting these types of trawling exercises and not actually using the information. One of the major criticisms that FOI officers have is that they put all this time and effort into finding the information and then the journalist does not bother to use it; no story comes out or the Opposition MP does not actually raise it on the floor of the House. So hundreds of hours of work have been put into not much information coming out of the process.

The applicant often finds that the trawling process just does not work because you get much more information than what you can deal with. I remember one request I put in to my department, primary industry, about the use of Atrazine—the pesticide. I ended up with effectively four boxes this high of information. It took me four weeks to read through it only to be more confused than I was at the start of the process. I wish I had actually listened and narrowed my request much more than I did at that time.

Mr BEANLAND: We have had some changes over time as to exempt matters of Cabinet under section 36 of the current Act of Queensland. We even had changes to the definition of "consideration" and so on. Do you believe the original way in which the legislation was drafted, which meant that many of the Cabinet items were not exempt but were able to be accessed, was a better format and do you think there is justification for going back to that, or do you think that all Cabinet matters ought to be exempt?

Mr Snell: My first response to that would be that almost immediately the Government ought to effectively pass legislation to take it back to its original position. I will go much further about what I think should take place. Just as an example—and I was trying to think about this on the plane on the way up here—take this boarding pass. Under your FOI legislation—including under mine as well, which is much more tightly drafted—it is theoretically possible for that to become a Cabinet document and attract a Cabinet exemption and be exempt forever and a day under the way that you read the Act. It states, "A matter is submitted to Cabinet", and "submit" includes "bring the matter to Cabinet irrespective of the purpose of submitting the matter to Cabinet, the nature of the matter and the way in which Cabinet deals with things." I do not think it will take place, given the procedures in place in Queensland. It would not take place, but the theoretical possibility is there. When you have that at the heart of your freedom of information regime, it is begging for trouble.

A good example of that is what took place in Tasmania. Our legislation has not been amended. It is a very tight piece of legislation in relation to Cabinet exemption which requires the Minister to effectively create the document. There is a fairly wide definition of "create"; he has

only to put his name at the front of the document in order to do that. What our Public Service did was overnight—the question time briefings for Ministers were being released under FOI because it was considered to be in the public interest for people to get access to them after they had been used by the Minister. The Ministers did not want this to take place; they could not think of any other exemption for it so they decided to use the Cabinet exemption process. They were able to do that because under the previous system departments effectively briefed the Minister in advance. The Minister did not ask, "Can I be briefed on X?"; departments said, "We've just been told Gary is about to ask a question in Parliament. You ought to know about this" or, "There's going to be a story appearing in the paper. You ought to know about this."

Mysteriously in Tasmania Ministers or their secretaries started waking up on Monday morning and requesting in advance to be briefed on certain issues before the following week. But they did not want to be briefed; they wanted their Cabinet colleagues to be briefed about their portfolio and for the matter to be considered in Cabinet. So what you had was that they had got a drop copy of the briefing paper to be used, it went to Cabinet in a box, there was a line item on the agenda "Cabinet to consider the documents in the box at the end of the table"—often about 200 to 300 each Cabinet meeting—Cabinet considered matters by ticking off the list considered and those documents were then technically exempt under our freedom of information scheme regardless of the fact that they contain such stuff as the closing times of Government agencies at Christmas time. They could not be released and the Ombudsman was unable to order their release because they fitted the Cabinet exemption purpose. That type of mechanism in place in freedom of information regimes really cripples the whole process.

A couple of steps that I would take would be to remove the concept of Cabinet being an exclusive zone of protection, that is, it has to be seen to be only there to protect the most valuable, important information you want, which is a concept of collective ministerial responsibility, what positions various Ministers took on a contentious issue in debate. That period should be limited. In my jurisdiction in Tasmania there is a 10-year limit on Cabinet documents. Cabinet documents become non-exempt after the passage of 10 years. There should be no conclusive or ministerial certifications. Again, in my jurisdiction just recently the Government has removed the ministerial conclusive certificates for Cabinet exempt matter, allowing the external reviewer—the Ombudsman in Tasmania—to review whether the matter is actually Cabinet exempt or not. There should be a public interest test, which is in fact being looked at in that process.

My immediate response would be that there is no reason why the Queensland Parliament should not go back to the pre-1993 position to begin with. Secondly, I think there are a number of fundamental improvements you could put in place as safety checks about the quality and the type of information. I think that is what it comes down to. We should only be protecting that key information which ought to be protected under the Cabinet exemption process. We need some way of assuring ourselves that that is taking place. If it is only putting in a 10-year time limit so that in 10 years' time we can see that the previous Government or this Government has not manipulated the Cabinet process, that is fine. If we find in 10 years' time that they did rort the system by putting things into Cabinet they ought not have put through to get the Cabinet exemption process, at least we have some accountability, whatever the delay.

New Zealand does allow access to some of their Cabinet material. It is all done on the public interest consideration, that is, balancing the public interest. Is it in the public interest for the people to know about this issue that went before Cabinet now, in two weeks' time or two years' time? Does there come a time when it is actually in the public interest which outweighs collective ministerial responsibility? I think that is the important aspect. We need to get back to that debate about what it is that we are trying to protect and what it is important to protect. I think your current Cabinet provision does not do that. I do not think the previous Cabinet provision did that adequately enough. I do not think that most Australian Cabinet provisions do it as adequately as they ought to. The New Zealand one in my mind at least makes a good attempt at it, and their Government has not come crashing down. Their performance in certain areas might not be great, but Cabinets in the Westminster system have operated fairly effectively in New Zealand, even with allowing access to certain amounts of Cabinet information.

Dr PRENZLER: I notice that you have made comments on central monitoring and coordination of freedom of information regimes. Can you expand on that a little to give us some idea of what you mean. In doing so, I would like you to make a few comments on what training regimes you believe there should be in place to train coordinators in the agencies and how far

dissemination of information should go between those agencies and from the FOI commission to the agencies.

Mr Snell: In my view, I think the model from Western Australia would be an ideal one for you to incorporate to bring into the Information Commissioner model a responsibility for training and public awareness which is separate from their review role but which is adequately funded. Probably the best example I can think of in relation to what they have done in Western Australia is that the FOI coordinators themselves have sat down with the Information Commissioner and worked out performance standards and benchmark indicators for their processing of requests, their handling of information—the criteria they want to be judged on and which they have committed themselves to meet. As an education process, having officers who have done that with their own self-imposed standards which the commissioner has found acceptable under the Act will transform the way freedom of information is applied and operated in Western Australia.

Numerous of your agencies in their submissions to this Committee have decried the fact that the FOI unit in the Attorney-General's Department was dismantled and that these services are not being provided. Again, if the Government wanted to do something, that could be done relatively simply overnight, even before the Committee makes its determinations. But, as far as the Committee is concerned, I think the educative function both for the officers and for the public and users like myself and journalists and others is one of the important concepts. The Freedom of Information Commission in Western Australia has sat down and provided training courses for journalists as to how they can access the Act and has made the relationship between journalists and FOI coordinators a little more user friendly and workable. We can do that with a lot of the other applicants. As a former FOI officer and as an applicant, one of the noticeable differences about how freedom of information operates is the level to which there is the cooperation between the officer and the person making the request.

In lots of cases, it is very adversarial. People think, "I know I've put the request in. I know they're not going to pass it. I know they're going to hide the information. They're going to delay it. I won't talk to them if they don't talk to me." It bogs down into open warfare between the officers. In a good FOI operating environment there is constant communication taking place, as in that video I mentioned. As hypothetical as it is, that was so effective because the FOI officer came back and said, "Do you really want this, or are you looking at this? There's heaps of information over here, but you might want this information." That is building up that trust. That really only comes from people knowing that they have the knowledge of the Act and the legal requirements and they satisfy those, that they have leadership coming down from the top which shows out in the training courses and they have support in being able to do it.

One of the crying shames I can imagine is that there are numerous FOI officers in Queensland in a number of Government departments who are effectively lacking any cohesive support in performing their functions. They may be very dedicated. They may be very keen to carry out their responsibilities, but they have been thrust into a very difficult job with inadequate training and are having to reinvent the wheel when there could have been a mechanism in place that would have given them the training, support and awareness at that particular stage. In relation to the awareness program in Western Australia, the officers will often go out to agencies who have been identified in a request as having a particular problem with meeting time limits or a misinterpretation of legal professional privilege and deliver specific training to that agency because that officer or those officers in the agency have had a lapse in understanding their compliance in the application. That is the kind of, if you like, complaint focused and incident based type of regime you have in Queensland. It is okay to a degree, but you really ought to be institution focused and performance based. We should be able to identify the top performing agencies so that we do not monitor them or provide them with training resources but identify that this agency over here, because of its size, attitude or whatever else, needs assistance in the process. That type of response in FOI is just not taking place in most jurisdictions around Australia at the moment.

Dr PRENZLER: So you believe in your mind that restoration of that unit in the Justice Department should be one of the first immediate steps to restore confidence.

Mr Snell: It is better than what you have. It is a far greater improvement, given the normal delays in responding to law reform committee reports, etc. I think that one of the most urgent solutions that can be put into place is for that unit to be functional again. My preference

would be to have a statutorily endorsed unit, maybe with the Information Commissioner—it does not really matter—which has the resources, the power and the position to provide those types of functions. If you do not put that unit back in some capacity immediately, then you are really not doing a service to freedom of information in Queensland.

Dr PRENZLER: Thank you.

The CHAIRMAN: This will be our final question from the Committee. The Information Commissioner model has been in place for quite a few years. Could you perhaps comment on the standing of that model now in the year 2000 and how that model might be improved in the current Queensland situation.

Mr Snell: In my view, the Information Commissioner model is the most superior model we have adopted in Australia to deal with external review applications. I think Queensland benefited enormously from making that design choice when it did. If you look at the evolution of freedom of information in Australia, it started with the Commonwealth/Victoria model back in the early 1980s which was largely a court review process. It was very time consuming and very legalistic. Tasmania, South Australia and others brought in the Ombudsman type of model to try to overcome some of the inherent problems in the court-based approach. The Western Australian and Queensland models have taken the Information Commissioner model. In the way they have applied the legislation and the way the agencies have responded has been probably the most beneficial aspect of the whole area. I think the way the information model can be improved here is to bring that policy and awareness function into the model, possibly making it separate from the Ombudsman concept. I notice in a number of the submissions there is some concern about the two offices. Coming from Tasmania where my Ombudsman wears several hats, we have learnt to live with those types of differential roles that take place.

Resources are one of the critical aspects about the Information Commissioner model. You can do enormous damage to the FOI process if you deny resources. If you look at what happened with the Information Commissioner, it did not have enough resources to commence the operations as effectively as he ought to. There were the backlogs. There were the time delays. The credibility of the organisation suffered as a consequence. They were not able to perform their function as effectively as they ought to in keeping time limits, even though they were not imposed by statute. Even if they had been, it would not have been physically possible for those time limits to have been matched. Compare that to Western Australia, where resources for the Western Australian Information Commissioner were so sufficient that she has not actually put in a budget application at any time to increase the amount that has been allocated each year. She had the resources from day one and actually had a surplus of resources to do not only the review function but also the publicity, awareness and training functions as well.

I think that has been one of the most negative aspects about the FOI process in Queensland. The impact on the Information Commissioner of the denial of those resources in the early years was enough to have a negative impact on the process. You can kill FOI very easily by withdrawing resources, either from the review process or from the FOI officers. The withdrawal of the FOI unit is an example of the denial of resources. The legislation needs those types of institutions to function.

The criticism that has been made of the Information Commissioner model are warranted about being too legalistic and all the rest. His contributions in the jurisprudence he has put across has been enough to effectively keep FOI alive not only in Queensland but also Western Australia, South Australia and Tasmania. Those States have piggybacked very heavily on his decision. The Western Australian commissioner will admit that she is able to write the short, succinct decisions that she writes, which a lot of Queensland agencies have referred very favourably to, because of the fact that she relies on the Queensland Information Commissioner's expertise, which then allows her to concentrate on improving performance standards. A neat idea would be to effectively get her to come to Queensland to help do some of the training and support to effectively repay the favour which Queensland has done in that process. A lot of us are beholden to Queensland, especially the Information Commissioner, for the level of jurisprudence that has taken place. That is not of any comfort to the agencies that have had to go through the magnus opuses that he has put out from time to time, but I think they will be indispensable not only now but also for the foreseeable future. They have laid a very solid foundation.

That comes back to one of the key points I made earlier: you cannot just rely on good efforts in one area. I think he has done a fantastic job in that particular area in laying that foundation, but if you do not address the compliance, training and attitude issues then that is all for nought in the process. One thing that is apparent from the Government agency submissions—with a couple of notable exceptions such as the Department of Primary Industries, the Environmental Protection Agency, the Department of Aboriginal and Torres Strait Islander Policy and Development and the Department of Equity and Fair Trading—is that they were very heavily in favour of the freedom of information regime. Most of the others treated freedom of information in the way they have presented in their reports—a little bit like the legislative equivalent of having influenza. It was something they could not avoid. It is now here. They have to learn how to live with it. Most of the suggestions they have made—increasing time limits, increasing fees, broadening the base of access fees, dealing with vexatious litigants—are trying to take precautionary measures against dealing with something that they are semi-uncomfortable with in the process. FOI officers within the departments are very comfortable with the legislation, but senior managers and senior leadership in the departments often treat it very much as an unnecessary evil which they will not be able to get rid of. They have tried to take steps, which they have made in their submissions to your Committee, to limit the impact on them.

The CHAIRMAN: Thank you very much.

Ms BOYLE: I hear a little contradiction in what you are saying to us today. I would really like to be clear about that. I go back to the trawling issue. Trawling is fine. Yes, we can diplomatically suggest narrowing of the question. It is too bad if they do not narrow it. They will want to trawl. They are allowed to trawl. That is the Westminster system; that is democracy. But, at the same time, we are asking them to do it within 21 days. In a decentralised State like Queensland—have a think about health, police and people who move all over the State in different agencies—that can be an impossible demand where people's names are mentioned and permission has to be given. We need to give them a break at a practical level.

