

WILLIAM FORGAN-SMITH

SUBMISSION TO REVIEWS  
*of*  
RIGHT TO INFORMATION ACT 2009  
PRIVACY INFORMATION ACT 2009

---

**TWO GUIDING PRINCIPLES**

**ONE ~ A business goal of Parliament, Government and Right to Information and Privacy Commissioners (and their agents in departments and agencies) must be to reduce customers' RTI and Privacy legislation product needs through the simple expedient of ensuring the information is already in the public domain. Secrecy begets RTI and like imposts. Open Government saves money.**

- a. There is a direct cost to secrecy: that of RTI and Privacy claim (including appeal) processing compounded by the opportunity cost involved in Queensland government resources being diverted to meet such, most often, unnecessary customer orders.
- b. The indirect cost of secrecy is even greater. Where the innovative and creative use of Government information is kept from the imaginative and /or entrepreneurial endeavours needed to enhance our community and democracy, governments fail the nation's people. Put bluntly there is an economic significance to the free exchange of data and information: *failure to permit the circulation of new ideas – including economic and political ideas ... - is almost always prima facie proof that the state is weak at its core*<sup>1</sup>. This is even more so when we think of how "scrum" and "agility" concepts (developed in the IT project management arena) are now being applied more widely in industry and commerce and for general decision making.

**TWO ~ RTI legislation exists to emancipate citizens through our access to knowledge: to open up government information to all people.**

- a. Freedom of Information and thence Right to Information legislation was introduced not because any law restricted most government documents – now more widely viewed as Information - being made available but because they were not. This culture of withholding information and secrecy has yet to be consigned to the dust bin of history.
- b. It seems that RTI policy and practice - like that of the Commonwealth's Freedom of Information Act 1982 -, has been captured by its practitioners and, in some cases, subverted by political considerations by or for the government of the day. Certainly, it does not always work for its customers but rather has become a plaything and sinecure for a small number of "insiders". The gaps between philosophical concept / ideological proposition, operational practice, and the reason the legislation exists - customer needs and the Queensland community's "right to know" - are clear and growing. This submission unashamedly favours ideology and customers.

---

<sup>1</sup> Alvin Toffler, Power Shift. Bantam Books, 1990: p402.

- c. My argument is informed by the writer's background experiences as a
- a Commonwealth FOI decision maker and agency "champion" – right back to 1982, and indeed earlier;
  - workforce planner, productivity specialist, risk management specialist and management consultant; and as a
  - a (past) seven year Commonwealth FOI mendicant.

My submission to the Hawke Review of the Freedom of Information Act 1982 and the Australian Information Commissioner Act 2010: see <https://www.ag.gov.au/Consultations/Documents/FOI%20report.pdf> and, specifically, <https://www.ag.gov.au/Consultations/Documents/ReviewofFOllaws/Willian%20ForganSmith.pdf> is also germane.

## **ACCESSING INFORMATION**

The RTI Act provides that *[a] person who wishes to be given access to a document of an agency or a document of a Minister under this Act may apply to the agency or Minister for access to the document.*

Against this the Commonwealth's FOI Act's s11 "every person" right of access reads:

- 1) *Subject to this Act, every person has a legally enforceable right to obtain access in accordance with this Act to:*
  - a) *a document of an agency, other than an exempt document; or*
  - b) *an official document of a Minister, other than an exempt document.*
- 2) *Subject to this Act, a person's right of access is not affected by:*
  - a) *any reasons the person gives for seeking access; or*
  - b) *the agency's or Minister's belief as to what are his or her reasons for seeking access.*

In both cases it is passing strange that no penalty applies if the information is not supplied, or if barriers and delays are put in customers' way and / or the information is supplied outside the defined time scale or otherwise later but without the consent of the customer to such product delivery delay.

**Recommendation:** a better start point might be that *"a person requiring access to any document of an agency or of a Minister becomes a customer of that agency or Minister upon placing an order for the required product."* This clearly establishes a customer – supplier relationship that should exist.

