Freedom of Information

46

ISSN 0817 3532 ISSUE No. 95

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Credits

The *Freedom of Information Review* is published six times a year by the Legal Service Bulletin Co-operative Ltd. Articles in the *FoI Review* are refereed.

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Print Post approved PP:338685/00011

This issue may be cited as (2001) 95 *FoI Review*

Comment

The new Northern Territory government has delivered on an election promise by tabling a discussion paper and draft Bill for an Information Act. The deadline for comments on the proposed legislation is 28 February 2002. Copies of the discussion paper and draft Bill can be obtained from:

The Director, Policy Unit
Department of the Attorney-General
PO Box 1722
45 Mitchell St
Darwin NT 0801

The Attorney-General, on ABC Radio, claimed that the proposed legislation is state of the art but has said that the government is willing to modify it after receiving feedback.

The key feature of the Information Bill is that it provides a framework for the management of government information in the Northern Territory by a single, comprehensive legislative package which deals with freedom of information, privacy and records management. This comprehensive or holistic approach to information certainly takes Australian information practice into a new era. Possibly there are some advantages to being the last cab off the rank if notice has been taken of the experiences and reform ideas of other jurisdictions. I have yet to see the Bill so my comments are a reflection on the details contained in the executive summary.

First and foremost, the government, in its executive summary and press comments, seems committed to treating access to information as a positive benefit to government and creating a culture of positive and proactive compliance. The Canadian Information Commissioner in his Annual Report 2000/2001, has linked the strength and resilience of good compliance to the attitude of ministerial and bureaucratic leadership:

> Finally, the senior management cadre must realize that the attitude its members express towards access rages like a grassfire through a department. If employees feel that compliance is not a priority for the leaders, increasing instances will be seen of delays, inflated fees, antagonism towards requesters, inadequate searches, increasing numbers of complaints and more visits from my investigators. When the leaders decide not to keep minutes of meetings, and advise others not to write things down, when they perpetuate the myths about abusive requesters, when they tolerate giving the Minister's needs priority over legal rights, when they do not foster a culture of openness in general their employees get the message loud and clear.

These are promising beginnings in the Northern Territory. This degree of optimism and strong support is not uncommon in the lead up to the passage of FoI legislation. The trick is to preserve and promote it after it comes into operation.

The government claims there is a general presumption that it is in the public interest for access to information to be granted unless some harm to the public interest can be identified. Whether this will operate like the New Zealand general public interest test is unclear. In addition, it appears unlikely to apply to all exemptions.

The government proposes to create an Information Commissioner who will promote access to information and privacy practices. The powers and functions appear to be in line with other joint FoI–privacy positions in Canada.

Concerns

The executive summary and the Attorney-General have both been silent about the nature and operation of the fee regime. It is to be hoped that they will adopt the Australian Law Reform Commission and Administrative Review Council recommendations on fees. Queensland has recently announced an increase in application and search fees. Research around the world is fairly consistent in demonstrating the price sensitivity of FoI requests.

The Bill proposes to exempt executive information — Cabinet, Cabinet committees and Executive Council. No detail is provided as to whether Cabinet material will be completely exempt or whether factual material will be able to be released. Furthermore, it is not clear whether there will be a time limit on the Cabinet exemption as with other jurisdictions (whether a 10 or 20-year limit). It is also to be hoped that there are tight qualifying provisions on what constitutes Cabinet information — avoiding the loopholes in the Queensland legislation. It was probably too optimistic to expect that the Northern Territory would be the place to think outside the square and adopt a more evolutionary approach to Westminster.

Unfortunately the Bill provides for the Chief Executive Officer of the Department of the Chief Minister to issue exemption (conclusive) certificates for:

Cabinet materials,

security and law enforcement information, and

privacy and cultural information.

More problematic is that Ministers have the power, delegable to their chief executive officers, to issue an exemption certificate in relation to deliberative process documents. The one offset is that the certificate cannot be issued once a complaint to the Information Commissioner has been lodged.

In summary, at first glance this looks to be an innovative and forward thinking approach to information management. The pro-disclosure commitment and a well-resourced Information Commissioner has the potential to give the Territory an excellent foundation for open government and high quality information practices. The link to privacy and records management will allow information policy to operate far more smoothly. Look at the Annual Reports of the Ontario Information and Privacy Commissioner to get a feel for the potential.

In my opinion too many concessions have been made as to the type and degree of information that will be exempted from FoI. The number of areas where exemption certificates can be issued is a major concern especially in connection to deliberative process documents.

I urge all readers to obtain a copy of the full Bill and forward their comments.

Rick Snell

Executive transparency in Belgium

Constitutional reforms in Belgium have further entrenched the notion of executive transparency in recent times. Implementation of a new article in the Belgian Constitution has necessitated action not only at a federal level, but also throughout the Belgian communities and regions. Although not strictly uniform in approach, all Belgian legislatures adopt generally consistent models in structuring the freedom of executive information access channels. Interesting differences also abound, and warrant further discussion. This article outlines the executive transparency paradigm in Belgium in light of all such issues.

Belgium's constitutional reforms in context

Belgium's delay

While some Western European countries had introduced general legislation dealing with executive transparency by the late 1970s,[1] Belgium was not among them. Executive constitutional reforms, in particular, absorbed a considerable amount of political energy, resulting in the transformation[2] of Belgium into a federal state, including the creation of a whole new range of institutions.[3] The essence of the transformation is depicted in *Figure 1* below.

The three communities (refer *Figure 1)* are generally responsible for cultural matters, as well as for other issues closely linked to citizens' linguistic background.[4] In contrast, the three regions are generally responsible for economic matters, in addition to town and urban planning issues.[5] The so-called 'residuary', or non-assigned competencies/responsibilities, remain at the federal level until such time as parliament decides otherwise.[6]

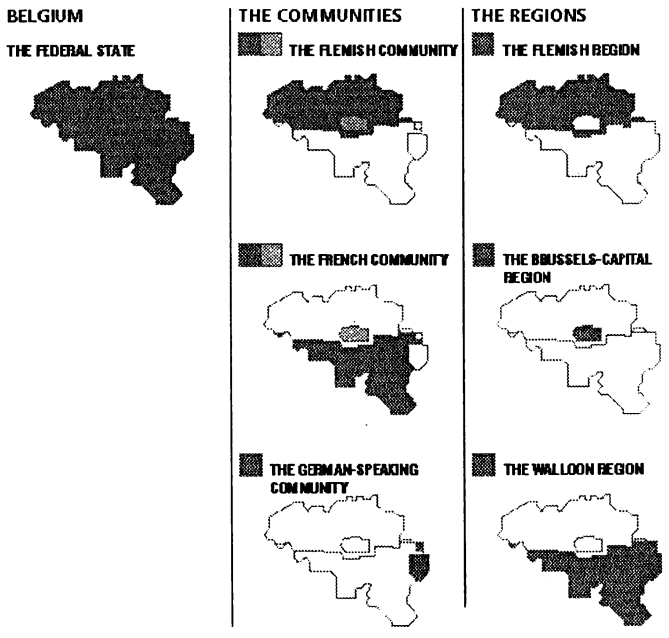

Figure 1. Division of Belgium following its transformation into a federal state.

Changing the relationship with the citizen

Increasingly obvious in the Belgian state, was the fact that the relationship between the authorities and the citizen was clearly falling short of general expectations. Inciting, and reinforcing the urgency of the need for change, was the *Vlaams Blok* party, a populist extreme-right wing movement in Flanders. The response which then ensued was twofold. Firstly, public rights vis-à-vis