



7 March, 2008

Dr David Solomon AM
Chair, Queensland Freedom of Information Independent Review Panel
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Dear Dr Solomon

**Re: Response to ‘Enhancing Open and Accountable Government’ Discussion Paper
(Review of the Queensland *Freedom of Information Act 1992*)**

Thank you for forwarding a copy of the above discussion paper, and for the invitation to have input into the review of the Queensland *Freedom of Information Act 1992*. Please accept this response from the Wilderness Society Qld Inc (TWSQ), which has been endorsed by the Management Committee of the organisation, as our brief submission on some of the issues raised in the Review Panel’s Discussion Paper.

TWSQ is a community-based, environmental advocacy organisation whose purpose is to protect, promote and restore wilderness and natural processes across Australia for the survival and ongoing evolution of life on Earth. TWSQ works through the avenues of public education and empowerment, advocacy and negotiation, and desk and field research. TWSQ is politically unaligned, and uses democratic processes to maximise wise conservation decisions. Its current focus includes ensuring the exceptional ecological and cultural values of Far North Queensland in a way that provides a prosperous and sustainable future for the people, lands, and wildlife of the region.

TWSQ’s interest in this review of the *Freedom of Information Act 1992* stems from its direct involvement in seeking, successfully or otherwise, access to government-held information, and also from a general desire for open and accountable government. TWSQ has made a number of Freedom of Information (FoI) applications under the present system, and these experiences have led the organisation to the conclusion that reform of both the legislation, and the principles and spirit in which it is interpreted and applied, is imperative.

At the outset, TWSQ wishes to express its overall support for the review of the FoI legislation, and for the general move for broadscale reform as articulated by the Premier. Rather than provide a detailed submission, TWSQ wishes to highlight some of the critical

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issues it believes should be considered in the development of a new regime concerning the management and availability of government information, and new FoI legislation specifically.¹

Firstly, in seeking to encourage greater accountability and openness within government through enabling access to government information, TWSQ believes that the onus should rest, as a rule, with demonstrating why documents and other information ought to be withheld from the public, rather than why they should be released. As the Discussion Paper suggests, there are good arguments for why some information may be retained in confidence, for a period of time, in consideration of effective governmental process and proper Cabinet debate. However, such examples should be considered on their particular merits, rather than being covered under catch-all exemptions. In general, we support the approach of the New Zealand legislation (s5), which holds that information should be available unless there is a good reason for withholding it, which is then essentially assessed on a case-by-case basis.

Secondly, TWSQ believes that as a guiding principle for the management and release of information, much information held by government should be available outside of FoI processes, without resort to application. This allows for greater access to information which is likely to be available under FoI anyway, but involves little or no workload or cost to the holding agency. In an age of electronic document distribution, much of this information could simply be made available on government websites or in electronic repositories.

Thirdly, where information is only to be made available under FoI legislation, it should be provided in a timely way, at little or no cost to the applicant. TWSQ believes that government agencies should be encouraged to establish processes which facilitate rapid access to information, and that decisions about approving such access should be treated with priority. TWSQ has also been concerned with the costs associated with applications under the present system. Even when the terms of an application have been narrowed as much as possible to best focus on accessing the specific information requested, costs are often too prohibitive to proceed to the stage of viewing of the documents, rendering the whole process counterproductive. For example, TWSQ has a current application concerning documents relating to Wild Rivers and Cape York Peninsula. The relevant department has indicated that the costs for release will be \$1,187.20; an extraordinary and potentially prohibitive charge for a non-for-profit, community based organisation.

In enabling these processes, TWSQ believes that it would be useful for agencies to establish and maintain inventories of documents and other materials, regularly updated, which would allow potential applicants to know what information exists.

¹ TWSQ understands that the Environmental Defenders Office, Queensland and Environmental Defenders Office of North Queensland have prepared a joint submission, which provides a more in-depth analysis of the range of issues and questions raised in the Discussion Paper. We would urge that the Review Panel study that submission in detail, and consider its responses and recommendations.

Finally, TWSQ wishes to respond specifically to the issue of exemptions related to Cabinet documents. Although the present legislation appears to allow for discretion regarding the release of cabinet-related information, it is the experience of TWSQ that this is rarely if ever applied. In practice, as the Review Panel's Discussion Paper highlights, the Queensland legislation effectively allows for a blanket policy regarding exempting documents and other materials which have been connected, however loosely, with meetings of Cabinet. This is especially so given that the mere past presence of documents in the *Cabinet Room*, but not necessarily as materials to be directly examined by Cabinet, qualify for exemption.

TWSQ is aware of actions and behaviour by public officials which it considers to represent excessive uses of Cabinet information exemptions. Over the years, TWSQ believes there have been many instances of documents being withheld under FoI exemptions because they have, at some point, been present in the room in which Cabinet discussions have taken place. Indeed, TWSQ knows of very recent cases where significant volumes of potentially important information about dams planning in Queensland have been taken into the Cabinet Room, in anticipation of FoI applications and media scrutiny, for the sole and deliberate purpose of removing them from the public domain. Such documents, many of which were scientific or technical reports and assessments, posed no greater threat than the potential for open and informed public debate in the context of Cabinet deliberations.

In considering law reform on this particular issue, TWSQ is firmly of the opinion that any future Cabinet exemption provisions ought to be *relative* rather than absolute. Class exemptions should not apply. The mere fact that something has been taken to Cabinet should not automatically mean it is exempt from FoI. The tests of adverse effects or harm/injury ought to remain, and related public interest tests need to be premised on present and future considerations of the community as a whole, not simply the government of the day.

TWSQ has appreciated the opportunity to raise the above issues with you in the context of the review of FoI legislation and practices in Queensland. Should you wish to discuss any of the matters discussed, please contact me c/- the TWSQ Brisbane office, on 3846 1420 or brisbane@wilderness.org.au

Yours sincerely



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