

Managing Information Access in A Democracy: The Challenges

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The Challenges

- Democratic
- Historical
- Supply and Demand
- Information Flow
- “Letting Go”
- Engagement
- Information Management

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The 1991 FOI Act – The Promise and the Potential

• *Section 3*

- The object of this Act is to **improve democratic** government in Tasmania –
- (a) by **increasing** the **accountability** of the executive to the people of Tasmania; and
- (b) by increasing the **ability** of the people of Tasmania to **participate** in their governance.

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- In the High Court In 1992 Mason J argued in the judgement of *Australian Capital Television Pty Ltd v Commonwealth*:
- *...elected representatives have a **responsibility** not only to ascertain the views of the electorate but also to explain and **account** for their decisions and action in government and to inform the people so that they make **informed judgment** on relevant matters.*
- This echoes Malcolm Fraser, who said in 1976:
- *If the Australian electorate is to be able to make **valid** judgments on government policy it should have the **greatest access to information possible**. How can any community progress without continuing and intelligent debate? How can there be debate without information.*

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A few historic challenges

- 1992 Cabinet Meetings
 - Secret committee of advisers to advise on political impact of FOI Act
 - Proposed sunset clause ending FOI Act in Dec 1994
- 1992 Amendments
- 1993
 - March -Ministers, ministers, Heads to look at all proposed releases only those approved by Minister to be released
 - March 4th Cabinet meeting– proposals to amend FOI Act
 - Guidelines redrawn for revision
 - August – beginning of a major effort to amend the Act – correcting Ombudsman decisions
- 1994 Groom Counterattack
- 1996 The Rundle Cabinet Shuffle
- The Forestry Holiday from FOI
- The Bacon-Lennon years
 - Disinterest in reform
 - Limited reactive release
 - The Ministerial Shredder and Delete Buttons
 - The Hoults Reflections – domination of verbal and 'preferred' advice

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Supply and Demand

- Supply
 - Increasing from a very low base
 - Focus on Agency need
- Demand
 - Selectively met
 - Once-off

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Supply and Demand – in a new era

- Supply
 - Avoid dump truck approach
 - Need more than simplified access to raw and unprocessed information
 - Focus on agency and user needs
- Demand
 - Predict and shape
 - Responsive
 - Value added

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Possible elements of a new FOI supply strategy

1. Anticipate disclosure policies while designing electronic record and document management systems (ERDMS). Tag and structure records with possible disclosure in mind, and build publicly accessible search interfaces into ERDMS systems. (Alasdair Roberts)
2. Require that there be "access impact assessments" (just as there are privacy impact assessments) before new databases are constructed by governments. Eg, will the database be configured to allow reasonable access to data fields? Especially important with contractor-supplied database programs. Does the procured software anticipate public access as one of the "business needs" for the database? (Alasdair Roberts)
2. Working documents exemption should (NSW Ombudsman Discussion Paper)
 - Be narrowed to policy formulation - not coverage of consultations and deliberations
 - If an exemption claimed government should provide a summary of the policy under development
 - Limited application of exemption ceases when
 - Final position reached
 - Decision made
 - No longer any ongoing consideration

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The Users

FOI Version 1.0 1966 - 2008	FOI Version 2.0 2009 - ?
Single user Slight but increasing problem of vexatious or excessive users	Multiple users and types More effective controls and filters to manage heavy use
Distribution to applicant - applicant's resources, inclination, purposes, skills and connections determine if any wider dissemination	Distribution to public at large and onus on agency to disseminate highest quality information
User blindness Fishing expeditions or wide sweeps for information a rational but rarely effective option	User able to target Fishing expeditions or wide sweeps for information generally not required or based on more effective intelligence if deployed
Low trust in the administrators	Increased trust a key objective

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Information Flow

- Focus has been on a relative static concept of information
 - Request for information decision to release or not
- Little attention to information use, distribution, or changes in flow and quality
- If information is a state resource important for us to map, track and ensure a reliable flow

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“Letting Go”

- Allowing users to access and aggregate government databases
- Reassessing future potential revenue gain against improved discussion, debate and analysis

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Engagement

- Level
- Type
- Expectations

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Information Management

- A modern, rigorous and client focused stewardship requires:
 - Use of technology as an enabler in service delivery across the system;
 - Well resourced/dedicated program;
 - Increase capacity to achieve and promote proactive, informal and routine disclosure of information;
 - Full integration of the new duty to assist;
 - Target systemic issues more efficiently;
 - Improve intra-governmental consultations;
 - Appropriate performance measurement;
 - Effective oversight body;
 - Re-engineer the investigative process - including towards pro-disclosure and ensuring information flow

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A new debate – Peter Timmins Open and Shut blog

- “But the debate (as picked up to some degree in the Queensland Solomon Report Chapter 3) these days has in some respects moved on from a good law that fairly balances the right to know and the imperatives of good government. The discussion is about government wide information access policies; the linking of public access considerations to an approach to information and communications technology management that is geared to reflect the changing sensitivity of information over time; access to search tools that would enable the citizen to search for government-held information of interest; improved access to digital information including government databases that might promote investigative reporting and further action by those outside government to achieve government policy objectives. And agency score-cards, performance agreements with chief executives, and penalties for obstruction.”

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