Mr Snell: It depends how you get to the 21 days. If it is overnight, then, yes, I agree with you. If the 21 days is part of your vision at the end of the process and you take it in steps to get there, you can achieve it. Start with 45. Go down to 40 for six months. Go down to 35 for the next six months. We did it in Tasmania. We did not bring local government in for a year. We gave them a year to accommodate the Act before they were brought in. We started off with 40 days in the first year, but we moved down to 30 days for the second year. In my view, you can take incremental stages where agencies can learn to adapt and respond to the new time limits. We can learn if there are any particular problems for particular agencies in trying to meet those time limits and maybe stop that progression towards it. We should aim to do that.

The Information Commissioner made a very good point about looking at the total overall budget of Queensland and looking at FOI as one of the democratic resources that come from it. The benefits you get from freedom of information ought to be seen as a dividend that has gone into the public welfare of Queensland. If you need to spend some of that dividend to administer the system by putting more resources into agencies that are having trouble dealing with the requests, be that either training or more officers, then you should do so at that particular process. As we move closer to that vision, hopefully the trawling request will get better because there is less information to trawl for because there is a much more defined amount. I hope that is an adequate response.

The CHAIRMAN: Thank you.

The Committee adjourned at 1.59 p.m.

The Committee resumed at 2.04 p.m.

PAUL WHITTAKER, examined:

The CHAIRMAN: I welcome Paul Whittaker, Deputy Chief of Staff of the Courier-Mail. Thank you very much for attending the hearing today. During your evidence you might wish to refer to particular FOI applications by way of example. We would find this useful if it is relevant to our review. We remind you that this is a public hearing. Therefore, we ask that you avoid making statements which reflect adversely on or identify any particular person or entity. I will hand over to Mrs Gamin to ask the first question.

Mrs GAMIN: I want to ask you about the internal review mechanism. A person aggrieved by a decision concerning access to documents, the release of certain matter or amendment of personal information can seek review of that decision by another person within the agency. Do you think the current internal review process is of value? Can you suggest changes which you think would improve the process? What do you think of the external review situation we have?

Mr Whittaker: It is valuable when we get the documents we want after the internal review, but it is not too valuable when we do not, which is most of the time. Quite often we find that if a matter goes to internal review it is merely another public servant in the department who will be reviewing the decision of someone who might be two desks away. Invariably, we see it as a rubber stamp. I think in Western Australia you can bypass the internal review process and go straight to external review. We have some problems with the external review as well. I actually thought I would be able to speak for five minutes preceding questions. It might be a bit more instructive if I could quickly run through some information I have.

The CHAIRMAN: Take that opportunity now to make a general statement.

Mr Whittaker: I am happy to answer any questions following. In his second most recent annual report, the Information Commissioner reminded Parliament that changes to the 1992 freedom of information legislation have effected a significant retreat from the principles of openness, accountability and responsibility which the FOI Act was intended to enshrine. As stated in the Queensland Newspapers submission to the Committee, we strongly support the public's right to access information which is of public concern in the terms described by then Attorney-General Dean Wells in his second-reading speech of 5 December 1991, which states—

> "The assumption that information held by Government is secret unless there are reasons to the contrary is to be replaced by the assumption that information held by Government is available unless there are reasons to the contrary. The perception that Government is something remote from the citizen and entitled to keep its processes secret will be replaced by the perception that Government is merely the agent of its citizens, keeping no secrets other than those necessary to perform its functions as an agent."

Sadly, in my view these notable sentiments and the spirit of the FOI Act have been consistently eroded since that statement was made. The Act has been emasculated to the point where many journalists consider it a largely frustrating, time-consuming, protracted waste of time, with the most sensitive information beyond public scrutiny and out of reach. Despite this, many of us, including the Courier-Mail, who are frequent users of the Freedom of Information Act remain eternally optimistic that the material we receive will be of some value.

As stated in our submission, we oppose exemptions by regulation—section 11(1)—and submit that any and all exemptions should be by legislation. Section 11(1) excludes certain bodies or their specified functions or activities from the application of the Act, either categorically or in respect of documents relating to their specified functions. The agencies covered by this include the Governor, the courts, commissions of inquiry, such as the Fitzgerald inquiry, and the Legislative Assembly. We submit that that should be amended to ensure that the workings and administration of the Parliament are open to scrutiny, excepting the dealings of a member of the Legislative Assembly and a parliamentary commission of inquiry.

Members of the Legislative Assembly are a good case in point. A recent example, where we have been involved in the FOI Act in terms of an application, regards matters concerning the Legislative Assembly and helps highlight the fact that many of the State's parliamentarians are unaccountable for their actions. I know that you asked me not to refer to anything by case, but most of this has been published in some exhaustive detail in the public arena.

The CHAIRMAN: Please refrain from mentioning any individual's name.

Mr Whittaker: That is the whole point, you see. We haven't got the individuals names. We have been attempting to get them for the past seven months. The Auditor-General's report No. 3 1999-2000 reveals that an audit to the year ended 30 June 1999 showed that a review of the debtors ledger revealed that the total amount outstanding as of that date was $151,591. This figure included long outstanding balances over 90 days of $15,327, including $13,878 owed by the MLAs. The outstanding debts were accumulated over periods of up to 12 months and were incurred mainly for the use of parliamentary catering facilities.

First of all, on seeing the Auditor-General's report immediately the press expressed some interest in finding out who these errant MPs may have been. But of course, the operations and activities of the Legislative Assembly are excluded under the Act from scrutiny in terms of FOI applications. The Courier-Mail then attempted to go through the back door, as it were, by applying under freedom of information for all correspondence between the Auditor-General and his officers and the errant MPs, as we understood it to have taken place.

The point we were making essentially is that if members of the public, and many of the constituents of the members of Parliament who were involved in this particular matter, had run up drink and meal bills for in excess of 12 months—if they were able to be members of a club that would allow such a discretion—they would find themselves within a good deal of time in the Magistrates Court. Most likely there would be a judgment entered against them and their names would be searchable on the public record. That argument held no water, of course, when we made our application.

In December the Auditor-General was sent an application in regard to the correspondence between his office and the MLAs involved in the unpaid parliamentary dining and meal expenses. This was done because the Speaker, who is responsible for chasing up the unpaid bills, is exempt from public scrutiny, as mentioned under the FOI Act. The relevant part of the report concerned the fact that a number of members were extremely dilatory in the payment of expenses incurred by them in the parliamentary dining room and elsewhere in Parliament House.

The Auditor-General criticised the recovery procedures of the Speaker's office and, inferentially, the members concerned. However, he did not name in the report the members concerned. He stated to us that we had not provided a compelling reason for him to do so either. The Auditor-General's decision is being appealed by the Courier-Mail and is now under external review with the Information Commissioner. The Auditor-General claimed that the information was exempt from disclosure under subsection 39(2) of the FOI Act because it was information disclosure of which was prohibited by section 92 of the Financial Administration and Audit Act 1977.

We were in essence informed that we would have to supply a compelling reason as to why the information should be released. We would argue that the test should be reversed in cases such as this and that the agency involved should have to supply a compelling reason why the material should stay secret. Our argument was, as mentioned earlier, that if members of the public were in the same position—running up bills, at subsidised rates, without paying for 12 months—they would most likely find themselves in a public forum such as the Magistrates Court with a judgment which is searchable by members of the press and anyone else from the public. I am not trying to be overly critical of members of Parliament here. There are many other examples in many other areas of Government.

The Auditor-General conducted an internal review of the Deputy Auditor-General's original decision. This is the internal review you asked me about earlier. The Deputy Auditor-General found that we provided no valid reasons. The ones we provided were that the public has a right to know about the conduct of their members of Parliament, the people whom they come periodically to vote for, to know about their ethical standards and their integrity, etc. All of those arguments were not viewed as being compelling.

The Auditor-General undertook an internal review once we appealed the original decision not to release the documents. He told us that he had decided not to name the relevant members in his original report in the interests of natural justice. He does not indicate what interests of natural justice were involved in that decision. Clearly, the members had been given the opportunity to comment on the reasons for their lateness in paying, and there was no question of

them not being given the opportunity to dispute the debts before they paid them. However, he has clearly accepted that he could have named the members in his report. That concession indicates that there was nothing to stop him doing so in the exercise of his discretion and for the purposes of the FAA Act. Therefore, those names are not protected information in our view.

The public interest concerned is that of enabling the public to know which of its members of Parliament are honest and do not abuse the privileges which they obtain by being members of Parliament by promptly paying their debts to the Government. In other words, it is in the public interest to know of and be satisfied with the integrity of elected representatives.

Carrying on with this argument, not just in relation to the three of four paragraphs referred to in the Auditor-General's report which refer to the MLAs who were involved in running up bills that had been outstanding for some time, we would argue that the general reasons for the disclosure of information in relation to the operations and activities of the Parliament that currently do not exist are: it serves the purpose of informing the public about the public activities of its Government and MPs; it provides information to the public which enables it to make effective use of its means of expressing public opinion or to make political choices; and it assists in informing the public about the propriety and ethics of the activities of its elected representatives.

The report raises serious questions about extraordinary deviations by MPs from usual business or administrative practices, especially in relation to payment for goods and services rendered to them in their individual capacities. In particular, it indicates that a number of MPs use the parliamentary dining facilities but do not pay their bills for long periods, notwithstanding monthly reminders by the Speaker's office. If the information is released in conjunction with information as to a member's practices after this report is made, it will enable the public to determine whether the individuals concerned have continued to fail to pay their debts promptly.

The information provided in the discussion paper that I have read to this Committee refers to the New Zealand legislation, which provides that information should be made available unless there is a good reason for withholding it. Some of the reasons cited in that legislation are matters which would seriously damage the economy and prejudice national security and defence, etc. Obviously, in this case, it could not be argued that any of those things would apply had we been working under the New Zealand legislation. It also made the point that embarrassment to Government should be an irrelevant factor in determining whether the release of a document would be contrary to the public interest. But, of course, the public interest is not even defined in the Act. It is too open ended and discretion is too wide, which brings me to the next point, which is provisions relating to Cabinet documents protection.

We would argue these are far too broad, that these provisions need to be removed or, at least, more narrowly defined in terms of the documents that are genuinely before the Cabinet and are genuinely a matter of Cabinet discussion and are genuinely a matter that would be adverse to the public interest should they be released. The discussion paper also referred to a culture of secrecy and asked the question: is there a culture of secrecy in Queensland?

Other agencies that are exempted under the FOI Act include law enforcement bodies, such as the Criminal Justice Commission. Mr Beanland, I know, has some knowledge of this matter involving Jack Herbert—Jack Herbert, the State's longest and most expensively protected witness, we presume, because we are not able to get the figures. From the Criminal Justice Commission, through initial application, internal review and an external review, we were not able to obtain the details on the grounds that we would jeopardise the security and the protection of witnesses in the program. That was, in my view, a rather ludicrous suggestion, given that we were simply asking for the overall cost and we were asking, if it was not available, for the individual cost of overtime of individual police officers, etc. It was widely acknowledged in the police force that the officers attached to the Herbert detail were on the best overtime rort available in the service. Jack Herbert said as much in evidence given at a District Court trial, one of the last remaining trials of people who he was due to testify against as part of his indemnity. He said in open court, in giving evidence in this court case, that he believes that the CJC had been involved in a $1.7m overtime rort.

We do not believe that the CJC had an argument in saying that the witnesses on the protection program would be compromised had they given us those figures. Surely it is possible under the Act for some flexibility, you would think. But no matter what we argued, we were rebuffed at every point in regard to the figures. Once again, I cannot see how, for instance, an X

figure of $3m for the protection costs of Jack Herbert over a period of four, five or six years could possibly jeopardise the program. All the public gets from the Criminal Justice Commission is one line in its annual report, which I think is its most recent details. It provided the figure of $3.1m, or thereabouts, for the program. Nothing else: that is it, lock, stock and barrel—all that the public of Queensland can find about how their money is being spent in regard to this particular program. We were not asking for the names of the people on the program, we were not asking for where they lived, we were not asking for where they went; we were simply asking for the overall cost. Despite a long and drawn-out process involving the company's lawyers and legal counsel, we got absolutely diddly-squat. The public has a right to know how its money is being spent. Certainly, in this case, even the protected were questioning the cost and the effectiveness of the program.

Government owned corporations are another body which we would say allow the term "commercial in confidence" to be abused for their own benefit. Lately, it has become almost a standard buzz word on every second FOI that this paper has been involved in. It becomes effectively an all-purpose shield, as I think is mentioned in the discussion paper. Government owned corporations such as Energex are publicly funded and, therefore, should be publicly accountable.

One example of this is that we did a freedom of information search in relation to Energex executives' travel. The annual report of Energex—the most recently available one—provides a two-page summary of more than $500,000 of overseas travel involving executives of the corporation. In terms of the overseas travel, the annual report provides the numbers of executives who attended, one or two lines on which countries they may have visited, but nothing else.

We would argue that there must be flexibility in terms of the interpretation of the freedom of information request, the names of the officers who may have attended and a breakdown of their costs—perhaps excluding some information on the basis that they met with someone whom they were currently doing a business deal with, or something in those terms. If the annual report can give you the barest snippets, which is the reason why we did the freedom of information request in the first place, we got absolutely nothing back but a photocopy of the annual return from these particular executives. We would argue that Energex in this particular case should have had to provide the same level of detail that other Government agencies and departments have to provide in relation to their executives' overseas travel.

It has also been suggested in the discussion paper—I think it is under the heading "Reversing the FOI concept"—that agencies should routinely release information rather than control access to it through formal resource-intensive FOI processes. In the media, we are all for releasing more information on a routine basis, but we would express some scepticism of the Government's ability to impartially release information which could prove embarrassing to it.

Another example of this particular aspect of the discussion paper is that we did a major freedom of information request in regard to expenses incurred by the 59 Supreme, Appellate and District Court judges of Queensland. Six thousand documents were finally provided, albeit nine months and one week after the original application was submitted. In the course of that, it was pointed out to us by the department that there was an annual return of the Justice and Attorney-General's Department, which provided for overseas travel by judges. We were helpfully pointed towards that and looked up the annual return, which provided one page—I believe, half a page—with the names of the judges, normally about one line on where they may have gone, and a total figure. But as the freedom of information application bore out—when we finally did get the documents back—the figures provided for in the annual return were not entirely accurate. In one case, there was $47,000 in travel by the Chief Justice which had not been recorded in the report, even though they argued that it was inadvertent misleading of the public about the expenditure, the true expenditure by individual judges. As a result of this, the department has changed its reporting procedures in regard to how those figures are compiled.

