

F FOI: rhetoric or reality?

An annual report from the Attorney-General's department finds the operation of the Freedom of Information Act to be lacking

In Chapter 4 of the Attorney-General's department's 15th annual report on the operation of the commonwealth *Freedom of Information Act* (FOI) for the period 1996-1997, there is a modestly sized paragraph dealing with the inadequacy of statistical collection, highlighting yet another divergence between the rhetoric and the reality of FOI.

According to the report, the overall quality of the statistical information provided by agencies is poor. The majority of agencies do not make the effort to record accurate statistics, for example, by the use of appropriate software. In some cases, the decentralisation of agencies means there is no centralised collection of statistics.

This admission of inadequacy echoes observations made in the Australian Law Reform Commission and Administrative Review Council's 1995 report on FOI. The report highlighted the importance of reporting and collecting statistics on FOI, and identified the need for improvement in this regard. The annual reports produced by the Attorney-General's department are based on information provided by agencies, as opposed to an independent audit or consideration of agency practices. Such reporting is insufficient for comparison of agency performance or assessment of what constitutes best practice. In addition, the statistics do not distinguish requests for personal information from other requests, or reveal what exemptions are claimed and how often. Among the roles envisaged for the proposed FOI Commissioner by the ALRC/ARC are reporting to parliament and improving the quality of statistics on FOI.

Bearing these inadequacies in mind, the report does provide the following snapshot of trends in FOI use, agency decisionmaking and appeals. In 1996-1997, there were 30,788 requests, representing a decrease of 21 per cent compared to the previous year. The Attorney-General suggests in his introduction to the report that this marked decline in the number of requests may be due in part to changes in practice by the Australian Taxation Office, which is making more information available outside the Act. Since the Act came into operation, 467,361 requests have been made.

The top three agencies in terms of numbers of requests are the Department of Veterans' Affairs, Social Security, and Immigration and Multicultural Affairs, and most of these requests are for personal information relating to the applicants.

This accords with the observation in the ALRC/ARC report that there are fewer requests for information about policy development and general government decision making. Yet these types of requests are closest to FOI's aims of facilitating accountability and democratic participation. The report was unable to offer reasons for this; on the one hand, it could mean that there is little demand for such information. On the other, it could be indicative of a lack of public awareness or a perception that FOI is not a

viable mechanism due to costs or lack of confidence in outcome.

Access to documents was granted in 79.19 per cent of requests and partial access in 16.36 per cent of requests. Access was refused in 4.45 per cent of requests. The agencies with the highest refusal rates were Telstra, the Department of Foreign Affairs and Trade, the Department of Administrative Services and the Australian Customs Service.

Applications for internal review were made in relation to 394 or 5.9 per cent of adverse decisions. The general trend in internal review decisions is affirmation of the original decision (62.3 per cent of requests), although in 37.7 per cent of requests, some concession was made to the applicant, usually the provision of access with deletions.

There were 117 applications for review in the Administrative Appeals Tribunal. In September 1996, the fee to lodge an appeal with the AAT increased from \$368 to \$500. Subsequent reports will provide a clearer picture of whether this increase has resulted in fewer applications to the AAT. It would not be surprising were this the case. The sum of \$500 to appeal a decision is a significant barrier to ordinary citizens and community groups with scant resources, yet it is at the appeal stage that the boundaries of the Act are most likely to be tested. Justice Michael Kirby, in a December 1997 speech to the British section of the International Commission of Jurists, described the increase of costs and fees as one of the "seven deadly sins" of FOI, effectively putting it beyond the reach of ordinary citizens.

The Ombudsman received 301 complaints about FOI matters, an increase of 6.4 per cent. In view of the cost of seeking review in the AAT, the Ombudsman may present a more attractive avenue, at least in terms of complaints about the handling of requests.

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