

Comment

The currency of democracy

We need information to exercise the right to free speech, to share knowledge, to make decisions as electors and to be active citizens. The concept of the right to know expresses the idea that access to information is an important prerequisite to all these activities.

Freedom of Information (FOI) legislation is just one aspect of the broader "right to know" picture. Lately it has been at the forefront of public debate, mainly due to concerns about its erosion and failure to live up to the expectations that accompanied its introduction.

In rhetoric at least, FOI is accepted as an integral part of Australia's democratic framework. But the reality is that FOI is increasingly under strain. Some of the problems are longstanding, while others, particularly the impact of contracting out and privatisation, are new, and pose significant challenges to existing notions of FOI.

Openness, disclosure and accountability in government are the principles that underpin FOI. For all its weaknesses, FOI has brought about significant disclosures to the public. In Victoria, for example, these include the disclosure of information about the Intergraph contract, privatisation of ambulance services as well as government travel and entertainment expenses and use of credit cards. Moreover, the value of FOI lies not only in actual disclosures but also from the salutary effects of the continuous potential for disclosure.

The problems with FOI begin with the balance that the legislation strikes between disclosure and the protection of countervailing government and third party interests. Numerous, broadly-worded exemptions providing grounds to deny access to information mean that legislation that is designed to promote access to information is often insufficiently weighted in favour of disclosure in the first place.

Governments tend to be ambivalent at best or hostile at worst towards FOI. In general, legislative change has weakened rather than strengthened it. In Victoria, post-1992 amendments have, apart from the extension of FOI to local government, reduced the scope of FOI, for example, by broadening exemptions, or created disincentives to its use, for example, by increasing the fee to lodge an appeal.

The changing nature of public sector administration reduces the scope of FOI as a tool for accountability. Neither privatised entities nor private sector organisations with whom governments contract for the delivery of services are covered by FOI. Moreover, FOI applications to government departments that deal with privatised or private sector bodies are increasingly being refused on grounds of commercial confidentiality. The final report of the outgoing Victorian Auditor-General, tabled in Parliament in late May 1999, criticised the culture of commercial confidentiality in government dealings with the private sector, warning that such secrecy prevents public scrutiny of financial arrangements and harms accountability.

The existence of FOI legislation is only the first step. How it works

in practice is the real gauge of the state of information access. Here too, problems abound. The Australian Law Reform Commission, and more recently, the NSW Ombudsman and the Commonwealth Ombudsman have identified numerous problems, including the misuse of exemptions, instances of an anti-disclosure culture, and poor training and systems. All have called for more resources for the ongoing monitoring of FOI administration. Without the collection and analysis of meaningful statistics, it is difficult to assess the health of FOI or to identify systemic problems.

FOI requires not just improvement but innovation if it is to remain relevant in the face of the significant changes in government and technology that have occurred since its inception. It is clear that any revisitation of FOI must tackle the changing shape of government and service delivery. There have been many good reform proposals over the years but most have been ignored. There is much too that can be learned from overseas, both from the experiences and proposed models.

Incongruous as it may seem, there are real risks of information loss and new barriers to information access in the Information Age, notwithstanding its promise of information abundance. Laudable as developments such as data protection legislation and the availability of government information online are, they do not eliminate the need for a legislatively based right of access to information. We have not yet reached the stage where governments are so willing to disclose all information that is required for accountability that a formal application and appeals process is unnecessary.

Given the natural ambivalence of governments towards FOI, much of the impetus for change must come from outside. This is a role for all individuals, groups and organisations who care about fostering a culture of access to information.

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