Essentially, without boring you with all the detail, there was a cut-off period before the financial year, where certain judges would be advanced large sums of money, or small sums of money, and then spend large sums of money when the accounting period had cut off. That was not recorded in the annual returns and, in some cases, it was not recorded again the following year when that money had finally been reconciled. In the cases of the judges' travel, we did get 6,000 documents back but, like I say, it came nine months and one week after the event.

We find as a common experience that it takes some time to get many of the documents that are released to us and often, when the paper is involved in the story—to give another example, Gocorp last year—much of the heat is taken out of the issue by the time the paper is able to even get its hands on documents obtained under freedom of information. All too often Government departments—not all of them, I might add, but some of them—use the Freedom of Information Act as a foil to delay their release of material or just simply not to provide material that could be provided on a general basis over the phone or faxed to us, or on any common media request. We are put through this laborious FOI process quite often when that information should be able to be provided publicly, certainly to the media in terms of its inquiries.

You asked about the internal review. Following the internal review was the external review. There was a point made in the discussion paper that the Information Commissioner's process can be excessively legalistic. Perhaps by virtue of the way it is structured at the moment, it has to be, but I would argue that you have no choice but to hire legal counsel at considerable expense to argue the case in external review simply because often the Information Commissioner is relying on past cases and case law. There might be 10 particular matters of precedent that are raised and unless you have the benefit of legal counsel, a commonsense and practical approach to what you think is right or wrong is not going to win the day. You are going to have to hire a lawyer and the lawyer is going to have to basically rebut the 10 points that might be raised by the other side's lawyers and add another 10 himself into the measure. That is the process that ultimately you go through. I notice in the figures that I think only just over 300 people had bothered to take the process through to external review.

Obviously, in the media we are better resourced than the average citizen in many respects, but even we are reluctant to take some of the these matters on external review, because it is a very expensive process, and a time consuming one, and even when we might get the information—sometimes a year after the event—its value has all but been diminished by the passage of time and it has become in some cases rather irrelevant.

Another issue that has been raised in the discussion paper is fees and charges. Queensland is the only jurisdiction which does not charge for the time taken to process applications. This applies in the Federal jurisdiction and, quite often, a freedom of information application at the Federal level can cost many hundreds of dollars. In Queensland, there is a $30 application fee and then a photocopying charge, which I would say is actually more than reasonable—the charges that apply currently. But one of the other aspects of the Freedom of Information Act is that, in many of these applications that the media make, the department or agency involved—and I will refer to one particular case involving the Police Service—cite section 28 of the FOI Act, that the application would substantially and unreasonably divert the resources of the Queensland Police Service. There was a case where the Courier-Mail had applied for documents under freedom of information regarding the number of police officers who had been excused from red light camera tickets and speed camera tickets for a period of 18 months. The speed camera office did have the figures. It was able to provide them to us after about four and a half months. But we then sought to obtain officer detected breaches in the 18 police regions—which includes the various police commands in the metropolitan region as well—and police directorates. But we were informed, as is commonly the case, that this would substantially and unreasonably divert the resources of the Queensland Police Service.

We would argue that the applicant should be given the choice. At least the department should have to particularise the unreasonableness of the request—how much it would cost and how many resources would be diverted in order to satisfy the request. At least if we were given the option of paying for it—in some cases, the media may well decide to pay several thousand dollars, even; we do not want to make a habit of it—but in some cases if it involved, for instance, writing a new computer program or actually sending off 500 letters or something of the like, it would be beneficial to at least be given the consideration to possibly pay for the research to be undertaken. In that case, I believe that that information could have been ascertained and probably for not more than $1,000—I do not know. But we were not given the option, nor were we given the details as to why it was too labour intensive, too resource intensive for us to obtain it.

The timeliness in obtaining access and process—I have mentioned that. Effectively, the Act allows for 60 days but, in terms of the judges freedom of information request, effectively nine months and one week after the original application, we received 6,000 documents. We had a day

to view those documents and we were able to photocopy those documents under supervision in a room at the Justice Department. During the process—and I admit that it was a long and involved one—the freedom of information officers changed, I believe, three times. All the new officers had to come up to speed on each individual application. In one case, the judges had not been given the 28 days to object to the release of personal affairs information and it had to be repeated, basically, twice when it should not have been. When I complained originally, I was told that I could take the matter up with the Information Commissioner. Then when I spoke to the Information Commissioner, in essence I was informed that it may take three months for my matter to be finalised but, in that time, I was probably going to have the documents I was after, anyway, which kind of defeats the purpose. It is quite routine for Government agencies to contact us and advise us that in their best efforts to compile the information and arrive at a decision, they have been unable to do so within the time frame and they have sought an extension. In the case of the judges, eight extensions were granted. But by the time we got the information we were dealing with figures that were in some cases two years and six months out of date. Obviously, the impact of those figures was lessened by that fact.

The CHAIRMAN: Thank you, Paul, for that very detailed statement. I am sure the members would like to have asked you more questions, but we are nearing the end of this session. In terms of your comments on the errant members and their parliamentary catering bills, perhaps the Courier-Mail might organise some financial counselling for those members, because I understand they are also subject to some very high interest charges.

Mr Whittaker: Were they always subject to the high interest charges or just since we started publicising it?

The CHAIRMAN: I do not know. I know that is the case now.

Mr Whittaker: We do not know what the case is, because no-one will give us the information. Perhaps you would care to furnish it?

The CHAIRMAN: I welcome Warren Pitt, the member for Mulgrave, who has just been able to rejoin the Committee. We really are at the end of the session. Are there any questions as a matter of urgency?

Mr BEANLAND: I notice in the supplementary submission you made on 24 May you refer to local government not providing information about the salaries of councillors and local government senior officers, claiming exemption under sections 44(1) and 256(1)(a). Is that under the Local Government Act?

Mr Whittaker: That is as I understand it. Basically, "matters pertaining to personal affairs" has been the argument given when we have tried to obtain details of salaries of senior executives of the Brisbane City Council, and other councils, for that matter as well. Also, we have been knocked back on freedom of information applications for the parking tickets that the mayor was personally ultimately responsible for excusing—the names of those people, the details and the dates. That is just a very small example of the material that we sought.

Mr BEANLAND: Most matters to do with local government are able to be obtained under FOI.

Mr Whittaker: We have had some problems getting a lot of the more interesting ones.

Mrs GAMIN: Is that only in Brisbane?

Mr Whittaker: No, it applies across-the-board, effectively. We seem to come up against a bigger barrier in dealing with the Brisbane City Council on all of these matters. It applies across-the-board. It is open to interpretation, basically. It is very subjective in many respects. In some ways the Act allows a lot of flexibility, but it is at the discretion of the officer charged with exercising that flexibility.

Mr BEANLAND: Has this matter been to external review?

Mr Whittaker: The matter of the salaries?

Mr BEANLAND: Have you had an external review from the Information Commissioner in respect of the salaries of senior council officers?

Mr Whittaker: I believe we have. I am not exactly sure about that. I was not involved in that matter personally. I know our council reporter was. I could not say for sure whether that was the case.

Mr BEANLAND: We will have to check that.

Dr PRENZLER: What exemptions would the Courier-Mail accept under the Act?

Mr Whittaker: Like I say, I think the onus should be reversed; that there should be compelling reasons not to provide the information; not that we have the onus on us to provide the compelling reasons as to why it should be. You asked me what exemptions should apply?

Dr PRENZLER: In your opinion, what exemptions would the Courier-Mail accept under the Act?

Mr Whittaker: Some of the ones we mentioned there included dealings between a member of Parliament and a constituent. They should remain private. I do not think people would expect that, if they tell their member of Parliament something in confidence and he takes notes, they would later see that splashed across the Courier-Mail. Also, I think we mentioned parliamentary inquiries in certain circumstances. Obviously, the Vasta matter is one to mention. I am not saying that it should not be released. In matters such as that material is gathered, a lot of which would not be tested. It may be quite damaging to someone's reputation, because it has not been tested. We are not saying that there should be blanket or open door access to everything. Certainly—and I do not mean to keep hammering it—in relation to the example of the Legislative Assembly, why should the public not be able to know what privileges and rights members of Parliament accept and, in some cases it may be argued, abuse? Why can the public not know how its money is being spent to make an informed decision about the people that it wants in Parliament?

Dr PRENZLER: What response time do you think the FOI Act should give you?

Mr Whittaker: I think in some complicated cases there is an argument perhaps for three to four months. But once again, this Act deals with documents. In many cases when we have sought information it does not exist in a document and they will not compile it for us. I go back to my earlier argument that this sort of information should be routinely given to the media upon request. We should not have to always be subjected to the FOI process, because in many ways it ends up dragging things out for a long period. By that time, a lot of the value and the impact of the issue has receded.

Dr PRENZLER: Do you agree with the Committee's looking at more open information?

Mr Whittaker: I think in general circumstances the 60-day period in terms of a decision is adequate. But what I am saying is that in some cases—certainly in many of the cases we are involved in—it might be a person seeking individual details about a particular matter that is pretty open and shut, and the 60-day limit has not been adhered to. They do ring up and say, "Yes, it is 60 days." In some cases—for example, the police department—we do not hear from them for five months and the next thing you know a bundle of documents arrives. Some departments are very efficient and comply with the letter of the law in terms of the timing and even ring you and seek an extension. They go through all of the processes. Other departments are a bit more slapdash and shoddy in the way they deal with it. I think 60 days is probably adequate. But I think it is certainly inadequate in the case of the judges' expenses, for instance. An annual report is compiled and a blanket figure is arrived at. Somebody has to put those figures into the annual report. They must have those sorts of documents at their disposal or near to hand. It is unacceptable that it takes nine months to get that material. I might add that the whole reason why I believe the Justice and Attorney-General's Department decided to publish these figures in the annual report was that the Courier-Mail in 1994 published a four-page exposé on judges' expenses on overseas travel. That is the reason why this became a matter of public record in the annual report; it was only when the Courier-Mail pushed the envelope. But the judges, to a certain degree, got a bit smarter on the second FOI, because they blacked out all of the particular drinks and meals they ate and much of the more salacious detail. They learnt from the first experience.

The CHAIRMAN: Thank you very much, Paul. We are very grateful for your assistance to the Committee today.

RICHARD ALLEN FOTHERINGHAM, examined:

The CHAIRMAN: Welcome to the inquiry. We are grateful for your time and contribution today. During the evidence, you may wish to refer to particular FOI applications by way of example. Whilst we would find this useful if it is relevant to our review, we remind you that this is a public hearing. Therefore, we ask that you avoid making statements which reflect adversely or identify any person or entity. Firstly, would you like to outline your interest and experience in this field?

Assoc. Prof. Fotheringham: There is only one item of relevance to you. I am an academic cultural historian, I am not someone who is trying to find information that Governments might hold on me, nor am I a journalist trying to find out information about contemporary interests. I have only been involved in one freedom of information application under the Queensland Act. The only usefulness of it to you is that it did seem to me to be an extremely non-controversial matter and yet it was one in which I was refused access to material—material that had been generated over 70 years ago and which was 40 years from the death of the person it concerned at the time that I made the initial application. It also seemed to show up considerable inconsistencies in the way in which Government records are held and/or released or not released in that nearly all of the information I was after I was able to get by accessing the records of another part of Government. So I think in that respect I can draw your attention to the fact that there are inconsistencies and that Queensland Health was very reluctant to release information of any kind. It even got to the point at which a mediation session was held in which I agreed to minimise my requests to one simple fact—the diagnosis of the mental illness that the wife of the gentleman I was writing the biography of suffered from. Given that the family was opposed to that information being made available, my application was refused. So it does seem to me to build up an extraordinary level of sensitivity.

Just to enlarge on this—the biography I was writing was of the Queensland short story writer and playwright Arthur Hoey Davis, who is better known as Steele Rudd, the creator of Dad and Dave. It is probably harder to think of a more significant Queensland writer. If you are talking about Queensland cultural history, there could be no greater case for public access. There had only been one very inadequate family biography, which was simply silent on most of the matters I was dealing with. There were two quite different scenarios presented to me on the evidence I had been able to find. One was that he was a fairly unpleasant person, a philanderer who drove his wife to a complete mental collapse. The other was that he was a good husband; that she suffered from some kind of mental illness that was not primarily related to the circumstances of her life and in which he was supportive for as long as he could be; that he, as it were, found another partner and led a separate life only some years after. The family was very fearful that the former was true and did not want to blacken their ancestor's name and preferred that nothing be found out about it, although in fact they approached me first about doing the biography. It was their idea, not mine. They wanted me to find out certain things that would raise his profile in the public record/memory and not delve too deeply into others.

The third aspect of this is that it took over four years. I was inquiring before the Freedom of Information Act came into existence. At that point, the family started to raise their objections. I applied almost as soon as I was able to under the Freedom of Information Act, which was in November 1992. It was October 1995 before I finally got a decision, at which point the book was actually in page proof. Having found some of the material, not the medical diagnosis but the actual dates of admission, through the divorce papers—he divorced his wife on the grounds of incurable insanity some 17 years later—I was able to establish when she was incarcerated. I still do not know why she was incarcerated. Clearly, these are matters of sensitivity. I would accept that for people now living and perhaps for the duration of the lives of the children of deceased persons this material should not be automatically available to be passed around. But on the other hand, the Act did not provide a specific exemption for materials of this kind. I could see no possible case in which the case for public interest in this area could be greater, and yet the application was refused.

Mrs GAMIN: Perhaps you might like to tell us any comments you might have about the internal review process and the external review process—how you thought they worked and what your recommendations would be to make improvements?

Assoc. Prof. Fotheringham: Having looked briefly—I must confess it was only briefly because I became aware of them last Tuesday—at the paper you released following the February discussions, I would certainly see that there is a need for some kind of independent or at least overseer independent person or group from the earliest stages. If one makes application, in the first two instances, to a Government department, which may rightly or wrongly have a vested interest in not releasing that information, it builds up a pattern of decision making that I think makes it more difficult for the Information Commissioner to overturn. Having read through the judgment of the Information Commissioner, which incidentally was never supplied to me—I found it on the web; I was simply told that the application had been refused, I was never provided with the written report—

Mrs GAMIN: Really?

