From: [redacted]
Sent: Saturday, 21 January 2017 3:33 PM
To: [redacted]
Cc: [redacted]; [redacted]
Subject: 2016 Consultation on the Review of the RTI Act and the Information Privacy Act

The Secretary,
Department of Attorney General,
Dear Sir,
Thank you for the opportunity to make a submission on this matter. My comments are in the context of local government only.
It has long been recognised that knowledge [or information] is power. Those that have information have power, especially if they can retain exclusive ownership of that knowledge. Those that do not have, or are denied knowledge or information are powerless in the perpetual power struggle between those governing and those being governed.

There should not be such a struggle when democracy works properly, as it was intended to work. Access to/availability of information about our government and the decisions they make is a fundamental right. One should not have to apply or fight to get information, nor should one have to pay to obtain it. It should not be within the power of the elected government or officials to withhold information or to release only selected parts. It should not be within the power of a government to pervert the very mechanism intended to guarantee access in order to deny or delay that access. Yet that is what occurs. The Right to Information has become a legal nightmare managed by government lawyers with an apparent mission to deny or delay access to sensitive information. By contrast, governments should see it as their role to gladly, willingly and freely make available every document in their possession, to make information available in the most “user friendly” way possible and to resist holding meetings behind closed doors. The “spin doctored” press releases of today do not satisfy that need; they frustrate it. As an example, council meeting minutes are generally not catalogued to facilitate public searches.

As citizens we need to be able to know what decisions our elected officials are considering so that, if we have an opinion, we can question our representatives and if desired, instruct them on what is our will on the matter. It is important that we also know what advice has been given to our representatives so that we can, if desired, question the competence and even-handedness of that advice; and so that we can present other advice. Timing is important if a member of the public is to

seek independent advice and is to consult his elected representative before the decision is made.
When the decision is made, the recommendation, the full terms of the decision and the reasons for the decision should be made available to the public. For example, in earlier days tenders were always publicly opened by the Shire Clerk at the appointed time and those tenders became public documents. The staff recommendations were reported in the minutes and the actual contract became part of the open meeting minutes. Contracts could not be entered into by staff or without the common seal being affixed by resolution. Today the whole process is often hidden under the excuse of “commercial-in-confidence”. There is then no opportunity to verify that the process was untainted, fair or cost effective. Contracts are one small part of the problem. Development Applications are another. Almost all DAs are now “code assessed” rather than “impact assessed”. The approval is given by a member of the staff. Councillors and members of the public have no right to comment or to object or to take the matter to the Land and Environment Court. In that case, the information is freely available on council’s web site, but the public has no right of input or consultation.

The issue is a “them and us” attitude; a culture of politicisation of process so that information is indeed power. The public service at all levels needs to go back to proven cultures of political impartiality, security of tenure and service to the public. Public administration can only improve if every citizen is aware of what is happening and what is proposed and if all citizens can have enough information to contribute to decisions and to judge if politicians and bureaucrats are performing.

In a perfect world there should be no need for any right to information legislation. However, recognising that the world of governments is far from perfect there still needs to be some binding process to guarantee access to information by citizens. Access to information is a RIGHT. This has always been recognised in theory, but elaborate rules are needed to actually avail oneself of this fundamental right. The first thing to be recognised is the prevention is better than cure. Governments must be charged with making every document public, every meeting open to the public. If that was the principle incorporated into every law [eg the Local Government Act] then the need to break down the barriers of secrecy would not exist. It is also far better to enact laws which state principles, perhaps with examples; rather than a rigid, codified set of exemptions and non-exemptions.

Openness and transparency are cornerstones of democracy. Government administration must be guided by those rules. Freedom of information is an integral part of openness and transparency so a right to information is a right which should not require legislation to be facilitated. However, recognising human and political expediency, some legislative guarantee will always be required but it must place the onus squarely on the information withholder to prove conclusively that disclosure will cause actual harm. The department from which information is being sought should in every case have to explain why it was necessary for the applicant to apply when as a general rule all information should be freely and easily available without the need to ask for it. Penalties for non-disclosure and for delaying or frustrating disclosure should be severe.

Kenneth E Park
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