

Jaana Hokkanen

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LEGAL, CONSTITUTIONAL AND
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COMMITTEE

From: Simon Baltais
Sent: Monday, 6 February 2006 8:06 PM
To: LCARC
Subject: revised submission attached.
Attachments: sub.foi.28jan.2006.doc; dpi.qss.deacons.foi.pdf

The Research Director
Legal, Constitutional and Administrative Review Committee
Parliament House, George Street
BRISBANE QLD 4000
lcarc@parliament.qld.gov.au

Saturday, February 4th , 2006

Dear Sir or Madam

I submit the following **updated** submission (attached) on the Legal, Constitutional and Administrative Review Committee the *Accessibility of administrative justice Discussion paper december 2005*.

Supporting evidence is included, which includes documentation from legal counsel to one matter.

Yours sincerely

Simon Baltais

Background

The author has had approximately 27 years experience in public service (State and Federal), with 6 years experience in the Queensland Police Force (1984 – 1990), and over 10 years experience in community activism assisting community groups with understanding local and state government processes (particularly planning and policy) chiefly in the Redland Shire but also throughout southeast Queensland. The author has and had a number of ministerial appointments, the most recent being the Queensland Coastal Protection Advisory Committee.

Overview

Legal, Constitutional and Administrative Review Committee (LCARC) in report 32 allegedly stated,

*In a healthy democracy, citizens should be able to effectively scrutinise, debate and participate in government decision-making and policy formulation in order to ensure government accountability and to make informed choices. Information plays a key role in so empowering the citizen. As noted in the Fitzgerald report: 'Information is the lynchpin of the political process. Knowledge is, quite literally, power. **If the public is not informed, it cannot take part in the political process with any real effect.**'¹*

Information, particularly the freedom of information, is a vital component of democracy.

Isabel Hilton and Anthony Barnett showed that one of the institutional and legal principles of democracy **is widespread, free access to the information needed to discuss, scrutinize, make choices about and uphold all these components of a democratic society**².

It is unfortunate that such information now costs, at times beyond the means of those who are most capable of maintaining democracy, the community group. Economic rationalism or be it cost recovery has impeded the ability of the community groups to scrutinize controversial matters, thus unable to discuss the same and ultimately uphold democracy in some instances.

¹ LCARC report no. 32, n 6 at p 13.

² Democracy and openDemocracy. Isabel Hilton (journalist/editor openDemocracy) & Anthony Barnett (chief editor openDemocracy).

It is noted there has been tardiness to implement recommended changes to the Freedom of Information Act (FOI Act). Mr Fred Albietz, in his 1996-1997 Annual Report (at paragraph 3.15), highlighted the problems associated with the practice of making, in other Acts, consequential amendments to the FOI Act, particularly where there is no reference to the amending provision in the FOI Act itself³. In its December 2001 Report (No. 32) on "Freedom of Information in Queensland", the Legal, Constitutional and Administrative Review Committee (LCARC) of the Legislative Assembly took up these concerns (at pp.252-253) as highlighted by recommendation 216.⁴ However, while the Attorney-General agreed that it is good practice for current and future exclusions to be contained in the Act wherever possible and not in separate legislation shortly thereafter legislation was passed that gave rise to the same concerns. The 2004 – 2005 Annual Report of the Office of the Information Commissioner shows only recently have the necessary changes been made to the FOI Act.

The author has had 10 years of experience in assisting community groups and individuals with obtaining and using information to support their endeavors to address issues with government decision making processes. The author believes there have been a number of instances where government agencies have made it deliberately difficult for community organizations to access information. Whether it is through fees or exemptions, the latter questionable in nature, the result has been an inability for community groups to scrutinize some matters. The author believes there appears to have been a general decline in public accountability within Queensland state and local government, the Courier Mail editorial (11th Jan, 2006), *Why pretend ministers are accountable*, echoes broad community concern. The author notes the Minister for Environment, Local Government, Planning and Women efforts to make local government more accountable and this is to be commended, equally effort needs to be directed towards State Government.

Costs & delays

The author has noted with a number of FOI applications involving contentious public interest issues (Fish Farm in Moreton Bay, Barramundi Fish Farm Hinchinbrook Channel) that they were subject to surprising FOI costs if pursued. These costs represented a considerable percentage of those organizations (applicant) revenue stream and yet these organizations were not considered to be exempt from FOI costs as enunciated under the financial hardship clauses of the FOI Act. To accommodate these costs the community group would have to divert valuable funds away from community projects and free public services. The result of these significant costs was the applicant withdrew the FOI applications.

³ Annual report of the Office of the Information Commissioner, 2003–2004.

⁴ Annual report of the Office of the Information Commissioner, 2003–2004.

By way of example, the author has been engaged in one FOI application since April 2004, lodged prior to April 2004 [DPI Reference: 2003(73)] now the subject of review by the Information Commissioner. The matter again is a contentious fisheries issue, relating to Scallop Farming in Hervey Bay. The FOI process was unnecessarily long, difficult and will be financially costly. It has become clear to the author, based upon 10 years experience in reviewing Environmental Impact Assessments and upon FOI information obtained to date that the subject proposal appears not supported by appropriate environmental studies or risk assessment. It is the belief of the author that this appears to be the primary cause for the delay in providing information not the unfounded fears of the Department of Primary Industries (DPI) and those associated with the Scallop Farm believing we sought commercial or market based information. The FOI applicant and author have no interest in such commercial information and are quite aware the same would not be available under FOI. The result of this FOI process is a delay in the ability of the public to scrutinize the questionable approval process relating to the Scallop Farm.

Solutions

The author **RECOMMENDS** that the community must be given the right to scrutinize any government process and within a timely manner. The FOI process must facilitate this right, subject to legitimate exclusions.

The author **RECOMMENDS** that community organizations with a genuine interest in public interest issues be exempt from FOI costs, with the exception of perhaps the initial application fee. Conditions could be set on the number of documents provided freely and or upon the number of FOI applications that can be made per year without incurring costs.

The author believes all applications made to government agencies relating to permits and licenses or is a matter of public interest should be readily available upon the Internet. The supporting reports and studies for such matters should also be available, except those matters subject to legitimate exemptions. An example of a useful information system is the Federal Environment and Heritage online Public Notices pertaining to EPBC Act Referrals.⁵ A similar system, perhaps centralized, in Queensland may reduce the number of FOI applications generated or help narrow the scope of FOI applications. The availability of cost effective electronic mass storage and the potential for improvements in accountability makes such a system both achievable and a necessity.

Judicial Review

With respect to challenging flawed government process under **Judicial Review** it is considered a risky fruitless exercise given the problems of 'standing' for community groups and excessive costs and personal risk (court costs) associated with this judicial process.

Yours sincerely

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⁵ <http://www.dch.gov.au/epbc/publicnotices/index.html>