Assoc. Prof. Fotheringham: That is correct. I am not a lawyer, but lawyers tell me that, if you read a judgment, about two-thirds of the way through at the latest you can work out which way it is going to go. Up until virtually the last sentence, it looks as if it is going to go my way, because the Information Commissioner accepts virtually every proposition I make—that this is of immense public significance to the cultural history of Queensland; that it was a proper request; that the persons concerned had been dead for many years; that none of their children were now living and it was only the next generation of descendants who were still interested in the matter. Yet in the last sentence of the second last paragraph permission is refused. It did seem to me that there was a great reluctance on the part of the Information Commissioner to overturn two levels of decision making made by a department.

Ms BOYLE: It is hard not to entirely support the position that you put to us in the particular case, but I have come across the difficulties that we have in other circumstances surrounding information about deceased people. You have indicated to us one of the parameters, for example. If we did decide to get the parameters around that area of information release clearer, it might be, for example, not within the period of the next generation. Are there any other parameters that you can think of that would help FOI people to decide when it is in the public interest and when the family's wishes for privacy should be respected?

Assoc. Prof. Fotheringham: I have worked mainly with working through the regulations under archives and those kinds of things. There has always been the assumption that personal and staff files should be withheld for a longer period of time than ordinary materials. I think that helps to categorise files so that it is not necessary to go through every file in detail in advance. In relation to the Australian Archives, which is now called the National Archives of Australia, that is the great hold-up and can take years. For example, in relation to something that ASIO might hold, they meticulously go through everything and black out or ink out anything that might identify persons. That is done for all documents before they are released. If you can categorise documents that are almost certainly containing nothing of personal significance, then that is one category.

The other category is this consistency thing. An example that has come up recently is the Education Department withholding admission records of students in schools. You can go to the school and buy a copy of the school magazine and find out when people were admitted and what prizes they won. There must have been some specific incident that led the Education Department to feel that they did not want to make that information available, but it does look rather foolish if the information is freely available elsewhere and, indeed, is disseminated as a form of publicity elsewhere.

Mr BEANLAND: Just very briefly, it is 30 years for the archives, if I recollect correctly. I think it is 30 years for births, deaths and marriages. It is 65 years for some personal material from the archives; is that right?

Assoc. Prof. Fotheringham: Yes, it is. It is 65 years, I think, from the making of the record because one does not know when the person died or if they have, in fact, died. Again, that is a subtlety that is sometimes missed in trying to apply year labels.

Mr BEANLAND: This issue that you raise clearly, since it is more than 30 years by the sounds of things—

Assoc. Prof. Fotheringham: Yes.

Mr BEANLAND:—falls under the 65-year category apparently.

Assoc. Prof. Fotheringham: Your legal knowledge would be greater than mine as to whether that was 65 years from the making of the document or from the death. I think there is some ambiguity there as to what it is.

Mr BEANLAND: So there would be some years to travel yet?

Assoc. Prof. Fotheringham: I am afraid so—another 20 years before I can do the revised edition and find out I was completely wrong, but I hope I was not.

Dr PRENZLER: The Committee is considering the establishment of a central monitoring and coordination unit for FOIs. That unit, of course, would give you some basic guidance on what you can and cannot find out. Do you think you would have proceeded as far as you did if that unit had told you that more than likely you would not have got that information?

Assoc. Prof. Fotheringham: It was a very crucial piece of information and it still bothers me. But, yes, I think if in general it was clear to me—for example, at the first level when Queensland Health refused my initial application, they foregrounded in their reasons the fact that the family did not wish the material to be released. In fact, I think the terms of the Act are that the family has the right to be consulted, but they do not have a veto. It seemed to me that Queensland Health was setting up as really the sole substantial reason for veto the opposition of the family, and that was I think the thing that encouraged me to keep going. That reason was repeated at the second level of application within Queensland Health and, again, it was one of the things that made me take it forward to the Information Commissioner.

The CHAIRMAN: Thank you very much for your time this afternoon. It adds a very different dimension to our review that we are very grateful for. I would like to adjourn the Committee hearing this afternoon for afternoon tea and I invite those present to join us for refreshments in the lobby outside the conference room. We will resume at 3.15 p.m.

The Committee adjourned at 2.50 p.m.

The Committee resumed at 3.15 p.m.

ROB STEVENSON, examined:

The CHAIRMAN: We will resume the hearing. I would like to welcome Mr Rob Stevenson from the Environmental Defenders Office. Thank you very much for joining us today and for contributing your valuable time. Would you like to make a brief statement before members ask you some questions?

Mr Stevenson: Yes, if I may. Firstly, thank you for the opportunity to address you today on behalf of the Environmental Defenders Office. My comments will focus on issues which the Committee has previously expressed interest about in writing. They are made from the perspective of a legal practitioner with relatively recent occasion to deal with the legislation.

By way of background, the EDO is a community legal centre providing services to the public in environmental and planning law. Our primary object is to provide legal assistance to individuals, community and environmental groups to help protect and enhance the natural and built environment. In doing that, we perform case work, law reform and public education activities. We have assisted clients with FOI applications and have made applications ourselves from time to time.

Based on that experience, we can say that FOI is an important tool for the centre's clients to obtain information, usually in the context of a proposed development and sometimes from the broader campaign perspective. Clients usually approach us because of the concerns they have about the effect of proposed developments on the environment and sometimes the health of those living near proposed developments. Often the only source of information that clients have, particularly for those in rural and remote areas, are second and third-hand, being what they have read in the newspaper or been told by their local elected representatives or by other people. Usually they have little understanding of how the development process works when they approach us. Quite often they have never heard of FOI.

It is often difficult to give legal advice without knowing a good deal of the facts about a particular matter. For instance, a proposal to extend residential housing into a rural area is something which is relatively straightforward in legal terms. However, the legal framework and facts of more complex developments, such as mining and aquaculture projects, dams and powerlines are not so clear. There is also the disadvantage that the client does not usually know at what stage of the approval process the proposal has reached. The best way we have found so far to make thorough assessment is to make an FOI application. In our view, it is a vital tool to help overcome the information imbalance which exists between members of the public, Government and developers.

With this background in mind, I turn to the suggestion of reversing the FOI concept to provide for routine release of certain information. We support that suggestion. In our experience there is little public awareness of the ability to informally request documents. There can also be some reluctance amongst Government officers to provide information informally. We have found that particularly at the local government level, perhaps through a lack of training.

In the planning sphere, there already exists precedent for the routine inspection and release of certain documents, at least in a limited form. Under the Integrated Planning Act, members of the public can inspect free of charge and purchase amongst other things planning schemes and associated State and local planning policies and studies, council corporate plans and enforcement notices under planning schemes, and ministerial directions and designations. In addition to those framework documents, members of the public have access to specific development applications and their supporting material. Another method is that used in the Environmental Protection Act, which is the creation of a public register of environmental licences which the public can inspect and obtain copies of. There is also provision in the draft Water (Allocation and Management) Bill listing documents the public is entitled to inspect and purchase. Whilst it is not a complete list and is still undergoing negotiation, it essentially follows the Integrated Planning Act model. These are some examples. I do have a copy of the specific provisions if the Committee would like a copy of that.

The CHAIRMAN: Thank you very much for that.

Mr Stevenson: In conclusion on that point, we support the suggestion that information of inherent public interest should be publicly available by way of registers or other automatic

disclosure mechanisms under legislation. Perhaps as well as modifications to the FOI Act there could be a statement in perhaps the Legislative Standards Act setting down that new legislation should include provisions for the routine release of information. In addition, each agency should have a policy stating the documents that can be routinely released which perhaps could be included in their annual reports.

Turning to the next issue of whether the application review processes are easy to understand and use, I guess as a lawyer they are easy to understand and use—probably one of the more simpler processes we deal with. Of course, whether that means they are easy in reality for lay people is another matter completely, and our experience would suggest otherwise. The first problem that people encounter is the notion that there should be a form—there should be a form for just about everything. There needs to be greater public education that a letter is sufficient and it is designed to be more of an informal process.

The next issue and the most important is what you actually ask for in the application. Often it is necessary for clients to obtain access to information in order to establish what the legal framework for a particular proposal is and to help inform themselves of the merit of the matter. On most occasions they will not be able to name all specific documents. Sometimes there is even difficulty with naming classes of documents, which can make forming the request difficult and dealing with it even harder for the FOI officer involved. In these cases, the guidance of experienced FOI officers is often crucial. Once the FOI officer knows the applicant's broad concerns, they might suggest refinement of the request to cover documents of particular relevance to the applicant.

Let us say then that the FOI officer makes a decision on access. The agencies that we deal with commonly list all the documents to which access is to be provided in a schedule and, if documents are excluded, then they are listed too. In our view that is a good practice. What is difficult to understand for both lawyers and lay people are the exemption provisions relied on to exclude documents. In practice most lay people accept an FOI officer's decision without question. It is probably the same for most lawyers. Most people baulk at the idea of an internal review and very few would consider an external review. Practically, it takes time and resources, which most individuals, community and environmental groups and, indeed, our office simply do not have. Thankfully the agencies that we commonly deal with attempt to give a thorough explanation of their reasons for not providing access, which forms a reasonable basis for making a decision about the need for the document from our point of view. It would only be the most important documents that we would seek a review on. So in our view any exemption provisions need to be very clear and certain in their boundaries so that people will understand them, and certainly the current perception is that the exemptions are broad.

In relation to the issue of whether sufficient information is available to assist FOI applicants, I can really only speak on that from the EDO's perspective. I am not really in the position of having first-hand knowledge of the issue from the layperson's point of view. Having said that, the anecdotal evidence is that clients do not know where to start in terms of FOI. Quite often they do not know which department or departments they should be addressing their request to. Most people would start with the telephone book or make contact with their local library or elected representative. Many legal centres have FOI kits which explain the process in simple terms, but it does not really address the substance of how to frame a request and what to include in the application. In our view it would be helpful to have a whole-of-Government approach to making information available rather than each department treating its information as sacred property.

One way of doing that would be to have a central phone number prominently listed in the telephone book that would be of use to direct callers to particular departmental FOI officers who would assist with some guidance about their query. Additionally, each agency perhaps could have their own phone number listed, again for people to contact for help and guidance. The Internet is also an increasingly important tool for people to access Government information. However, the only department web site that I have come across which mentions FOI is the Attorney-General's Department and it is there hidden under the title of "Our Services". It might not be easily apparent to anyone entering the site that one of the services is in fact FOI. None of the other departments whose web sites we have had occasion to look at—and that is only a small number—seem to have a particular reference to access to information. I have not myself found any reference on the Queensland Government's overall web page.

In relation to specific difficulties, most of our applications relate to the making of a statutory decision such as granting an environmental licence. This will particularly involve ascertaining the documents relied on by the decision maker in making the decision, including correspondence between the decision maker and the applicant, and in department assessment procedures. It is accordingly difficult in all cases to be precise in requesting access to particular documents in an application. As we gain more experience we are becoming more focused in the scope of our applications, but the history, certainly for a number of matters, has been that the FOI officer considers the scope of our request to be too broad. However, we have then been able to discuss the scope of the matter to see if it can be satisfactorily refined. In all occasions, that has been possible. Indeed, on one occasion the departmental FOI officer offered to let us meet with certain Government officers involved so they could explain the particular process involved—the factual situation—and help us to isolate particular documents that were we seeking.

Difficulties have also occurred when documents are held by regional bodies. Government departments that we have dealt with are able to have their regional files sent to Brisbane for inspection purposes. However, local governments are generally not willing to release their files outside their office. We have suggested to one council that perhaps its documents could be sent to the Department of Local Government in Brisbane where we could attend to inspect the documents rather than incurring the cost of travelling to the council's chambers, which, in that particular case, would have amounted to an extra $300. However, the council was not prepared to do so. As councils take on more responsibility for environmental matters, I think that will become an increasing issue.

Most FOI applications that we have made tend to take between two and four months to finalise. Some have taken longer, particularly in cases where there are prosecution proceedings on foot, the documents have been tendered in court proceedings or where extensive negotiation is required over the scope of the request. However, they are a minority of cases. Whilst that may seem—and, in fact, it is—a long time, I do find it difficult to imagine how, with current processes, it can be made shorter. One suggestion might be that the whole of a file be made available for inspection with any excluded documents taken out. Practice does seem to vary between departments. In relation to the last issue of making the process simpler and more user friendly, I have made some suggestions about that. In our view, a change of emphasis to promote the routine release of information certainly would be a worthwhile step and a whole-of-Government approach is needed.

I would mention only one further matter, that is, costs. The current system treats all people in the same way. This can create inequity, particularly in the environmental law field where developers can spend tax deductible dollars pushing their development, and they often do use FOI themselves as a tool. There can be large volumes of documents, particularly where expert reports on various factual issues are concerned. Photocopying costs of 50c a page can be prohibitive, particularly for non-profit organisations which are supported primarily by public donations. Photocopying expenses can routinely run into hundreds of dollars. In our view, some financial hardship waiver for individuals and groups would be appropriate or a reduction in fees perhaps for photocopying over a certain number of pages or perhaps a public interest exemption. That is my opening statement, Mr Chairman.

The CHAIRMAN: Thank you very much for your statement.

Mrs GAMIN: Mr Stevenson, would you like to give us your comments on the Information Commissioner model as it exists in Queensland? Should it be amended or improved?

Mr Stevenson: I must confess that I really have not had the occasion in practice to do an internal review and external review, so I am not really in a practical position to make any detailed comment in response. It does seem to me that the Information Commissioner model is a reasonable balance between a full judicial model and not having it at all. In my experience, the decisions of the Information Commissioner do seem to be reasonably well detailed and reasoned. Unlike a lot of judgments, they do make sense. I certainly have no reason to criticise or make constructive comment on the model.

Mrs GAMIN: And you do not want to explore too much the internal and external review?

Mr Stevenson: No, I do not. In relation to internal review, again, I have no particular experience with Queensland, only Federal issues. From a legal practitioner's point of view, internal review is practically pretty much a waste of time. Occasionally you will get a different decision, but

it certainly is unusual. Again, I make that just as a general observation. In our view, the option of being able to go straight to external review would be good to have.

