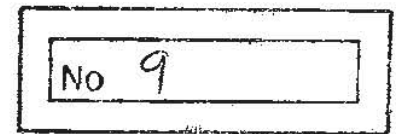
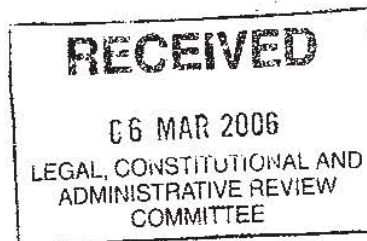


Date: 2 March 2006
Contact: Miss B Webber
Location: Nerang
Telephone: (07) 5582 8234
Your Reference: LG222/354/48(P1)
Our Reference:



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

Dear Sir/Madam

RE: THE ACCESSIBILITY OF ADMINISTRATIVE JUSTICE

The Freedom of Information Decision Maker for the Gold Coast City Council is pleased to submit the following comments in response to the key issues raised in the committee's discussion paper relating to Freedom of Information only.

Key Issue 1: What is the effect, if any, of the fees and charges regime under the FOI Act on access to information and the amendment of documents? Is amendment of the FOI Act and or administrative reform necessary?

It is not considered that the fees and charges regime has any effect on the accessibility of administrative justice on the Gold Coast. There are however a number of matters in respect to this issue that require discussion.

The introduction of processing charges has certainly created more paperwork for this Council as the bulk of applications received are of a non-personal nature and the majority of those exceed the initial free two-hour processing period.

In relation to the applicants that this Council deals with on a fairly regular basis, Council accepts their advance notice as to the amount of the processing charge they will agree to pay. This process negates the need for a Preliminary Assessment Notice to be sent therefore providing us with the opportunity to provide a more timely decision.

On occasion, the processing charges regime has affected the ability of this agency to provide a timely response. This is particularly evident when there are public holidays included in the permitted period and with the stopping/starting of the clock.

As part of our acknowledgment advice, mention is made to all non-personal applicants that processing charges may be incurred. This has led to more telephone enquiries from those applicants who did not have prior knowledge of these charges.

There is also some confusion in respect to the difference between an application fee, a processing charge and a charge for a photocopied document.

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Current experience has shown that the processing and photocopy charges are not a deterrent for many law firms who consider that \$20.80 per hour for a Council officer to photocopy documents, and the 20 cents per A4 page, is cheaper than their attendance to inspect the documents and frees up their officers to perform other duties. Also, it is not easy to resource the copying of the documents and continue to provide FOI services to other applicants within the stipulated time frames.

This is certainly significant when the documents to be photocopied number in the many hundreds and sometimes thousands. It would be beneficial if the stipulated time frames were substantially longer where excess numbers of documents were required to be photocopied. This would enable Council to better plan its resource allocation to ensure that other FOI requests are not disadvantaged.

Further, the introduction of the Integrated Planning Act 1997 has brought on more applications from the city's town planning fraternity due to the limitations of the Full Town Planning Certificate. Under this Act Council is only required to supply details of any decision or negotiated decision that has not lapsed. Consequently, such applications do not provide any historical data in respect to a particular site. This process differs to certificates issued under the Planning & Environment Act 1990 wherein details of all decisions were provided.

As a full Town Planning Certificate costs approximately \$1500 and an FOI application costs \$35.25 plus processing charges, many town planning consultants are utilising the FOI Act to access all documents in respect to a site as it is not only considerably cheaper, but the documents are often provided within the same time frame.

It can be seen that the introduction of the Integrated Planning Act 1997 has placed added burden on Council's FOI workgroup. Again, the documents requested can and do number in the many hundreds and sometimes thousands. As stated above, it would be beneficial if the stipulated time frames were substantially longer where excess numbers of documents were required to be photocopied.

In addition, a concern that exists, in respect to the waiver of the processing charges on the grounds of financial hardship, is that such provisions are open to abuse. An example of possible abuse would be where organisations are using members who are eligible for waiver of charges on the grounds of financial hardship (e.g. pensioner concessions) to make the FOI application thereby avoiding payment of any associated charges.

In some instances the applications lodged by these organisations are all encompassing and extremely time consuming (although not sufficiently so as to be eligible for refusal) and staff find it extremely frustrating that this loophole has not been addressed.

A number of other matters are raised concerning this issue:

- It is not apparent at this time what will be achieved by recording the payment of fees and charges as part of the s.108 return;
- It is recommended that the initial free two hour processing period should be withdrawn and all non-personal applications pay processing charges for all time spent processing an application;
- It is recommended that there be no capping of processing charges.

