Feb 1 2017

RTI and Privacy Review
Department of Justice and Attorney-General
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Brisbane Qld 4001
Sent via email: FeedbackRTIandprivacy@justice.qld.gov.au

Dear Department

Submission to review of Right to Information Act 2009 and Information Privacy Act 2009

- I am a private citizen who has made applications for information on several occasions over the years both under the RTI Act and the previous FOI Act. It has been noticeable that I have been obtaining less information as time goes on and the process is taking longer and costing more. There may be a principle that information is available unless there is a compelling reason not to release it but the system doesn't work that way.
- A RTI officer can not go wrong by not releasing information. The appeal provisions are completely ineffective and so, I don't bother. In fact as far as local government is concerned I have found it is almost impossible to get information so I don't waste time and money on that anymore. I have found that if I ask for specific information, such as the total amount that a levy has raised or the way that it was spent, I get no useful information and it is thus impossible to judge or comment on the measure.
- Perhaps some examples will show how this does not work

  Example 1

  There was a very large development proposed for an erodible sandy peninsula. The Queensland government conducted several physical studies of the area to assist in developing a coherent plan for its use. I applied under for the information so that I could

  a. Better understand the area
  b. Relate the physical conditions to the plans for the big development.

  I was refused any information or even confirmation that the studies had been done. I ended up in the Planning and Environment Court opposing a development on this land. I did not have the information. What I really needed was a LIDAR map setting out the contours and levels of the peninsula as this would show if there were low lying areas susceptible to storm surge and/or a sand barrier to prevent the surge. I was fortunate in that an expert for the developer quoted the LIDAR map as a document supporting his contention that there were no low lying areas and a 6m high barrier to the ocean. As he quoted the map, I was entitled to ask the Judge to order the expert to give the map to me and it showed that a large area, that had been planned to have 6 storey buildings, was very susceptible to storm surge. The court refused the development.

  The point is that it was just luck. [redacted]

  Example 2

  I had a dispute with a council employee in a neighbouring council area. I complained that the employee had not treated me in a reasonable way. During a telephone exchange

with an officer investigating my complaint I learnt that the officer had complained about my behaviour. I requested a copy of the complaint about my behaviour and was unable to obtain it. (The council dismissed my complaint and I'm not sure what happened to the complaint about me)

Example 3

I am currently appealing against a development decision of my council. The council approved the development largely on the basis of an environmental permit issued by the Department of Agriculture. I have asked the Department to provide me with information relating to this permit and the issuing of similar permits. A time extension was requested. I agreed. Now another time extension is needed to consult with third parties. I don't know what I will get but it may be too late anyway. One set of experts have already met and put out their reports without the benefit of this information and another lot of experts are due to report soon and the case may be on before I get the information.

1. The 'push model', favouring proactive disclosure of information, is not currently being adequately implemented – more action must be taken across government to proactively provide the public with information to avoid the need for RTI applications

The preamble to the RTI Act specifically recognises that 'information in the government's possession or under the government's control is a public resource', the benefits to a free and democratic society of releasing information in ensuring accountable governance and better quality decision making, and the government's commitment to proactively releasing information unless there is a good reason not to. These principles are part of the ***'push model'*** suggested by the Solomon Report, a Report undertaken by an independent panel, chaired by Dr David Solomon Am to review the previous *Freedom of Information Act 1992* (Qld) which the RTI Act replaced in response to the Solomon Report.

The examples above demonstrate

- *inadequate action is being taken by most government departments to actively provide the public with the information needed to ensure transparency and accountability in governance;*
- *much more frequently than not, the public must apply to access information they seek, actively, repeatedly pursue their request with the public office to which they applied and await lengthy delays while applications are being decided, often to the point of making the information redundant due to the delay; and*
- *decisions under RTI applications are often not in favour of disclosure, usually citing vague grounds of commercial-in-confidence, or broadly ongoing government deliberations.*

2. **All essential documents, such as copies of environmental licences and monitoring data, need to be made available to the public by legislation on a public register to avoid need for RTI applications**

The 'push model' should inherently mean documents relevant to the public interest should be provided proactively by the departments as part of their 'publication schemes'. However, this has not been adequately undertaken to date. Therefore, it is necessary to ensure that legislation requires that documents such as licences, permits, authorities and similar, and any monitoring data generated by proponents when undertaking their activities must be published by departments on their websites.