Mrs GAMIN: Thanks.

Ms BOYLE: Thank you for your presentation. I am the member for Cairns. Cairns is an area where there is a strong dynamic, and has been for at least 12 years, between environment and development. I have some experience in local government. I know too well the uneven performance, if you like, in terms of easy access to information from one council to another. What I am concerned about is this. If I have understood you correctly, you have said that in come your clients. Not only do they not know where to even start to get documents, they do not know anything about FOI. Then I have understood you to say that what you do is take them straight to FOI rather than going, using your expertise, to whatever best Government department you think would have been involved, certainly the local council. What I want to put to you is that it is important for people such as yourself in your office to encourage people to first attempt to get the information direct from the agencies involved, because that is one of the ways we can then measure whether or not they are becoming freer with information, as well as setting up good processes for the longer term. Did I understand you correctly that you do not even bother with the line departments and you do it all through FOI?

Mr Stevenson: I did not mean to misconvey our position in terms of our internal process. Certainly, as a practical matter, our office always explores with the client what efforts they have made to ascertain information on the ground informally. We make suggestions where they have not made all usual efforts that they contact—in certain circumstances, we will do so ourselves—council officers or Government officers involved to try to do that on an informal basis. There is a fair record of success in that. That is why perhaps our office does not do that many required applications. Yes, in answer to your question, I apologise. I did not mean to misconvey our position. But certainly from a practical matter, it is much quicker and much cheaper to explore all practical avenues first, and we do indeed do that.

Ms BOYLE: Thank you.

Mr BEANLAND: Mr Stevenson, I notice in your submission you make reference to access to information in non-paper forms. You go into some detail in relation to that. Would you care to expand on that some more, because I am sure that is an area that is going to expand over the future and become a matter of some contention?

Mr Stevenson: I was rather dreading that someone would ask me a question about the submission. I must admit that I was not the author of it, so I am not fully familiar with the terms. Perhaps you can draw me to the particular page.

Mr BEANLAND: It is page 10, item 4. It talks about documents and access to information in non-paper forms.

Mr Stevenson: Thank you. I guess I can only really respond in general terms. As you have pointed out, there will be an increasing tendency for information to be not recorded on paper but simply on computer emails and so forth. In the longer term, one can see the paperless society materialising. I do not see why, for instance, a development file or supporting material could not be accessed externally by the public with necessary exclusions. That will pretty much almost make FOI redundant as a concept. As information is stored on computer, it will hopefully be easier, with a proper indexing process, to access. I am not sure if that helps with your question.

Mr BEANLAND: What you are really saying is that agencies over time should be moved to freely have available information as a matter of course rather than having to ask for it and it is placed on a web site so the public generally can access that information.

Mr Stevenson: I believe so, yes.

Mr BEANLAND: I think you also talked about reversing the onus of the public interest concept, that is, still retaining it but in a reversed form.

Mr Stevenson: Yes.

Mr PITT: Through the previous question we touched on the issue of routine disclosure. In your particular experience with environmental issues, you would have a lot to do with local governments. How do you see a system working that would do the right thing by people seeking

information yet at the same time protect those who are engaged in some quite deep commercial activity which may need a degree of confidentiality?

Mr Stevenson: That is a vexed issue, isn't it? I have not really had occasion in practice to come across or deal with that particular problem or had documents excluded on that particular basis. I guess I can concede that there certainly is a need for some commercial confidentiality. One can certainly envisage commercial competitors trying to obtain that information. In my experience, Mr and Mrs Average are generally not concerned with financial issues. They are not really worried about that so it has not become an issue. I would certainly accept that there needs to be some limitation just from that point of view.

Dr PRENZLER: You indicated that one of the areas that does concern you is the cost of FOI applications. In our touring around many agencies have indicated to us that costs do require the redirection of many of their resources at great expense to the departments. What do you believe is a fair costing system? How do you think it should be applied? What exemptions do you think there should be to it, particularly in relation to your activities for a good example?

Mr Stevenson: In response to that, the Queensland system certainly seems to be the fairest in the country at the moment. I have no quibble with that. Having said that, money is always an issue for public interest groups. In our view, there is public interest in reducing the cost of masses of documents. I certainly agree with the retention of a standard fee. Perhaps certain environmental groups could be given a number of free applications or one free application a year or something like that. There certainly could be a financial hardship provision.

The other side of that coin is that the consideration of those matters is a time-consuming exercise in itself. So perhaps even some flat way is another way—having the first 50 or 100 pages free and then imposing a charge after that, or having a flat rate for the first 50 or 100 pages and an increased fee after that. I certainly support the retention of a fixed system, as much as possible. That may not be possible in terms of all groups.

Dr PRENZLER: Some of the FOI applications you put in would be fairly broad, requiring much documentation searching.

Mr Stevenson: No doubt they would. In that case we try and cooperate with the FOI officer as much as possible to refine that. That is certainly so. However, it comes back to the practice of the particular department involved. I do not have any personal knowledge from working inside Government so it is really only conjecture and from what one hears, but sometimes one thinks that the internal filing system could be a bit better than it is. Lawyers have one file or a couple of files and they are all together. It certainly can be difficult to locate documents but, with negotiation in terms of the scope, as an outsider I do find it hard to understand how searches can be very wide and take so much time in some cases. I am not able to give you specific instances, because the situation has not really arisen.

I appreciate the question that you ask. In my view, perhaps some better internal dealing with documents may be a partial answer to that, or even a different processing of the documents by an FOI officer. When a file comes to an FOI officer, instead of going through and taking particular documents off and numbering them and having a list, the officer could perhaps make the whole file available, under supervision, with particular excluded documents taken out. On the face of it, that seems to me to be a slightly quicker process. The practice probably varies. Whilst I certainly take your concern—it is a valid one—I think it can be offset by better internal processing.

The CHAIRMAN: We are interested in the principle of the public interest. I am sure that your organisation would have application and engagement of this principle a fair bit. Could you expand on the references already made in relation to that as to how you see that principle operating under the current Queensland legislation?

Mr Stevenson: I wish I could. Our national network had a meeting last week and this issue came up. We had eight lawyers in a room and we all disagreed about what the public interest meant. Unfortunately, I do not think I can be of real help. It is not an issue I have sat down and studied in real detail myself. We say that all of the work we do is in the public interest, whether it is for an individual with a particular development application or for an environmental group. But how you then define what the public interest is in the particular matter is a difficult issue. You may define it by the number of people affected by the issue or by the number of people in the group. Whether the principle involved has a broad application across the State or

even nationally is another indicator which has been suggested. I apologise: I have not been able to pin it down.

Mrs GAMIN: Is your organisation a big user of the freedom of information process?

Mr Stevenson: Whilst I do not have the exact figure on hand, I can say that we would perhaps make one application every month or two. In recent times I have tended to make the applications through our office, mainly as a way of getting some experience in the use of the Act for myself. On other occasions, and I think increasingly, we will be helping clients to make applications themselves. It was indeed difficult to gather examples from environmental groups during the course of preparing the submission. The perception I have is that it is not used frequently by environmental groups and perhaps not as much as it could be. I do not think I can assist you further.

Ms BOYLE: I want to ask about the very difficult issue of whether freedom of information should apply to GOCs and even private sector bodies. Within the submission there is the recommendation that it should definitely apply to GOCs. To do with either GOCs or private sector bodies, can you give me an example of where there might be, however we would define it, sufficient public interest that should outweigh the private dealings that they are used to having, with blocks of land under their control, for example? There may not be any particular pollution issues, but it may nonetheless be of great public interest, in the very literal sense, as to why they are doing something, who is paying for it, how much it all costs and how the deal was done.

Mr Stevenson: It is an interesting issue. We have certainly supported the contention that FOI should extend to GOCs and even to private sector bodies utilising Government funding or fulfilling public functions. Certainly in most of our work there is a particular angle the client is coming from in terms of a particular environmental issue, whereas I think what you are referring to is almost the inquiry for the sake of it, or for philosophical satisfaction.

In our view there should not be exclusion for what can be termed frivolous or vexatious requests, simply because once you start going down that road it inevitably gives a discretion to the decision maker involved in making that assessment, and inevitably sometimes that might be wrong. The physical effort in making that assessment, not to mention in any subsequent appeal processes, in our view might well outweigh the time and effort taken to process the request in the first place.

If a request involves such documentation that it is not practical to deal with it, then there is an exemption in relation to unreasonable diversion of resources. Our view would be that such requests, if really frivolous, could perhaps be dealt with through other mechanisms. But to include such a provision and include such a discretion would not be a good move, in our view. From my experience as a legal practitioner and being in private practice, my perception is that the proportion of people making those types of requests is really very small. In any area you are going to get some people of that nature.

Mr BEANLAND: I have noticed that you think the fees and charges are fine, except that the photocopying is a bit too high, in your submission. I notice a number of other changes that you recommend here, all of which seem to me to have some significant resource implications, including speeding up processes, appointing an independent monitor, etc. I take it that your submission indicates that there should be a very significant increase in resources, particularly money resources, to enable all of these processes to occur and that you believe these are of significance for that to be undertaken in order to speed up and improve the processes.

Mr Stevenson: I am not familiar with the amount of money it takes to run the FOI process, but in my view there should not need to be an increase in resources beyond what is currently a reasonable level. If processing applications is done differently or if more information is made routinely available so that there is less time needed in actually processing applications, then I do not see why that should lead to increased resources. We have certainly raised some suggestions in the submission. That is our submission. I do not wish to particularly pursue those matters myself.

Mr BEANLAND: Queensland is a vast State. It is not a pocket handkerchief State such as Victoria, so it is often difficult to get files from one part of the State to another. Not all the files are necessarily on one big computer system for people to gain access to them. Consequently, that small area alone requires some significant changes to the way in which processes are handled.

There may be a whole range of new technology and new operations put in place. You can just go on from there to look at the whole public interest and the fact that there is often a lot of personal information contained within these files, including the types of files you might be interested in. All of these matters have to be handled. Sure, you can put out more information, but at the end of the day there would need to be some major changes made to the way in which Government departments and agencies operate—particularly significant changes to the whole process of the filing operation and the records operation that we have in this State.

Mr Stevenson: I do not think I can really make constructive response to that, other than to say that the Commonwealth has certainly devoted no new resources to the introduction of the Environment Protection and Biodiversity Conservation Act, which I would have thought would make some major changes as well.

Mr BEANLAND: That is just one Act, of course. That is just one small Act we are talking about.

Mr Stevenson: That is certainly correct. Certainly the Act is likely to have a significant effect on matters, as you are aware.

The CHAIRMAN: There being no further questions of this witness, I thank Mr Stevenson for his time.

The Committee adjourned at 3.52 p.m.

The Committee resumed at 4.02 p.m.

LONE VEIRUP KEAST, examined:

PHILIP GEOFFREY CLARKE, examined:

KATHRYN MAHONEY, examined:

THERESE ANN STOREY, examined:

ALISON JEAN ALGATE, examined:

The CHAIRMAN: Thank you very much. I welcome the multiplicity of witnesses for this afternoon's next session, all from Education Queensland. Perhaps for the purposes of Hansard, if we can get you to each identify yourselves and your positions.

Ms Keast: I am the principal policy officer of the Judicial and Administrative Review Unit of Education Queensland.

Mr Clarke: I am the director of Executive and Legal Services in Education Queensland.

Ms Mahoney: I am the manager of the Executive and Legal Services Unit.

Ms Storey: I am also a principal policy officer in the Judicial and Administrative Review Unit.

Ms Algate: I am the manager of the Document Management Unit in Education Queensland, which manages the records.

The CHAIRMAN: Thank you very much. Can I just advise you that during your evidence you may wish to refer to particular FOI applications by way of example. While you would find this useful, if it is relevant to our review, we remind you that this is a public hearing. Therefore, we ask you to avoid making statements which reflect adversely or identify any person or entity. So thank you very much again for your time and contribution this afternoon. Would any of you like to make an introductory statement on behalf of the department?

Mr Clarke: Yes, I would. In general, the department supports the purposes and principles of the FOI Act. Just by way of background, Education Queensland is one of the largest departments in the Queensland Government, responsible for the operation of 1,300 schools and employs over 40,000 staff with 450,000 enrolled students. The department also has responsibility for broader portfolio activities such as non-State school approval, higher education and financial support to a range of groups providing education services.

The department submits that the purposes and principles of the Act have been satisfied within this jurisdiction. The following statistics go to prove this: since July 1998, the department has received 390 freedom of information applications. Of these, 173 were personal applications and 217, or 56%, were non-personal. Since the beginning of 1999, the department has kept records about the type of people applying for access. The largest group is students and parents of students seeking access to student-related information, and that comprises about 42% of applications. Our staff are another large group who account for about 30% of applications and typically seek access to documents relating to their own employment. The remaining 28% of applications are lodged by persons whose applications are more issues based.

Since the commencement of the Act, the department has made access to decisions in respect of about 300,000 documents. Full access has been granted to 80% of those documents, partial access to 8% and access was refused to about 12% of those documents. The average processing time for each application within Education Queensland is 12 hours. That figure is made up of personal applications taking an average of seven hours while non-personal applications take 18 hours. The average photocopy costs is $620, $370 for personal applications and $925 for non-personal. The average amount of documents sought by each application was 220, the split being 125 for personal applications, 335 for non-personal.

As people said when they were introducing themselves, the Judicial and Administrative Review Unit deals with freedom of information applications. That unit has five staff members who do a range of functions, but about half of their time is spent on freedom of information processing. While the average time taken and costs associated with processing applications is moderate, a small amount of applications comprise an enormous strain on resources set aside for compliance with the freedom of information legislation. Sixteen of the 390 applications lodged since 1 July 1998 required a decision to be made on more than 1,000 documents each.

Combined, these 16 applications sought access to almost 35,000 documents, or 42% of the documents considered in that period. These applications have taken on average 112 hours to process compared with the overall average of 12 hours and the recorded photocopying costs associated with these applications average $2,250. On average, access decisions have been made in respect of 2,158 documents for each of these 16 applications.

The applicants who have lodged these 16 resource-intensive applications can be categorised in three categories: one was made by the media, nine applications were made by Opposition members' staff and six applications were made by others, including employees and parents. These are the applications that make freedom of information processing extremely draining and difficult for the staff involved.