Key Issue 3: Is information relevant to, and about, government decisions and actions adequate and accessible? How can it be improved?

In relation to access to information relevant to local government decisions and actions, it is considered that the general community now has numerous access points to information relating to the decisions and actions of local government.

The requirements to publish a Statement of Affairs provide much information advising of local government functions, structures, policy, publications and services.

It is considered that the requirements for the publishing of the Statement of Affairs could be reviewed in light of the quantity of information already available to the community on websites and through other publications. (e.g. Annual Report, Corporate Plan)

Key Issue 4: Can a diversity of people access administrative justice? If not how can this be improved?

Council believes that there is currently nothing preventing any member of the community gaining access to administrative justice through the Freedom of Information Act.

Council receives FOI applications from an extremely diverse range of the community. Applications are received from businesses, individuals, investors from interstate, investors from overseas, media groups and community groups. Not all applicants are fluent in English, verbal or written, and every endeavour is made by the FOI staff to assist these applicants to ensure they are not disadvantaged.

It should be noted that Council has a number of persistent applicants who are very well aware of their rights pursuant to the FOI Act. Often these applicants have been to the Ombudsman and/or any other representative they believe may take up their cause. When it becomes apparent that no action will be taken, they continue to bombard the Council through the FOI Act, seeking documents that they believe will answer their concerns, often to no effect.

While Council acknowledges that the FOI Act has been amended to include the right to refuse applications for documents that have previously been addressed, these applicants are sufficiently skilled in the workings of the Act to reword their application to include just one document that was not previously addressed.

It is appreciated that, with the amendments to the FOI Act in 2005, the power to deem an applicant vexatious has been conferred on the Office of the Information Commissioner. The wording of the FOI Act limits the application of the decision making power to those applicants who the Commissioner believes have made repeated applications to an agency and those repeated applications involve an abuse of the right of access.

Council believes that this power should be vested with the agencies with an appeal process to the Office of the Information Commissioner available.

Key Issue 5: Is access to administrative justice effective and efficient? Is reform necessary?

At the time of the implementation of the Freedom of Information Act access to documents enabling the community to understand the decision making processes of an agency appeared to be limited. It was the intent of the FOI Act that it would provide an avenue to obtain information that was not already readily available and thereby permit the community to gain access to open and transparent government.

Unfortunately, based on the applications lodged with this Council, there are not a significant number that could be considered to directly relate to the intent of the Act.

Further, it appears there is considerable confusion in the community as to the intent of the legislation. Many people, who have never had exposure to the Act, are disappointed to discover that Council's FOI officers do not provide general information and that they must put their request for information in writing.

Upon receiving advice that they may have to pay an application fee and possibly processing charges and may be required to wait 45, 60 or 75 days to receive the information, many initially consider that the legislation is more of a hindrance than a help and find it confusing and designed to deter them from proceeding.

However, with the assistance of staff from the FOI unit, members of the community are, in most cases, provided with sufficient information to make an informed decision as to their other information access options and can then decide whether or to proceed with an FOI application.

This Council receives a large number of information requests each year. Only a very small percentage of these requests proceed to external review. It is believed that this is evidence that the greater majority of applicants consider the processes employed to deliver access to information in order to facilitate administrative justice are both effective and efficient.

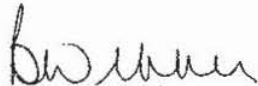
The following is a summary of the matters addressed above:

- It is not considered that the fees and charges regime has any effect on the accessibility of administrative justice on the Gold Coast. If any reform is necessary, it is the imposition of heavier charges;

- Given that some non personal FOI applications are not aligned with the original intention of the Act, is considered that the costs associated with non personal FOI applications should increase;
- It would be beneficial if the stipulated time frames were substantially longer where excess numbers of documents were required to be photocopied. This would enable Council to better plan its resource allocation to ensure that other FOI requests are not disadvantaged.
- Council believes that the power to deem applicants as vexatious should be vested with the agencies in the first instance with an appeal process to the Office of the Information Commissioner;
- There is no indication that access to administrative justice is not available to a diversity of people;
- There is no indication that access to efficient and effective administrative justice is not available to the people of the Gold Coast; and
- Current time limits imposed by the FOI Act need to be addressed in respect to the exclusion of public holidays due to the impact they have on providing timely responses.

Council would like to thank you for the opportunity to make this submission and looks forward to receiving further advice as to the outcomes of your review.

Yours faithfully



Brenda Webber

FREEDOM OF INFORMATION DECISION MAKER