

**Submission to the Department of Justice and Attorney-General**

**Review of the Right to Information Act 2009**

**Discussion paper**

**August 2013**

---

## Submission

### Summary

*The Courier-Mail* and *Sunday Mail* supports the *Right to Information Act's* (2009) pro-disclosure bias and advocates Government openness and accountability.

To further promote openness and accountability, it supports its application to include the documents of contracted service providers performing functions on behalf of the government and Government-Owned Corporations. Support is also given for the application of a public interest test for legal privilege.

However, *The Courier-Mail* and *Sunday Mail* opposes additional protection for information in communications between Ministers and Departments. Premier Campbell Newman has promised not to wind back current RTI laws and wants Queensland to be the most open and transparent government in the nation. However, if deliberative processes were made exempt, that won't be the case. The Government already enjoys secrecy for Cabinet, Executive Council, legal advice and any material used in preparation for Parliament or for the Crime and Misconduct Commission.

Access to documents showing deliberative process not only ensures politicians make decisions in the best interest of the public, but further encourages senior public servants to provide well-researched and well thought-out advice knowing they could also be subjected to public scrutiny.

### Related documents

The same proposal came up in the recent federal review of the FOI laws  
<http://www.ag.gov.au/Consultations/Documents/FOI%20report.pdf>

The independent reviewer, former public servant and diplomat, Dr Allan Hawke, says in his report that a conditional exemption must not be given without the application of the "Public Interest Test", which weighs up factors for and against disclosure.

Dr Hawke rejected suggestions further protection from public scrutiny was required.

"While the review acknowledges that adoption of these options would provide clarity and strengthen the protection of deliberative advice, it also recognises that they may be viewed as diluting the objects of the FOI reforms," he says in his report.

### Discussion paper

#### **4.5: Should corporations established by the Queensland Government under the *Corporations Act 2001* be subject to the RTI Act and Chapter 3 of the IP Act?**

Yes. Attorney-General Jarrod Bleijie supported this when he was in Opposition. There have been several issues raised of concern in relation to the decisions made by Government-Owned Corporations. Most recently, the State Government announced an inquiry into Racing Queensland Limited as a result of these concerns. Given there is sufficient protection already provided in the exemptions offered by the RTI Act, they should be as accountable to their employers, the public, as Government agencies are.

**4.6: Should the RTI Act and Chapter 3 of the IP Act apply to the documents of contracted service providers where they are performing functions on behalf of government?**

Yes. As Government is making decisions on behalf of taxpayers, who are ultimately the employer of contracted service providers, they should be privy to documents which assess the quality of service being provided.

**6.12: Should the requirement to provide a schedule of documents be maintained?**

Yes, because it's in everybody's interest including the decision-maker to know whether the applicant is getting the information they are after. It cuts down on the workload and also reduces the likelihood of review because the applicant can see whether the information they are seeking has been captured. However, it should be compulsory that the schedule of documents be provided at the same time a charges estimate notice is provided. That way, a better-informed decision can be made by the applicant about whether they wish to proceed, reduce or expand the scope of their application, or withdraw their application entirely.

**7.2: Are the exempt information categories satisfactory and appropriate?**

Yes, but a public interest test should apply for documents regarded as being exempt under legal privilege. For example, had legal advice not been ignored by the former State Government on the Queensland Health payroll, there may have swifter action taken at an earlier juncture.

**7.6: Does there need to be additional protection for information in communications between Ministers and Departments?**

No, a public interest test must always apply to deliberative process to ensure the right decisions are being made in the interests of the public.

The release of such information can help gauge interest, canvass alternative views and foster informed public debate. It also means politicians have to lead and ensure their decisions are logical, well-researched and informed

Historically agencies have argued that documents are against public interest to release under deliberative exemption because it will hamper "frank and fearless advice". This argument has been lost repeatedly by governments in the past decade and as such, the exemption does not exist in any other jurisdiction.

Any exemption of deliberative processes would mean the public will no longer be able to find out whether decisions are made in the interests of the public instead of the politician or party.

**7.10: Are the current provisions in the RTI Act sufficient to deal with access applications for information about successful applicants for public service positions?**

No. Given allegations of nepotism and favouritism that continue to haunt successive governments, increased scrutiny as a result of increased access to documents regarding successful public service applicants would allay public concerns.

---

**8.1: Should fees and charges for access applications be more closely aligned with fees, for example, for access to court documents?**

No. However, if an applicant has concerns with the amount they've been charged, they should be able to apply for internal or external review.

**9.1: Should internal review remain optional?**

Yes.

**9.3: Should applicants be entitled to both internal and external review where they believe there are further documents which the agency has not located?**

Yes.

**9.6: Should applicants have a right to appeal directly to QCAT?**

Yes.

**Conclusion**

Secret government costs economically as vested interests, political fixes or poorly designed policy waste taxpayer's money without the discipline provided by transparency. The *Right to Information Act 2009* is already seen as one of the best in the country.

While there are opportunities to tweak certain aspects to make it more efficient and documents easier to access, there is no justification for any changes that would further hide or obscure government process.



Alison Sandy

Right to Information Editor

---