One of the difficulties with the management of larger applications can be in obtaining sufficient specificity from the applicant in terms of the scope of the application. This makes it necessary for the decision maker to work through many files and documents before being able to assist the applicant to narrow their scope, and that can be a long and involved process.

With regard to internal review, since July 1998, Education Queensland has received 71 internal review applications. Of these, 32 were affirmed, 30 were varied, four were withdrawn and five are pending. Twenty-one of the applications were lodged by third parties objecting to the release of information to applicants. Of those, 10 of the initial decisions to release information were affirmed, eight were varied, two were withdrawn and one was pending. The officer who conducts internal reviews of decisions is a member of the unit but plays no role in the initial decision making.

In addition to resources required to manage FOI effectively, there are concerns about some aspects of the legislation. In the department's written submission to this Committee, comment has been made on the relationship between freedom of information and the working relationship between the Minister and the chief executive officer. It is the department's contention that there is conceptually no difference between the advice prepared for a Minister that will be used specifically in Cabinet or Parliament than any other advice prepared by the CEO. Indeed, it might be argued that all such advice provided to the Minister is ultimately for his or her participation within the Executive or on behalf of Executive before Parliament.

Moving on to the second point in your letter to the director-general, the department embraces and supports the concept of providing for routine release of certain information where warranted. Part of the charter of freedom of information legislation is facilitating access to a range of documents held by the agency, and this includes actively encouraging applicants to seek documents by alternative means. In fact, the FOI Act is not intended to prevent or discourage the giving of access to documents administratively. In this respect, it is our priority and, indeed, we are in the process of employing a range of strategies to promote alternative access to documents in certain cases.

There is strong advocacy within the department for use and application of section 16 of the Public Service Regulation 1997, for example. This summarily provides current employees with the right to access any record regarding themselves. In a similar way, other departmental policies encourage administrative access to information held by the agency. For example, parent and student access to student records at a school with the exception of guidance-type files is set out clearly in the department's manual. Guidance files must be handled in the context of the FOI legislation. However, they often contain the names and private details and emotions of other children and, on occasions, adverse allegations made by children about the parents, relatives and others.

Quite often, guidance files incorporate intelligence and cognitive testing material that is subject to strict copyright restrictions. In this respect, Education Queensland has an express agreement with the authors of such copyright-protected documents not to publish or allow the copying of such material. However, wherever possible and where practical, the department does encourage and will continue to encourage administrative access in preference to compelling people to use the more formal and time-consuming freedom of information process to access information about themselves or their children.

That is not to say that difficulties do not manifest themselves from time to time. Some principals may be reticent to release sometimes sensitive material administratively and, for want of a better expression, play safe by asking parents to pursue the formal FOI mechanism. Any

monitoring of documents released administratively may not be a true reflection of the actual volume of information provided outside the parameters of the legislation. A decrease in the number of applications received by an agency is perhaps a formal means of analysis but one which could readily be attributed to other factors. Many schools as well would release administratively without formally tracking the movement of information and without notifying the decision makers.

In regard to your third dot point, a vast number of electronic documents are received or generated by Education Queensland. These documents may be in the form of word processing files, spreadsheets, electronic mail messages and so on. The Libraries and Archives Act 1998 requires the department to make and keep complete and accurate records. The Australian Standard on records management, AS4390, defines a record as recorded information in any form, including data in computer systems, created or received and maintained by an organisation or person in the transaction of business or conduct of affairs and kept as evidence of such activity. As the department does not currently have a record keeping system with the ability to maintain electronic records in an electronic format, all staff are responsible for ensuring electronic records of continuing value are printed to hard copy for placement into the paper based corporate record keeping system. Once these records have been converted into paper format, the electronic version may be deleted. Thus, all of the records relating to the transaction of business or conduct of affairs of the agency are maintained within the paper based corporate record keeping system. Guidelines to this effect have been promulgated throughout the department intranet for some years and are included in a draft policy regarding intranet, Internet and electronic mail usage undergoing consultation at the moment.

As part of the department's disaster recovery program, electronic data held on departmental servers is backed up onto tape on a regular basis, normally monthly. These backups are designed to restore large quantities of data in the event of system failure. It should also be noted that these backups are only a snapshot in time and that they are taken on one day each month and would not necessarily include all documents created in that month. Electronic documents created and deleted between backups are not maintained. It is extremely difficult and time consuming to locate particular documents, be they word processing files or electronic mail messages, relating to specific matters on these tapes.

In the case of electronic mail messages alone, it is estimated that it would require approximately 31 hours to undertake a basic search of just one month's backup tape for one electronic mail server. There are multiple electronic mail servers within the department and the time taken for the search would increase exponentially for each server. The basic search would turn up many hundreds of messages that would require more detailed examination to determine their relevance or otherwise. As the time period covered by freedom of information applications often covers months or years, this would appear to be an excessive diversion of departmental resources. As the relevant records have been printed and placed on a paper file, there is no real requirement to keep electronic versions of documents. As such, the documents held on backup tapes could be termed as ephemeral and the tapes destroyed once their administrative use has ceased, possibly when a new backup tape has been made. Even so, the trawling of backup tapes for relevant documents is not likely to provide any more useful information than would be found on the paper based record keeping system.

Electronic mail has become an ever-present and indispensable communication tool within Education Queensland. In many cases, it has replaced the telephone as a means of communicating minor messages of transitory importance both internally and sometimes with external clients, although this is less so with schools than with central office. Should this method of communication generate records, departmental staff are responsible for ensuring that hard copies are printed and placed on the corporate record keeping system. Likewise, a paper based record should be made of any telephone or face-to-face communications that come under the definition of a "record". This is achieved through recording the communication on a file note and placing it on the appropriate file. As such, it can be anticipated that the documents that provide evidence of the department's activities and dealings with its clients, other agencies and the community in general are maintained within the paper based system. Documents maintained within the paper based corporate record keeping system can be readily retrieved for the purposes of processing applications under freedom of information. Paper records of electronic documents are regularly provided to applicants requesting access to information under the Act.

In November 1999 the department commenced a major review of its corporate record keeping and correspondence tracking systems. This review has identified amongst other things the benefits to be gained from the implementation of an electronic data management system. These benefits include the ability to control and manage electronic records in their original electronic format, enhanced search and retrieval of records regardless of format, status or location, increased productivity and improved ability to meet legislative and statutory requirements. Implementation of an electronic document management system has been recommended for consideration in the current departmental budget process.

With regard to the fourth dot point, Governments made up of both sets of political parties have made conscious policy decisions to exclude student assessment data from the operation of the Freedom of Information Act. This exclusion is based on a concern that the comparison of small elements of data about a school's performance out of context can lead to misinformation or misunderstanding about the performance of that school. It should also be noted that this policy has the support of relevant stakeholders, including the non-State school sector, and is reflected in the decisions of the Board of Senior Secondary School Studies, an independent statutory authority.

However, freedom of information release is not the only means through which schools can be held accountable for their students' performance. The department's school planning and accountability framework requires schools to publish annual reports for its communities. For the benefit of the Committee, I can table that report. Through these reports, schools publish, amongst other things, information about student performance at the school. This meets the needs of the community in respect of accountability of the school and also the needs of parents who are seeking information to assist them in making decisions about their child's schooling.

With regard to the final dot point, on the question of applications for information relating to minors the department would offer the following comments: the primary concern is in maintaining and protecting the rights of children whose information is sought. It is a vexed question which turns on the legitimacy of any authority a child might be able to provide regarding release of information regarding themselves. It is often the case that legal representatives apply for information under FOI and are acting on behalf of parents and students. In most instances, the information is sought about a minor and, in some cases, may unearth information which may reveal a dysfunctional relationship between the parent and child. In rare cases, the information can be even more sinister. It may not be in the child's best interests to consent to release such documents to their parents, who are in effect the applicants for access. It is the custom and practice of the department to make a judgment as to whether the minor is required to grant an authority to release any damning information to the parent applicants or their solicitor. It raises a number of issues and potential conflicts of interest. At what age is a minor able to understand the ramifications of consent to release of their information under FOI? The line in the sand is unclear. Asking parents to procure an authority from their child would invariably place that child in a difficult situation. If the child is not old enough to understand the implications of providing such authority, how can they do so or will it be seen that they are providing such an authority under duress? A child may legitimately be a third party in their own right for the purposes of section 51 of the Act.

However, consulting potentially vulnerable children does have its dangers. Consultation is frequently an extremely distressing experience for the child and they often request that the consultation is not made known to their parents. Given the nature of section 51, parents need only know that the consultation has taken place and can readily identify their child as the third party by a process of elimination. This can serve only to further divide and inflame particular situations in a family. Decision makers are placed in a difficult situation in balancing the legitimate rights of the child on the one hand and the rights of the parent on the other. Whilst it is not a situation which is often encountered, the department has to date successfully managed these competing interests.

In summary, the department submits that the purposes and principles of the Act are appropriate and have been satisfied, with the exception of concerns that we raised regarding the relationship between the chief executive officer and the Minister. The department supports notions of administrative release of information where appropriate. The department's records management policy in respect of electronic documents requires all documents of corporate value to be converted to paper form and put on file. However, we have commenced a process of review which will further enhance records management, including electronic records, in the department.

The exclusion of student performance data from the operation of the Act is a policy decision which through time has been made by both parties and Government, has the support of educators and should continue. Finally, the department from time to time experienced difficulties with particular applications from parents for access to information about their child. So far each case has been carefully managed to a successful outcome.

The CHAIRMAN: Thank you for that very detailed statement.

Mrs GAMIN: You were discussing in your presentation the implementation of the process where the onus is on agencies to routinely release information of public interest rather than on citizens to seek that information through the FOI process. What do you think the costs to the department would be compared to the costs of the current regime? Would you have any idea?

Mr Clarke: We have not made any attempt to formally estimate those sorts of costs. I could not give you a figure, sorry.

Mrs GAMIN: It seemed a bit hard.

Mr Clarke: I should say that we do routinely release a lot of information, particularly policy related information, once agreed to by the Government. It is fairly standard practice now.

Ms BOYLE: You mentioned that quite a large group of your applications are from staff, and I would guess that a considerable proportion of those would be about job competition issues which I gather the Information Commissioner has ruled are non-personal even though there is a lot of personal information involved in there. I wonder whether you have an opinion about all of that and whether it needs any amendment or change?

Ms Storey: I do not think we have mentioned in our submission that we have put in writing to the Committee that we thought that there were any changes that were needed to any of the exemptions. We do accept the commissioner's ruling that job related information is non-personal, and that is generally the way that we apply it. Some of the third-party objections that we get in those cases do relate to people claiming that that information is personal. In those cases, as I said, we do apply the rulings that have been given to us by the Information Commissioner that it is not personal and, therefore, it is not subject to exemption. Obviously in those cases where it does not meet the initial personal affairs test there is no public interest test, either.

Mr BEANLAND: In relation to the matter of information held by technology these days, the current Act talks about "documents", if I recollect, as distinct from "information." Is there a necessity to look at a change there to cover "information" rather than "documents" and, if so, in what format? One has to look at the fact that a lot of information is held but may not be held in a form that is readily accessible by someone who is making a request under FOI. Can I have your comments on that? You people would have a lot of information in that area, I would suggest, or are about to if you do not already because of the changes that are going to occur.

Mr Clarke: Sally, do you want to answer that?

Ms Algate: Only from the point of view that, as we said here, should information be deemed to be a record under the Libraries and Archives Act—at this present moment it has to be printed out in hard copy to paper and then placed on a corporate file because we do not currently have a system that can manage electronic records as such, and the Libraries and Archives Act requires that we manage our records. As we mentioned, we are currently in the process of completing a review of our system and the recommendation is coming out that we should have an electronic document management system, and that is currently up for the budget process.

Mr BEANLAND: Can I just follow this a bit further because I think this is particularly relevant in view of what you just said? It gains even more currency. You would currently be able to produce information down into a document form? Say if I make a request under FOI for information that is held within the system in various bits and pieces but you cannot download it in one form for a document. If amendments to the legislation were made to talk about "information" rather than "documents", would that cause problems? I perceive it would if we made it a broad terminology for "information" which was not able to be readily put together. There might be some more there; it might be scattered all over the place and I make an application for it and it would not be able to be readily downloaded or produced in a format that you could produce for me, the applicant? Do you see that causing you problems?

Mr Clarke: It causes us problems at the moment because our only effective and readily accessible storage is of documents through the paper filing system. I suppose if the proposition that you have put were to happen to the legislation, we would have to move quickly on our electronic records system.

Mr BEANLAND: Information may need to be defined as something that can be retrieved rather than something that is simply stored. That is a simple way of putting it. Do you see it as necessary to do something like that, or could it be information that is just simply stored?

Ms Keast: I think the Act already covers that situation where data can be retrieved from a database and generated into a document or more documents. Section 30(1)(e) provides for that situation, which compels a department or agency to produce such a document if it can, using its ordinary processes. So say if you have a database full of information and somebody is after a particular set of data out of that database and we can produce it using our software, we are compelled as I see it by section 30 to do so.

Mr BEANLAND: So you do not see any problem with changing the legislation from "documents" to "information"?

Ms Keast: I suppose so long as it is information which is stored, it is not really going to make much difference from what section 30(1) is as I see it.

Mr PITT: I go back to something Mrs Gamin raised regarding the routine disclosure of information. You take one look at Education Queensland and you see 450,000 students and their families who are FOI clients, approximately 45,000 staff members and their families who are FOI clients and 1,300 educational institutions with their attendants and the stakeholders surrounding them. It is a really mammoth area you are covering and by far, I would say, the largest in the State Government agencies. How can you support a system where you are going to have open disclosure of almost everything, and you have not given an indication to us today about the cost of that? Is there not some sort of practicality situation or consideration here where at some stage you have to make up your mind? Quite honestly, we just cannot provide everything that anyone could be interested in. Do you have any idea of the limitations you would need to place on that? Are there specific areas which you think should be routinely disclosed or areas you think should be only on application, because commonsense dictates that is the best way to do go?

Mr Clarke: Again, we can get more detail from people who are the decision makers day to day. Already when dealing with clients we do seek to encourage them to use administrative access when we think that is appropriate. There are some areas where we do have to be careful because of personal information; guidance files is the example that I gave. Lone, do you want to paint a picture of the decision-making process that you go through?

