

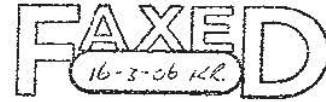
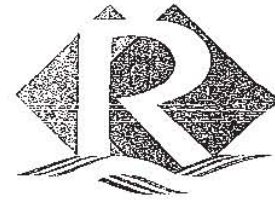
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LEGAL, CONSTITUTIONAL AND
ADMINISTRATIVE REVIEW
COMMITTEE



15 March 2006

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

FAX: 3406 7070

Dear Sir

COMMENT ON FREEDOM OF INFORMATION ACT 1992

I refer to the inquiry by your Committee in assessing the availability of administrative justice in Queensland, and submit the following information in support of a request that the *Freedom of Information Act* include specific provisions to cover requests from the public for access to the footage from CCTV surveillance systems.

Background

Requests to Council from the public for access to CCTV data are now processed as FOI applications. These are not processed as personal affairs applications, due to the complication that third parties may be involved. Council recently processed two FOI applications and another was received only last week for access to CCTV data. The difficulties encountered in processing these applications include:

1. Whether the application should be categorised as a personal affairs application, when the footage will often show third parties.
2. The need for third party consultation under the *FOI Act* before data is released bearing in mind that any such third parties may be impossible to identify by name and address as required by Section 51 of the Act.
3. If they are able to be identified, such third parties may object to the release of the data, particularly if it incriminates them in an assault, vandalism or other anti-social behaviour.
4. The role of the data collected by the cameras in assisting the Queensland Police Service in law enforcement.
5. The application of exemptions under Section 42 (matter relating to law enforcement or public safety), and Section 44 (matter affecting personal affairs).

Legal Issues

Members of the public are aware these days that public areas are under CCTV camera surveillance and believe that they have a right to view or obtain copies of video data regarding particular incidents.

Council has no formal protocol dealing with this, but does have a Memorandum of Understanding signed in 2004 (copy attached) with the Queensland Police Service (QPS) allowing the QPS access to data for law enforcement purposes. The primary purpose of the camera network is to assist the QPS.

Applications to Council under the *FOI Act* for CCTV data can operate concurrently to the QPS undertaking investigations if an alleged offence has taken place. The QPS always obtains its own copy of relevant data as provided by the MOU.

Council has approached the Local Government Association of Queensland regarding privacy and data access issues surrounding CCTV surveillance cameras (copy of letter attached) and has received a response from their legal advisers, King & Company (copy attached). As well as the abovementioned issues, Council notes that based on legal opinion, there are no privacy concerns in relation to the release of CCTV data under the provisions of the *FOI Act*.

Conclusion

While Council acknowledges that the *FOI Act* clearly applies to CCTV data, and is the applicable mechanism by which a request from the public for access must be processed, it is requested that consideration be given to including specific provisions in the *FOI Act* to cover CCTV footage. For example, should the need to consult with third parties, not apply to CCTV footage.

As outlined in the attached documents, Council will soon have as many as 50 cameras in operation, and given the increasing incidence of CCTV coverage both in Australia and overseas, it is to be expected that the difficulties highlighted will become more and more common, not only for this Council but also for other local governments.

Yours faithfully



Bradley Duke
Deputy CEO/Director Corporate Services