



Freedom of Information: locking or unlocking?

A few weeks ago the magazine of the Australian Consumers Association, *Consuming Interest*, published an article with the title 'FOI — the great dissuader'. Was this fair?

There is plenty of anecdotal evidence that individual inquirers have had problems. Sometimes this may have been due to obstructiveness by particular departmental officers. But should the rest of us be put off trying to use the legislation because of this?

In the last year for which published figures are available, 1988/89, 24 679 requests for information were received, 2750 fewer than in 1987/88. Of these requests, 77 per cent were granted in full, a further 20 per cent in part, and only 3 per cent were refused. This is very much the same pattern as in the previous year. A 97 per cent success rate for the inquirers does not make the operation of the Act sound too draconian.

There were big differences between departments. For example, the Trade Marks Office, the Patent Office and the Australian Electoral Commission granted in full or in part 100 per cent of the relatively few requests that reached them under the FOI Act. Some large agencies, like Veterans' Affairs, Social Security, DILGEA (Department of Immigration, Local Government and Ethnic Affairs) and Tax, with about 20 000 inquiries between them, granted 99.2, 96.8, 95.4 and 94.9 per cent of requests respectively.

The Federal Treasury and the Department of Defence, says the article, 'have gained a reputation for slowness, delaying tactics and obstruction'. But in 1988-89 Defence determined 471 requests under FOI and granted 93.2 per cent of them, although admittedly the statistics also show that nearly 60 per cent of the requests took more than 30 days (the statutory time for compliance), and a quarter took more than 90 days — slower by far than other departments. The Treasury only had 22 requests, but refused 16 of them. Well, we don't know what the inquirers were trying to get out of these departments.

Overall, nearly 82 per cent of requests were answered within the 30 days.

and only 3 per cent took over 90 days. Figures in the FOI report show that the proportion of requests dealt with within 30 days of receipt went up by 19 per cent between 1986-87 and 1988-89, and there are now only half as many slowcoaches.

Passing the buck...

One reason for delay may be transfers between departments: the Attorney General's Department picked up 15 of the 43 requests it dealt with on transfer from elsewhere in government, and generally the 30 day limit had already expired when they were received. Frustrating for the inquirer, you may say — just passing the buck. But is it that? Or is it that the cumbrous government machinery is trying to do the best it can with what it has?

An important right under FOI is the request to have personal records amended. In practice, remarkably few people take advantage of this — only 100 in 1988-89, a decrease of 45 per cent on the previous year. The rate of usage of this right, says the report, 'is substantially below expectations'. But only 44 amendments were granted, and 22 were still outstanding when the report was written.

Charges for searches under FOI are a thorny topic, but in 1988-89 they were only collected in 15 per cent of cases, and the amount collected was only \$256 471, representing only 2.5 per cent of the cost of the FOI Act, and slightly down on the previous year.

Appeals are the right of those whose requests have been refused. In the report, we read that fewer than 5 per cent of adverse decisions were challenged in the Administrative Appeals Tribunal (AAT). About the same number went to internal review by the refusing agencies, with concessions being made in almost half the cases.

The AAT only set aside the agency decision in two cases out of the 43 reported, and affirmed the decision in ten cases. In four cases the agency conceded, but in the remaining 27 cases the applicant withdrew, in a handful of instances with full or part concessions by the agency.

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A·L·I·A 1990
1st Biennial Conference
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at the Perth Concert Hall

...or doing their best?

What message do we draw from this? Certainly, that if you or those who ask your advice have a request you would like to raise under the FOI Act, don't be put off by the horror stories — most requests go through. You may have to be patient, and persevere, but most departments are trying to be helpful: after all, their FOI performance is a matter of public record, they want to keep their statistics looking good, and they will help you formulate your request by explaining the documents they hold and how you can use them.

The great dissuader? That isn't what the figures tell us. 

(see also Jan Heath's *Frontline* on page 2)