Ms Keast: I suppose, especially in terms of the student documents, there are often intertwined in those documents the affairs of other students, which you have to be really careful to not disclose unduly. I suppose we go through a consultation process in those circumstances, whereas if the documents are released administratively the principal will simply black out large chunks of the text, which is not always satisfactory.

Ms Storey: We do have a policy already in place called Access to Records Held in Schools. That provides a schedule of all of the records that might be held in a school and what is available on request and what has to be accessed through FOI. Most of the documents in there, especially most of the documents relating to students, are available on request. The only ones usually that are not are the ones that we mentioned before. That might be guidance files and they might contain more sensitive information about students. But most of the routine information about students can be obtained on request already from the school principal.

Ms Mahoney: I think it could be said that the decentralised nature of the agency probably relieves some of the pressure you are alluding to and by working through policy that way we can reduce some of the pain of the applications being made in large volumes.

Dr PRENZLER: I have just a short question to end this session. This Committee has canvassed the establishment of a central monitoring and coordinating centre for FOI applications to help applicants with their problems in taking up an FOI application, such as the system of the Department of Justice. Do you agree with that re-establishment? Would that help you in your field at all where you see your applicants coming from?

Mr Clarke: Again, I can provide a response from a decision maker. But we do consciously and are aware of the expectations of us under the Act to help applicants. I think consistently decision makers do. Perhaps Lone could give some indication of the amount of time spent trying to help applicants who might have been front-ended, from want of a better expression, at a central point.

Ms Keast: Certainly when we get a very broad based application we go through a process where we try to identify what types of documents might fall within this application and explain to the applicant what those documents might be, and by a process of consultation we try to narrow that down. In relation to your question about a monitoring agency and its appropriateness, I certainly think there is a need for decision makers to be able to ask a body for advice in respect of the quite complex law that has emerged from the Information Commissioner's office. It is quite difficult at the moment to get that sort of advice other than liaising with other decision makers.

Ms Mahoney: We actually have proposed in our submission that there should be a body to which the agencies can second people where the best talent in the agency can be used in a centralised way for assisting other agencies with often asked questions concerning the interpretation of the FOI Act and so on. I think that is very, very urgently needed.

Ms BOYLE: I am interested in the issue of guidance files. I certainly understand why the kind of information that may take place in conversations or even on paper—psychological tests, particularly the actual testing information itself—should be exempted. However, sometimes guidance officers reach conclusions on the basis of all of that information that do in some way or another label a child or influence how a child is going to be managed within the school system. Their conclusions, I believe, should be out there in the domain for the parent, the child and the teacher to be discussing. Guidance officers would themselves admit that it is not a precise science. To have a child, for example, labelled as having a low or abstract thinking ability at the age of nine could have some impacts and that should be freely available for the direct parties involved to deal with. I understood from what you were saying that your guidance files are just shut, that even the conclusions are not managed.

Mr Clarke: No, that is not what I said. I said they do need to be considered, though, in the context of the legislation. They cannot be released under administrative access, but the decision makers look at the documents on the files and make an assessment.

Ms Keast: And usually the results—we certainly work it out under FOI, but I also believe from when I have spoken to guidance officers that, when they work with the child and do some tests on the child, they will interpret the results for the parents in laymen's terms. So it is not a secret document in that sense; the results are not secret. They are certainly provided to the parents for discussion as to how do we manage this child's particular educational needs.

The CHAIRMAN: Thank you very much. Your contribution this afternoon has been very valuable. We will now call the next group of witnesses.

JULIE McCUSKER, examined:

BILL RODIGER, examined:

The CHAIRMAN: I welcome witnesses from the Department of Transport. Would you like to make a brief statement at the outset of this hearing?

Mr Rodiger: Yes. I have a brief statement. It is not too long, but I would like to read it out if I may. I am representing the Department of Transport. I would like to thank the Committee for this opportunity to appear before you to provide this information. Mr Graeme Healey, whom some of you may have had dealings with, has previously represented the department and assisted with the submission to the Committee's Freedom of Information in Queensland Discussion Paper No. 1. Just for the record, Graeme is ill with the flu at the moment and quite unable to attend. I will do my best for you.

The department has supported the Committee's work in conducting this review and is very pleased to assist. The FOI Act is administered on behalf of Queensland Transport and the Department of Main Roads by the Legal & Legislation Branch. That branch, of which I am the director, is located within Queensland Transport. It is believed this situation is unique where the administering branch acts for two departments in FOI matters. It also acts on judicial review matters and other issues such as legal matters, but that is by the side.

The total number of applications for both departments combined is expected to be around about 417 for 1999-2000, of which 310 are for Queensland Transport and 107 for the Department of Main Roads. There is wide application. Generally, the issues for Main Roads are far more voluminous in detail than those we would get for Transport, although Transport certainly has those, too. Something like 50% or a reasonable proportion of our material is for simple registration type records, etc. The other half is more voluminous in nature. Since 1993-94, when the total applications were 205, there has been an average increase in applications of 10% per year. In about seven years, it has doubled. I think that is about 10% per year.

For the Committee's information, we have three full-time people working on FOI for the two departments. They cover both departments. The Committee's attention is directed towards consideration of a specific amendment to the FOI Act that would greatly assist certain departmental services. Queensland Transport has an in-house employee assistance program, which includes the services of a professional counsellor available to staff. As would be appreciated, records of counselling sessions may contain sensitive and highly personal information relative to staff who have used the counselling service. This material currently is caught within the meaning of the Act. Even though exemptions could apply, there is still a need for officers—the FOI officers—other than the counsellor to read the documents. It is the department's view that these documents are confidential and should be exempt under the FOI Act.

We have had people who have leaned very heavily on the counsellor and have used the counsellor's services. It is a he in this instance. The material that goes to the counsellor can be of a very personal nature. We have had instances where there have been situations within some of the Customer Service Centres and other areas. Different parties who believe they are being spoken about to the counsellor have asked for copies of the information. That is probably not a good situation. We believe we need to protect those people using the counsellor.

Relevant to this matter, the department has also approached the Office of the Public Service Commissioner to consider amendment to the Public Service Regulation 1997 section 16, as was mentioned by the Department of Education, where a Public Service employee may inspect any departmental record about the employee. In a draft regulation currently being developed, the documents held by an employee assistance provider or professional counsellor are exempt from discovery. It is expected that this draft regulation will proceed to finalisation in the near feature.

We are very pleased that the Office of the Public Service Commissioner has considered this matter for us. We would ask the Committee to also consider this matter if they would. It is recognised that there are other statutory powers whereby these documents can be accessed such as court discovery procedures, the Evidence Act, etc. The main avenues of popular use are the FOI Act and Public Service Regulation 16. They are generally the avenues used by staff to try to find information of this nature.

I would like to now address the five points raised in the Committee's letter to Queensland Transport on 20 April. In relation to whether the purposes and principles of the Act are appropriate and have been satisfied, it is felt the objects of the Act and the reasons for enactment as set out in sections 4 and 5 are adequate and do not require any significant changes. The next point relates to the suggestion in our discussion paper of reversing the freedom of information concept to provide for routine release of certain information. The range of information held is voluminous and the costs associated with this approval need to be fully examined as it is believed this would impose a limiting factor.

The next point relates to the fact that the current FOI approach is efficient in that resources are only expended in gathering documents that are required. The reverse approach would generate access to all documents, of which only a small proportion would be required by applicants. The next dot point relates to whether Queensland Transport has had difficulties processing applications for access to electronic documents. Generally, electronic documents are reasonably available. Although there has not been a high demand for such from applicants, it is increasing. However, the department can face high costs if documents such as emails are requested where there is a possibility of these emails already being deleted. We have had an instance of this. Costs for search and recovery from hard disks can be high and time consuming.

In relation to the application of the Act to Government owned corporations, Queensland Transport does not process applications on behalf of the ports or Queensland Rail GOCs. I am not in a position to offer comment on this matter apart from noting section 199 of the Transport Infrastructure Act 1994, which excludes certain activities of transport GOCs from FOI—namely, commercial activities or community service obligations prescribed under a regulation. In relation to the extent to which the Act should legitimately and appropriately protect commercial-in-confidence material, it is believed that section 45—a matter relating to trade secrets, business affairs and research—and section 46—a matter communicated in confidence—provide adequate basis for evaluation of commercial in confidence documents.

Further assistance is provided by the Information Commissioner's decisions in Cannon and Australia Quality Egg Farms Ltd, where matters need to meet three cumulative tests for commercial material other than trade secrets; and "B" and Brisbane North Regional Health Authority, where the commissioner established five criteria for breach of confidence. We found those to be fairly successful in evaluating commercial-in-confidence matters. I have brought along a couple of copies of graphs of usage patterns and separations between Queensland Transport and Main Roads. I will give these to the research people later. That is the end of my statement at this time. I am happy to answer questions.

Mrs GAMIN: Mr Rodiger, thank you for that presentation. Staying on the subject of the proposal that the onus be placed on agencies to routinely release information of public interest rather than on citizens seeking the information through FOI, do you think that is practical? I am not sure that you do from your presentation. What sort of information held by Queensland Transport might be amenable to automatic release? Would you be able to give us any idea of costings?

Mr Rodiger: The material that is available or amenable for automatic release generally is at the moment. It is available, in most cases, for purchase or for free if asked. An awful lot of material has to do with registration details, transfers of registration, etc., and accident material. That is now outsourced through CITEC. That material is available for a fee. In relation to making the other material within the department accessible, it would need to be reviewed and evaluated for exemptions first, such as privacy considerations, etc. I do not believe it would be practical to open up licensing or registration records or those types of things. I think there are too many privacy issues involved there.

It would be an extremely high cost. I do not think it is practical. I think it would constitute an enormous cost and enormous administrative effort to gather the material in the first instance. It is all around the State. The last time I heard, there is something like 80 different filing systems throughout the State, although that has been combined a lot with recent efforts. It would be very difficult. I cannot put a figure on the cost, but it would be extremely expensive. It would take a fair diversion of resources to try to carry that out.

Mrs GAMIN: Thank you.

Ms BOYLE: To continue on the same general issue, there is a middle course of action, however, according to the experience of some Government departments. It may be worth the effort, because patterns have been noticed in FOI applications of seeking consistent kinds of information, even though it may be fairly much personally driven. Rather than publishing all that information all over the State, you could at least publish that it is available for those who need it and where they should go if they want it. In that way, you are not publishing the information; you are publishing the directory of what information can be accessed, not necessarily through FOI.

Before you comment on that, might I also bring to your attention that some FOI officers—they are generally the people who are processing the applications day by day—have said to us that in the pattern of FOI applications over a year or two they have spotted glitches in the department's information output to the general public. They also say that there is often not good coordination within the department as to what is being requested of FOI and that changes to that would result in a lower number of FOI applications. Within Transport, does that kind of dialogue go on with the broader department? Have you seen any impacts or changes that have come about in that information management area as a consequence of FOI?

Mr Rodiger: They are very good points. Julie will know of instances. We certainly have over the years identified systemic type issues where we are getting a lot of single categories. Transfer of registration is one that comes to mind over the past years, as does other registration details and accident information. We have met those divisions and requested those divisions to open up that information further. We used to have 16 exemptions on accident information. After meeting with the police and the divisions, we have reduced that to one, which is simply next of kin, so long as they are notified first. Those things can be done. As well as that, we have asked them to open up public access systems. Normally they like to charge a fee, nowadays. Transport seems to be very much in that line of things. What was the second part of your question?

Ms BOYLE: It was about the dialogue between the FOI officers and the broader department.

Ms McCusker: We have had quite a bit of dealings with Land Transport and Safety, who handle all registration details. We did have a very good policy set-up. However, I think it was in line with the National Competition Policy. Recently they actually made changes to that and really tightened it up. We have had quite a bit of dealings with them to try to loosen it up a little bit so that people can actually go and get registration documents if they own that car, or if it was a husband and wife and one of them has gone and changed it over into a sole name instead of into a joint name, etc. There is an access for that and people can also access their traffic history, etc. Once again, as Bill said, they have to pay. They have to complete forms and they have to pay. Maybe something could be on the Internet which actually says that these sorts of documents are available and that they are available here.

Mr BEANLAND: Transport has quite a number of GOCs across-the-board. They are currently exempt, if memory serves, from FOI. Do you think they should be exempt? Do you think if they were covered by FOI commercial-in-confidence issues would be amply covered under the current situation?

Mr Rodiger: The second part of the question I can answer easily. I believe we cover commercial in confidence fairly well under what we have in the Act. We are able to make a fairly good fist of that. It is always a balance between those who believe that nothing of a commercial nature should be released and the applicant, who wants to see everything. There are also firms and organisations out there simply wanting to obtain intelligence. We need to maintain that balance between what is released and what is not. In terms of whether a GOC should be subject to FOI, I really cannot answer that question. I think that is a policy issue.

Dr PRENZLER: Main Roads today particularly uses a lot of private contractors. Have you seen any FOI applications come in regarding their activities? How have you handled these?

Mr Rodiger: I certainly have seen applications come in requesting details of tender material documents—anything associated with tender processes. Sometimes it is an unsuccessful tenderer. Sometimes it is somebody who may in fact have been successful and may even be trying to find information themselves. That is an area where we need to use careful balance in what we release. There have also been requests on Main Roads for the documentation to do with its commercial arm, the RTCS, on the road construction side,

particularly in terms of quarries. Other quarry operators have asked for tender details, pricing details, etc. Using the general guidelines, we are able to release what we can.

Dr PRENZLER: Is RTCS treated as a GOC?

Mr Rodiger: It is an interesting situation. It really does belong to the department. It is not a separate legal identity. I do not believe you could call them a GOC in that case.

The CHAIRMAN: Can you comment at all on what changes have occurred through the GOCs in terms of public accountability? For example, in relation to Queensland Rail we have moved from an old line accounting approach to, essentially, a form of accountability by the bottom profit line. Do you see any implications in terms of public interest, in terms of the sort of information that might satisfy the public in terms of accountability that is really changed via that transformation in accountability essentially to the economic calculation of profit rather than the old line accounting approach?

