

Another problem it referred to was the potential for breach of copyright if architectural plans and so on were copied from building or development files.

Council also noted that the protection under the Act in respect of actions for defamation, breach of copyright, criminal actions or personal liability, only related to determinations made in good faith under the Act. It believed, no doubt rightly so, that the previous policy would not afford its workers the legal protection conferred by the Act.

Council's final concern related to cost. It estimated that approximately 20% of the counter staff's time and 20% of a records person's time was spent in researching and pursuing information and files.

### Comment

The introduction of the more restrictive access policy is in one sense disappointing, as Byron had been viewed as a 'model council' which had implemented liberal Fol policies without mishap. Nonetheless, there is definite legitimacy to its concerns, particularly in relation to the release of personal information to a third party. Although the risk of defamation actions always seems to receive a disproportionately high amount of attention from Fol officers, it was no doubt proper for Council to consider its effect on its staff. In relation to considerations of cost, it should be noted that although Fol inevitably entails some expense, so do other mechanisms for providing information and so do policies which deny access. And although 40% of a person's time no doubt appears substantial to this local authority, there is no central agency collecting Fol statistics in NSW, and it is difficult to assess the 'reasonableness' of any Fol costs.

This recent decision merely brings the Council back into line with its fellow councils across the State. Hopefully, however, it will retain its generous attitude to release of information.

[A.H.]

### Reference

- 1 For further discussion of this general debate, see Villanti, P., *Freedom of Information and Local Government* (1990) 29 and 30 *Fol Review*.

## THE FoI AMENDMENT ACT

As reported in the April 1992 edition of *Fol Review*, the NSW Government recently committed itself to a number of amendments to the *Fol Act*. The changes were to be those outlined in the 'Memorandum of Understanding' which the three Independent Members of Parliament and the Government had signed to demonstrate that the political instability which some were saying existed in this State was no longer a concern.

The resulting *Freedom of Information (Amendment) Act* came into effect from 1 July 1992. It made a number of significant changes, including:

- reducing the 45-day statutory time limit for most responses to 21 days (s.1 *Amendment Act*);
- providing that some agencies previously totally exempt (e.g. the Independent Commission Against Corruption, the Office of the Director of Public Prosecutions and the Auditor-General) are no longer exempt in relation to their administrative functions (s.14);
- providing that the issue of Ministerial Certificates will be reviewed by the Supreme Court rather than the

District Court (s.8), and requiring the Minister, when issuing a Ministerial Certificate to give reasons and support the claim that the document is restricted (s.9);

- providing that it is not relevant to take into account the possibility of embarrassment to the Government, loss of confidence in the Government, or the applicant's confusion, misinterpretation or misunderstanding of the document in deciding whether giving access to the document is in the public interest (s.10);
- providing that refusals to process applications on the grounds of 'substantial and unreasonable diversion of resources' are reviewable decisions (ss.2-4);
- providing that where the Ombudsman investigates the conduct of a person in connection with a determination the Ombudsman may recommend either that it is in the public interest to give access to an exempt document, or that the agency change its Fol Procedures (s.6);
- removing documents exempt under Commonwealth and Victorian Freedom of Information legislation from the category of restricted documents, thereby removing the power of the Minister to issue a Ministerial Certificate in respect of these documents (s.12);
- removing the right of an agency to refuse access to non-personal documents on the ground that they came into existence more than five years before the commencement of the Act (s.5).

These changes generally apply to applications received after 1 July 1992.

The NSW Government had previously promised that the Act would be reviewed within two years of its commencement. Partly due to the closure of the Fol Unit, this review never occurred. However, it is likely that the changes resulting from any such review would not have been as significant as those contained in the *Amendment Act*.

Of course, there were some disappointments in these changes — for example, one of the key commitments in the memorandum was to apply the *Fol Act* to local government on the same broad basis as it applies to the State Government. Unfortunately, this promised change was lost somewhere between the Memorandum and the Amendment Act. Despite its inclusion in the Memorandum and previous commitment to this change by the Premier in 1990, local government is still only covered in relation to documents which concern personal affairs.

Nonetheless, these changes represent a definite improvement to the legislation from an Fol consumer/user's point of view.

[A.H.]

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