

Freedom of Information Review, Submission, March 2008

Owing to a lack of time, I am hereby making the following short submission on this important review.

Principles of FOI

6.1 FOI must be subject to individual privacy, security and commercial-in-confidence issues. However, when I mention commercial-in-confidence, I am referring to commercial matters that are currently under discussion and have not been finalised by government. Once these matters are finalised they should not be considered commercial-in-confidence any longer. That does not mean to say that a privately owned companies financial, copyright, trade or business matters should be disclosed, that would be quite improper. However, the government's involvement should be disclosed without this material being made available. Exemptions must be made for these three matters where FOI is involved.

6.2.3 I am not aware that any document prepared by departments is automatically considered confidential, however, it should not be and in my experience was not so.

6.2.4 The 30 year cabinet rule is in view of the type of material that goes to the Queensland cabinet hard to justify. In fact, after making allowance for security, privacy and commercial in confidence issues as I have outlined, the timelines could be reduced to say five years or even less.

6.2.5 There must be full protection given to the public service for advice, recommendations and information provided to government and in the undertaking of their daily duties that may come under public scrutiny under FOI laws. They must not be able liable in the courts for their decisions.

6.2.10 Government owned bodies should certainly fall within the FOI legislation after all they are part of the government and operate at the taxpayer expense.

7.1 Public interest tests should not be able to override privacy, security or as I have set out commercial-in-confidence unless somehow determined by the Supreme Court that the other party has been significantly affected because of the failure to release the information but this would need to be exceptional as public security or privacy must be paramount.

7.2 Cabinet matters seem to raise most of the high profile concerns in the community about access. Ministerial briefing notes and seemingly matters that ministers are embarrassed about are able to be hidden by taking them to cabinet, this should not be allowed. However, of course cabinet discussions must be totally sacrosanct and must not be subject in any way to FOI laws. Much material taken to Cabinet could in effect be made public immediately such as statistics etc. The reason it is not apparently is that it would embarrass the government of the day.

Again similar time limits as to other matters could apply say five years or shorter subject always to the above exemptions of privacy, security or commercial-in-confidence as I have spelt out.

A totally different approach needs to be considered to overcome the loopholes that will invariable occur should Cabinet material be given blanket exemptions.

7.3 If there is exemption to deliberative material then there will be argument and a loophole on what is deliberative material. The guidelines need to be clear and not subject to 'weasel' words.

7.4 Personal affairs are what I have referred to as privacy matters.

7.5 Commercial-in-confidence. During the colonial period several major contracts were entered by the government and this material was made available through the parliament. The direct mail contract for freight, passenger, and immigration in 1880 is a good example of a large controversial contract involving some £30,000 a year government subsidy, yet all the material was made available. As I have indicate while these contracts are being discussed then that must be done in-confidence but as taxpayers money is involved then the material should be made available. That does not mean to say that a privately owned companies financial, copyright, trade or business matters should be disclosed, that would be quite improper. However, the government's involvement should be disclosed without this material being made available.

Conclusion

Senior officers in the FOI are should have a law degree, because of the constant legal decision making that is required in the process.

Also, consideration needs to be given to any changes that might be appropriate for family members to gain access to material that is held for decades on other family members where the other family members have died but may be subject to time restrictions. This can be a pertinent issue where family history research is concerned.

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