Mr Rodiger: I appreciate your question. I would love to be able to help the Committee, but I do not do that work, nor am I involved directly with the GOCs. My position is with Queensland Transport. I am not in that area and I am really not qualified to comment.

The CHAIRMAN: Thank you very much for your contribution today. We really appreciate it.

ALAN DAVIDSON, examined:

The CHAIRMAN: I welcome Mr Davidson to the proceedings this afternoon. We are very grateful for your attendance. Would you like to make a brief statement before members ask you some questions this afternoon?

Mr Davidson: Certainly. I have been asked here and I am here not in connection with my expertise in freedom of information but in relation to electronic commerce. I lecture at the T. C. Beirne School of Law in relation to the law of the Internet and the law of electronic commerce. I think the questions I can help contribute to answer involve your discussion points 33 to 37 in relation to how records should be kept, how records can be accessed and definitions in relation to what are documents, information and records.

There are two main issues that are burning in electronic commerce throughout the world, in Australia and in the State of Queensland, particularly in Queensland, that are still yet to be addressed in relation to electronic transactions but indeed in relation to electronic record keeping. One is the concept of functional equivalence, which means that electronic documents and electronic transactions should be treated the same as paper documents and paper transactions, and so forth.

There is, I think, a colloquial concept that documents must be on paper—that there is something about parchment that makes the document a document, when in fact it is more esoteric. Documents exist as cheques or as wills or as some other instrument because of the authority that is placed there by human beings, by a signature. It represents some other information in some other statement. Provided those attributes can be met electronically—sometimes they cannot and sometimes they can be met more so electronically than in a written form—then functional equivalence means that the electronic document should be treated the same for transactions.

The problem in relation to electronic commerce is that there is a requirement at law that some documents must be in writing, that some documents must be evidenced in writing. There is doubt about whether that can be met electronically. There was the concept with words such as "document", which is defined in the Freedom of Information Act, that it typically means a written document, because we have that colloquial understanding, if not that legal understanding.

In certain circumstances we cannot get away from paper. Without going into details, things like bills of exchange and cheques probably are required to be in a written form for a combination of reasons. That does not apply to general information documents and so forth. There seems to be amendment required to include a broader definition of "document".

I was very impressed with this discussion paper in that every time I thought of an issue I came across an answer which somebody had already raised—almost all the time. In that regard, there is one point of view in relation to "document" that it is adequately defined by the Acts Interpretation Act 1954, but it has a different definition. We have one definition in the Acts Interpretation Act and another definition in the Freedom of Information Act. There is some doubt about whether you can have both definitions or whether there is a conflict. You would be better off by putting in an appropriate definition to cover what you want to cover. That, to me, means all documents—written, electronic and so forth.

There is mention in your paper of using the expression "information", because it is the Freedom of Information Act but you are only allowed to have access to documents and not to information. I think that is a correct view. It would be incorrect to say that you can have access to information, because that is a much more esoteric concept such that information could be contained in a human being's head rather than on paper. To say that you have access to what is in everybody's mind is quite an absurd concept. If it is worth putting down in writing, to document it or to record it, then that is the information that perhaps people should have access to. I personally prefer the expression "record", which is used in the Irish Freedom of Information Act, because it gets rid of that colloquial concept of a document being a piece of paper.

Whether you call it a "document" or whether you call it a "record", in my view you must give it an expanded definition. There are several definitions floating around in relation to what is an electronic document or what is a document and what are the attributes, one of which comes from UNCITRAL. UNCITRAL is the United Nations Commission on International Trade Law. In 1996 it produced what is called the model law on electronic commerce. It is the model for many

pieces of legislation around the world, including the Commonwealth's Electronic Transactions Act. The Commonwealth's Electronic Transactions Act became law on 15 March, so it is very new. It is supposed to give functional equivalence in the Commonwealth. It actually comes into complete operation—it is a two-stage process—on 1 July 2001, but it is based on the model law of UNCITRAL. It states that functional equivalence:

> "... is based on an analysis of the purposes and functions of traditional paper-based requirement with a view to determining how those purposes or functions could be fulfilled through electronic-commerce techniques. For example, among the functions served by a paper document are the following: to provide that a document would be legible by all; to provide that a document would remain unaltered over time; to allow for the reproduction of a document so that each party would hold a copy of the same data; to allow for the authentication of data by means of a signature; and to provide that a document would be in a form acceptable to public authorities and courts."

This is from the UNCITRAL notes in relation to the model law. It goes on to say that the electronic equivalent probably does that and in some cases does it more so. There is the argument that I could forge a normal signature but I cannot forge a digital signature that is attached to an electronic document.

I can explain that, but it is easier for me to forge a paper-based document than it is for me to forge an electronic document. So in a transaction sense, it is even more secure. But you do not want to go further and make it more secure, you just want to have functional equivalence. The concept that a document has to be in writing—I do not think that we need to do that. Clearly, there are many, many records which are sounds, videos and pictures—electronic—but there remains doubt, I think, about whether or not that is covered there.

The Electronic Transactions Act of the Commonwealth also states that they do not need to amend any other piece of legislation in the Commonwealth, saying that "writing" means electronic as well as paper. I have heard that it has been put on the agenda somewhere that there should be an electronic transactions Act for Queensland and that we would like to get uniform legislation around Australia. That is a different question for another time, I guess, but the aim of an electronic transactions Act in Queensland would be to do something like wherever a document is mentioned, the electronic equivalent shall be acceptable. So if we had this global Act, that would hopefully help cover Freedom of Information Act situations. But in the absence of that, I think that you would need to amend it. For example, section 4 of the Electronic Transactions Act of the Commonwealth says that the following requirements imposed under a law of the Commonwealth—because there are constitutional problems—can be met in electronic form: the requirement to give information in writing, the requirement to provide a signature, the requirement to produce a document, the requirement to record information, a requirement to retain a document. I guess the last one might be the one that is most closely connected with here, the requirement to retain a document. The idea of the Electronic Transactions Act is that that can be electronic as well.

I said that there were two concepts, and I have mentioned only one, functional equivalence. The other one is a concept called technology neutrality, which just simply means that you do not—and I believe that you are going in the right direction, but I would reiterate it—get tied to one piece of technology, because technology just changes so quickly. The fact is that so much of our legislation is tied to paper and not connected with computers, but the concept of the Internet, the concept of public key cryptology and other technologies which are emerging will soon be forgotten as new technologies develop. So we should not be looking at one sort of technology in the Act that is referred to that Government departments need to embrace to record data. I personally would doubt whether you would want to tell them exactly how to record their data, so long as they fulfilled certain guidelines.

I have other definitions in relation to "document" but I do not know that I want to go into the detail of those, other than to say that you have a Public Records Bill that defines "document" quite comprehensively. So you have already gone through that process of figuring out what should be a definition. If you are going to have one in your public records Act, I guess that you should try to make it the same as the one in the Freedom of Information Act, if you decide to use the word "document" rather than "record".

That is probably all I need to say. Do you have questions? I guess that I have not addressed access by the public to electronic records. I would be very much in favour of putting things on the Internet. I teach my students how to use the Internet. I put masses of information on the Internet. I guess I am a fan of that. That is the direction and the skills that I am teaching the law students at the T. C. Beirne School of Law, and that seems to be my brief. Besides them learning the usual things in relation to the law, I am trying to drag them into Internet and electronic research. It seems to have been the brief of Government departments around the world—certainly federally and certainly in Queensland—that efficiencies can be gained in putting every piece of information you can think of that would otherwise be publicly available on the Internet. So you can minimise the number of phone calls that come into the department and reduce the staff, you can minimise the amount of mailing that needs to go out, you can minimise the number of people who have to go across the counter to ask questions, if they can just go into the Internet and get the information there. I am talking about general public information rather than the personal information that might be the requests—the utilising of that technology.

Certainly, if you ever go to the Federal Government's page it is huge, because every Government department and agency just has masses of information to go through. That is one of the first places to start if you are researching something in a particular field, I think. However, that is probably enough, unless you have some questions.

The CHAIRMAN: Thank you very much. I am glad that you have raised the issue of changing technology because, as you spoke, I was starting to think about the digital compression of data and what that might mean in terms of the new wave of technology that is coming through and whether that has the same form as the original data from which it was drawn and the legal implications of that. We will not go into that.

Mr Davidson: Other than to say that the Copyright Act defines "data", defines "data messages" and defines "computer program" in a particular way that is perhaps worth looking at, because sometimes the messages can be read only by machine, as you say, but they are capable of conversion. The Copyright Act already talks about the conversion of that data into some type of readable form. The idea of the Copyright Act is, yes, you can get copyright in that form even though it is not necessarily a literary work in the usual sense. It is for the purposes of the Copyright Act. So they have gone through the process of defining those types of terms.

The CHAIRMAN: So long as it is ultimately enforceable, I suppose. But that is another aside. Just going back to this issue that you have spoken about, which we are very interested in in terms of the capacity of the public sector to put more information in electronic form on the Internet, I cannot help thinking that, when we speak to some of the Public Service areas about this, they seem a little hesitant about the cost of that and that they may be thinking fairly statically about how much information is in electronic form at present. So what I am asking is: can you see that there is a trend within Government to put more information in electronic form, hence creating a greater capacity in future to facilitate more provision of this information in an Internet accessible form?

Mr Davidson: Yes, I would see that you could create several levels. There is public information that everybody should be able to assess, and almost advertisements that you want people to go to the page and read that information. There are press releases and there are speeches by politicians, which are all available on the Internet because they like to promote their departments as well. Then you could have a second level where, once you pass a certain security test, then there is other information that is available, whatever that security test is that you want to put in place—whether you can do that via the phone, whether you do that in writing.

The concern that a lot of members of the public have is that if you make information available online in some fashion like that, then you get these hackers who can get into truly confidential information. The technology is certainly there to set up what are called firewalls, so that you cannot get past a certain system without using certain protocols or that you even separate systems in a certain way. But just as there are firewalls, there are ways of letting people through those—with access through the firewalls—to get to information that is flagged in a particular way for particular users. That can be done.

The CHAIRMAN: Can you give us some examples of what you might be thinking of there? That sounds like a fairly adventurous concept.

Mr Davidson: No, it is not at all. That is what Internet banking often does. So you can go into the Internet and access certain files that no-one else can access. That is meant to be open and available, but whether you do that in an open sense or whether you now put the files in a certain location and then give someone the appropriate access passwords—I do not like passwords because I do not find them particularly secure, nevertheless that is one security method that financial institutions still use, with passwords and PIN numbers—that certain information can be gained. You can gain access to it by that particular method.

Certainly, the Federal Freedom of Information Act has a curious section that I do not quite understand that says that when a member of the public requests access to information in a particular way, we must give it to them in that way. That seems so broad that they can say, "I want it on a disk", or "I want it on a CD", but if they said, "I want it online", then it seems to me that they have to comply with that, because there is this curious section that is very broad. I would have to put the word "reasonable" in there if I was interpreting that particular section. I think that it was the Federal one that I read, because I have read a few in the last few days coming up to this.

Certainly, the technology exists. Any computer analyst will program it. Although I am a lawyer, I have a degree in computer programming, although I have not worked as a computer programmer. Any systems analyst should be able to put together such a system, although it would be a big system from the Government's point of view. My only concern is that you would probably get to a stage where you said to each Government department, "This is the format that we want", and that would be massively expensive. It seems to me a better process would be to say, "These are the guidelines. Now fit within the guidelines providing this type of result", and different departments might use different systems, which still fall within the concepts of the law.

The CHAIRMAN: Thank you.

Mrs GAMIN: I found that amazingly interesting, for someone who is almost illiterate in the subject that you are talking about. Would the implementation of requirements for routine release of information require agencies to develop whole new systems of information collection and storage, or would it be possible to modify current systems? When would the sort of technology be widely available that will assist in the implementation of the routine release of information?

Mr Davidson: I think that we have the technology now to put databases together, to put it in certain categories and classifications, to put firewalls between certain areas of data, and then to give various levels of access. I often describe this when I am giving seminars to law firms that, in their law firm, they will have some files which any member of the law firm can have a look at—the secretaries—there are some files which are in a locked room, there are some files that are in a locked cabinet and they have different levels of security in the law firm. If you would let me use this analogy, when they convert that to electronic form, you must similarly have several levels of protocols. You do not suddenly let the security slip by and anybody who can access the computer—and you see solicitors' children playing games on computers and so forth and other people getting access to the computer—you have a general level of security, you have a specific level of security to govern a certain area and then another level of security to look at various files. Just as whoever you trust with that key to the filing cabinet for the most confidential files, you trust yourself and the one private secretary, or whoever, with the appropriate password. The analogy becomes much bigger when you are looking at Government departments, but it is no less valid. The first part of the question? That was the second part.

Mrs GAMIN: Modifying current systems.

Mr Davidson: The first part of the question where you said "collection of material or modifying it", my concern is that if you come up with a protocol, or even have somebody who is a systems analyst who says, "This is the method that I think that I will guarantee is secure and every Government department should use", I think that you would have a lot of public servants pulling their hair out saying, "But it works perfectly well. This is horrific to implement and to put into place", which is why I would recommend—and this is just one person—that you have a series of guidelines by which the security and protocols are met and then they can each decide whether they need a minor modification or a major modification, or whether they can fall within what they already have.

That is partly what I mean by technology neutrality. We do not need to specify the system or the program by which they comply, so long as each Government department is able to

deliver—I am not sure what the parameters are; within seven days, within 24 hours—answers to certain questions that are raised by members of the public. Maybe that can even be met because that Government department hates computers and still likes to put it in a paper format, and that is the way they do it. I am not one of those people who think that you just use technology for technology's sake; you use it because it does enhance the process, it is more efficient.

Mrs GAMIN: Thank you.

Mr Davidson: So, I, too, am concerned about the cost but the technology is there to do it. If you want to utilise it, you can spend millions.

The CHAIRMAN: Thank you. Desley?

Ms BOYLE: No questions, thank you.

Mr BEANLAND: I think that the couple that I had have been answered.

Dr PRENZLER: I am happy.

The CHAIRMAN: I think that covers it very well. Thank you again. Your contribution has been very interesting and valuable.

Mrs GAMIN: It livened us up at the end of the afternoon.

The CHAIRMAN: It certainly stimulated us. We will adjourn the hearing now.

The Committee adjourned at 5.23 p.m.