Many documents of this nature are required to be on registers and made available to the public, however these are not always in an easily accessible form and frequently the applicant is required to actively pursue a department to obtain the documents. Also, there are frequently gaps in registers where essential documents aren't listed, such as monitoring data undertaken by a proponent in compliance with their environmental authority, however which was not required to be provided to the Department except if the Department requests it. All monitoring data generated by a proponent to determine whether they are complying with their relevant permits must be accessible by the public as it is in the public interest to understand the impact proponents are having on the public's health and the environment.

This would be greatly assisted by a central website for which all permits, authorities etc for each company/ project are listed to assist the public in understanding and assisting in a watchdog role in the compliance with relevant permits, authorities etc.

Example 4

a. In the Planning & Environment Court in North Queensland the parties ,(the council, the developer and the appellants against a development) all agreed that the information obtained in monitoring the operation of the development should be public. But this was not incorporated in the conditions of development as it was judged to be subject to RTI and the court was not eager to impose conditions that impacted on RTI.

b. Similarly I am not convinced that my local council will act to force a remedy to any adverse effects revealed in monitoring the development in Example 3. The information provided to the council as part of conditions should be publicly disclosed on a website as part of RTI so that citizens can monitor compliance..

3. **Too much weight is put in favour of non-disclosure, more weight should be provided to the public interest of disclosing information, as committed to in the Preamble to the Act:**

   - **Improve the balance of weight given in favour of disclosure in the public interest, to ensure this is given sufficient weight in decision making; and**
   - **Narrow the number of considerations for when non-disclosure should be favoured**

When considering on balance whether to disclose documents requested through a RTI application, too often exemptions such as the commercial considerations of third parties, or

deliberations of government, are given more weight than the recognised public interest in disclosing documents, for example:

- for the protection of the environment;
- to reveal environmental or health risks;
- to contribute to promoting open discussion of public affairs and enhancing government accountability; or
- to ensure effective oversight of expenditure of public funds, for example for major projects.

4. The ability to refuse documents due to potential implications to commercial interests and deliberative processes must be better defined and restrained to ensure they are not abused, for example confidence of commercial interests should be limited to 'trade secrets', particularly for major projects effecting the environment and community

Currently there is insufficient guidance provided as to when possible harm may be claimed to warrant favouring non-disclosure of documents.

To support the pro-disclosure bias intended to be promoted by the RTI Act, more detailed guidance must be provided to specify when possible harm favouring non-disclosure may be relied upon to justify non-disclosure, particularly in regard to commercial interests. We recommend that exemptions to disclosure relating to commercial interests should be limited to trade secrets as far as intellectual property rights or similar are applicable.

'Deliberative processes' must be better defined and narrowed in scope. This exemption is often relied on for the purpose of ensuring public servants are not hampered from being honest in the decision-making processes of governance. If the government encouraged a true culture of open, accountable, transparent governance in the public interest, honest internal debate would be recognised as a legitimate and healthy part of decision-making processes and should be celebrated, rather than feared at the risk of stepping out of whatever political opinion may be being dictated at the time.

Decision-makers must remember that the government is acting on behalf of the public, and in the interest of the public, with public tax money; any commercial activities and deliberations of the government are inherently in the public interest and should be open to the public.

5. Given the importance of access to information to ensuring open, accountable governance, free of corruption, more consultation should be undertaken as part of this review

We commend the Government for undertaking this statutory review. It is unfortunate that it has been undertaken over a period including the festive season, when many people are on leave and unable to provide the review the attention it deserves. It is also unfortunate that there were not more proactive attempts to inform the public the review was being undertaken, including contacting all those who have previously made applications under the RTI and IP Acts.

We recommend that public hearings be undertaken as part of the review. Meaningful consultation requires diverse forums for the public to convey to the government their experience with the legislation under consideration, including opportunities for further discussion to support written submissions as this will garner far more insight to inform improvements to the Acts.

6. **To decrease the processing time of applications, a higher threshold should be applied to consultation with third parties and third parties should not have ability to pause the time for considering an application**

Currently under the RTI Act, third parties are consulted where any RTI application may 'reasonably to be expected to be of concern' to that party. This is a very low threshold that is frequently triggered, causing more delays to decision-making processes and an increased amount of challenges being brought by third parties to applications. Third party consultation also currently causes a pause in the time for processing an application. The only choices an RTI applicant has is to withdraw its application, receive a 'deemed refusal' of its application or otherwise await for the department to complete consultation to re-start the processing clock.

I commenced this exercise thinking that I would write my own submission completely. But I completely endorse the points made in the template and hope that my small examples can help the government understand how the RTI procedure can be greatly improved.

Yours sincerely

Reg Lawler

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