

# Freedom of information

– knowledge is power

By Richard Cumpston

The state and Commonwealth freedom of information Acts have sometimes proved very useful in getting actuarial reports and other non-personal documents. This article discusses some past wins and losses, and suggests tactics.

## WHY USE FOI?

As actuaries, we are sometimes asked to estimate the costs of changes to accident compensation legislation. Without the detailed actuarial reports routinely available to compensation schemes, reasonable estimates are usually impossible. Similarly, advice on the profitability of insurers is very difficult without the detailed statistics routinely supplied by insurers to APRA. Government agencies sometimes go feral, and detailed information may be needed to curb their excesses.

## VICTORIAN WORKCOVER AUTHORITY

When Labor unexpectedly won the 1999 Victorian election, with some campaign help from APLA members, it was clear that restoration of common-law rights to injured workers would be a priority for many lawyers. When we sought the most recent actuarial report under FOI, our request appeared unwelcome, and WorkCover lost our \$20 cheque. Ministerial intervention may have resulted in WorkCover eventually agreeing to our request, and waiving copying charges. Along with

WorkCover NSW and the Transport Accident Commission, it has since been very responsive to our FOI requests.

## AUSTRALIAN BUREAU OF STATISTICS

In 2002, the Productivity Commission recommended that Commonwealth information agencies answer information requests at marginal prices, and the Department of Finance introduced a policy to this effect. Noting in 2004 that the Australian Bureau of Statistics had not complied, we sought details of its prices. The

### PAST WINS AND LOSSES

YEAR	JURISDICTION	AGENCY	RESULT
1999	Victoria	WorkCover	Win
1999	Victoria	State Taxation Office	Loss
2003	Victoria	WorkCover	Win
2004	Commonwealth	Australian Bureau of Statistics	Win
2004	NSW	Office of the Protective Commissioner	Loss
2005	Victoria	Department of Justice	Win
2005	Victoria	WorkCover	Win
2005	Victoria	Transport Accident Commission	Win
2005	NSW	WorkCover	Win
2005	Commonwealth	APRA	Win
2006	Queensland	WorkCover	Loss



Photo © Bill Madden

Bureau receives very few FOI requests, and ours appeared unwelcome. Its response showed five different price schedules, none of which seemed 'marginal'. We drew this to the attention of the relevant minister, and more ABS data is now free, or available at low cost.

**OFFICE OF THE PROTECTIVE COMMISSIONER**

In 2004, we sought details of any current contracts between the Office and investment managers. Although such details are required to be disclosed on a central website under the Premier's Memorandum 2000-11, our request was refused.

**AUSTRALIAN PRUDENTIAL REGULATORY AUTHORITY**

On 13 December 2005, we sought from APRA copies of any submissions it had received about its proposed half-yearly general insurance statistics. On 23 December, it asked us to pay \$190, made up of \$30 for two hours of search and retrieval time at \$15 per hour, and eight hours of decision-making time at \$20 per hour. On 13 January 2006, it sent us copies of 25 submissions, and told us that 4 other submissions were protected documents under 56(2) of its Act. Eight hours of decision-making time had not been required, and it said it therefore would refund us \$135. Being actuaries, we failed to note that we had been over-charged \$25. But we did think it outrageous that an agency could invent any labour charge it thought fit, and demand it in advance. This appears to be a Commonwealth speciality, with no equivalent in NSW, Victoria or Queensland.

**VICTORIAN DEPARTMENT OF JUSTICE**

On 16 December 2005, we sought the tender specification for a consultancy on the administration of funds in court, and the consultant's draft report. On 18 December, the government's proposals to transfer administration from the Supreme Court Master's Office were criticised at a public meeting organised by guardians and beneficiaries with funds in court. On 19 December, the government withdrew its proposals. Our FOI request may have been one of many factors suggesting the wisdom of retreat.

**QUEENSLAND WORKCOVER**

On 6 January 2006, we sought Queensland WorkCover's actuarial report on claims outstanding at 30 June 2005, saying that we intended to use the report to assist public discussion about possible changes to workers' compensation benefits, in Queensland and elsewhere in Australia. Our request was refused under s475(2) of the *Workers' Compensation and Rehabilitation Act*, which says that the *Freedom of Information Act* does not apply to WorkCover's 'commercial activities other than activities about policies, applications for compensation, proceedings for damages'. We appealed to the Office of the Information Commissioner, on the grounds that the actuarial report was wholly or largely about applications for compensation and proceedings for damages.

WorkCover initially refused to provide a copy of the actuarial report to the Office on the Information Commissioner, saying that 'the report

is not released to any member of the government or the public'. On 15 August, the board secretary made a statutory declaration, including a number of interesting assertions, particularly:

'Parts of the Actuarial Report outline confidential internal policy decisions implemented by WorkCover ... If these internal policy decisions were made public, WorkCover would almost certainly need to revise the way it approaches certain classes of claim.'

On 31 August, the assistant information commissioner upheld WorkCover's refusal of our request, for the reason originally given by WorkCover. Concerned about costs, we decided not to appeal to the Supreme Court.

**GROWING USE OF FOI IN VICTORIA**

The 2005 *Freedom of Information Annual Report* for Victoria shows that FOI requests grew from 17,224 in 2000-01 to 22,493 in 2004-05. In 2004-05, WorkCover had 1,855 requests, and the Transport Accident Commission had 803.

**TACTICS**

FOI applications can be very good value for money. Some suggested tactics:

- Give a reason for your request, as this can sometimes reduce the fees payable.
- Quote the relevant section number of the *Freedom of Information Act*.
- Ask for appendices to documents, as well as the documents.
- Ask for documents in electronic form (WorkCover NSW's actuarial report has about 10,000 pages of appendices).
- If FOI is refused, try the chief executive or the Minister. ■

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We are grateful to Paul Mulvany for showing us the value of data, and to Meri Boskovska for doing the hard work for our recent FOI requests.