**Recommendation:** It should be a criminal offence for a Minister, Agency Head or Delegate to not comply with the Act or its provisions or to not meet the time limit(s) delineated in the RTI Act. The penalty should involve dismissal / demotion and / or a fine. In addition the customer must then be provided with all the information sought: without cost and with any prepaid fees (including application fee) refunded.

## **PRIVACY**

The ideals that led to privacy legislation being first contemplated and thence introduced rested on certain understandings of what privacy was and, importantly, that it could be enforced. Neither situation still exists and likely can never be reclaimed.

In 2017 it is clear that citizens have a very different perspective as to what is their private and what their public information – even if this antique sticks to the old paradigm;

1. the use of social media leads to many individuals and even businesses “posting” information about and images of themselves and others – whether indiscriminately or purposefully - and whether intended just for a targeted or more open / universal audience;
2. modern forms of communication and information technology as utilised by individuals and corporations (including government) are much more interactive, inclusive and integrative, and that generally for the better;
3. GPS and other tracking now means that not only, say, are company vehicle movements always reviewable by management but that anywhere where an individual person has moved is track-able (in real-time and / or by later review of the data) – and via many sources from smart watch, mobile phone, Tablet, motor vehicle positioning and a host of other devices. In a recent murder trial much was made of evidence that the (since convicted) person’s phone was put on its battery charger at a time when he claimed to be asleep. Such are the incursions even into our home life. And, of course, now that so many motorists, cyclists, even pedestrians travel using a video camera, or have same as a home safety device, anyone’s image and hence movements might be captured: whether purposefully or just as “collateral damage”. Whilst in criminal matters this is considered a boon to law enforcement an important issue must be “who else gets to see the collateral sightings”? Or maybe it is no longer an important issue now that so much of the public space and of places of commerce and industry, of education and health care, etc is “kept safe” by closed circuit TV and now even by cameras carried aloft on drones and helicopters – police owned or otherwise.
4. Beyond GPS tracking is DNA and gnome identification and mapping. No doubt, other submissions will comment cogently on the privacy / no privacy issues to be addressed by such technologies.
5. As our understandings of psychological-type casting as also of genetic and lifestyle susceptibility to various medical, mental health and other perceived “dysfunctions” becomes more acute even more questions arise as to what is “private” and what should be shared amongst appropriate others, let alone the wider community.
6. the ease of “hacking” – by individuals, groups and corporations as also now governments - makes it increasingly difficult to keep information secure or otherwise private.

I would like to have been in a position to suggest how privacy legislation might change to take account of the contemporary world and its values but I have yet to learn of or read much that helps me to do so. That said, an article *The dark side of transparency* just published by McKinsey and Company (arguably the world's leading management consultancy) and available at <http://www.mckinsey.com/business-functions/organization/our-insights/the-dark-side-of-transparency?cid=eml-web> might just prove, on further reflection and renewed wider reading, to suggest some key start points. The article begins

Executives need to get smarter about when to open up and when to withhold information so they can enjoy the benefits of organizational transparency while mitigating its unintended consequences.

Transparency in the business world—think of buyers and sellers rating each other on eBay, Airbnb, and Uber—is generally considered a good thing. It accelerates information gathering, helps people coordinate their efforts, and makes those in positions of authority accountable to others.

What about transparency *within* organizations? Again, many emphasize the benefits of sharing information freely, as a way of empowering frontline employees and improving the quality and speed of decision making. For example, transparency is one of the key principles in the increasingly popular Scrum Methodology for project management: “In my companies, every salary, every financial, every expenditure is available to everyone,” says Jeff Sutherland, its inventor. Compared to knowledge hoarding and secretive behavior, it is easy to agree that greater information sharing is a good thing.

Whilst the target audience for the article is organisations and their managers, the same issues will apply within government and society generally.

## **TWO CLOSING THOUGHTS**

The required “culture”, business management and decision making paradigm focus for all RTI and Privacy law requirements must be fair, just, economical, informal and quick. It must provide customers and related third parties with procedural fairness. The objective is to satisfy customers' needs, not the State of Queensland or any of its Agencies.

RTI and Privacy legislation outcomes and customer service should never be captive to “the process”.

*William Forgan-Smith*

3 February 2017