Open Government – missing the target by a country mile

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Environment ACT and ACT Forests claim it will cost $3310 to process a FoI request by the Canberra Times to obtain documents associated with the Government’s decision to revegetate the lower Cotter River catchment after the 2003 bushfires. It also sought details of ‘grants and agreements’ between ACT Forests and Greening Australia. The request followed claims by prominent environmental scientists that the ACT Government had ignored expert advice on preventing erosion. Scientists had also questioned the effectiveness of government-sponsored tree planting programs in the catchment. ¹

ACT Chief Minister Jon Stanhope saw little wrong with either the price tag or the way the ACT Freedom of Information Act 1989 was applied to the Canberra Times request. In the Chief Minister’s eyes this was a reasonable cost to pass on, especially to media organisations, as FOI requests took staff away from their normal business.

This is only one more example of the common practice, at all levels of Australian government, to use fees and time delays to deter individuals and organisations, especially media outlets, from effectively using FOI legislation. Our political and bureaucratic leadership fail to see the paradox that, after 21 years of FOI in Australia, quick access to the majority of government held information is seen as an unnecessary and unwelcome interruption to normal business, rather than as an essential part of government accountability.

Openness is treated as the exception rather than the everyday right of citizens, despite lip service to the democratic principle of popular control of government.

In an information age it is a sad testimony to the power of secrecy that a government can generate a bill of $3000 to gather basic information about an important environmental issue. Of greater concern is a government managing its information on the basis that all information is to be treated as secret and only with great time, effort and expense can the ‘for government eyes only’ tag be removed.

In a sweet irony the Chief Minister noted, in his press release (20 April), that:

‘The ACT’s FOI regime is comparable to those of the States and compares favourably with the Commonwealth Scheme’ Mr Stanhope said. ‘Right now, the Commonwealth Department of Transport and Regional Services is asking me to pay a charge of more than $11,000 for the release of documents relating to studies of future land use in the Majura valley, around the airport.’

At two levels of government—involving two major public interest topics, a Chief Minister and a major newspaper—we have fees, time delays and excessive secrecy operating to undermine the legislative objectives of both the ACT and Commonwealth Freedom of Information Acts. Denis O’Brien has argued that Freedom of Information law is in need of an overhaul. O’Brien suggested that ‘since its enactment, the capacity of the FOI Act to deliver on its promise of more open government has been a matter of controversy.’

Yet the greatest damage is done not by trying to work with an antiquated and seriously flawed Act—the Australian Law Reform Commission and the Administrative Review Council proposed 106 major and urgent reforms in early 1996 to the Commonwealth Act. Rather it comes from relying on administrators and government ministers unable to tolerate even a minimal exposure to informed scrutiny. The McKinnon cases where conclusive certificates prevented access to basic economic analysis, the Canberra Times attempt to access Cotter River catchment details and Jon Stanhope’s own Don Quixote-like re-enactment involving land use in the Majura Valley, all send an unmistakable message. Open government in Australia is the exception rather than the rule.

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Applicants for any information, other than their personal affairs information, will face twin tasks each almost insurmountable on its own. First, navigating legislation more noted for its failure to deliver timely access to high quality information than informing public dialogue. Second, pursuing a request through the various administrative hurdles (fees, time delays and blanket exemption assertions) that are deliberately placed in the path of requestors. Where the hurdles are non-deliberate they occur because administrators consider providing access to information to be an unwelcomed optional extra in their daily tasks. Other dedicated FOI officers are unable to command the resources needed to adequately perform this vital function of ensuring an informed public and fourth estate.

The administrative effort, expertise and creativity in Australian public administration appears more focused on the management of secrecy rather than the provision of reliable and accurate information to citizens. Whilst the ACT government cannot or will not employ even a single full-time FOI officer, according to the Chief Minister, it has no hesitation in swamping the public payroll with government advisors, departmental liaison officers and departmental media officers. Throughout Australia a full-time FOI officer, dedicated to opening up government held information, is seen as an almost unaffordable luxury yet spin doctors are now considered essential.

Whilst legislative change is vital, and long overdue, it is not a cure all.

Public policy makers, according to Stiglitz, are undermining their own efforts if they allow information asymmetries to persist. The Canadian Access to Information Review Task Force argued in 2002 that Freedom of Information should be seen as, administered and funded on the same basis, as any other program of government (health, education, transport etc). In an information age it seems axiomatic that removing as many barriers as possible to the free flow of reliable and high quality information would be a central and

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4 <http://www.atirtf-geai.gc.ca/report2002-e.html>
pressing objective of government policy. Yet government leaders like Jon Stanhope seem content to preside over a governmental information system that allows public discussion to be fuelled by a media that has to rely on leaks, rumours, and speculation to discuss issues like soil erosion in the Cotter River catchment.