

# A psychology of secrecy

What I want to talk about are the contrasts I've noticed in my experiences between Australia and America, and in particular about the different ideas in the two countries about the public's right to know what its servants are doing.

Once you've been a foreign correspondent it is impossible to stop thinking like one, and the chief characteristic of foreign correspondents is that everything looks strange. For a foreign correspondent nothing is normal.

So now I'm back in Australia, I find I'm dealing with this country as if it were a foreign country. I keep wondering why Australians are such strange people and why they behave the way they do. In fact that mind-set turned out to be very useful journalistically.

## Openness of American system

Americans take aspects of their system for granted. They're very proud of the openness of their system because, they believe, it allows political wrong doing to be discovered. They're confident they'll find out what is really happening in their government because the politicians and the public servants are committed to the principle of the public's right to know.

The power of this idea really was what astonished me most about working in America; it is a journalist's paradise. I never had any trouble getting information on anything I wanted. The people I spoke to had nothing to gain from talking to a reporter from an Australian newspaper. They simply believed that explaining themselves is part of their job in a democratic society.

## Secrecy in Australian system

In my experience it is the opposite here. Australian journalists expect the public servants, and, for that matter, bureaucrats in private business, to say 'I can't talk about that'; 'I have to get approval from the Minister, or from the Managing Director'; 'You're not entitled to know that'; 'That's not part of the press release'; 'The Chief Executive doesn't talk to the media and the Public Relations Director is away', and so on.

Our public service and our businesses are imbued with a psychology of secrecy. It's my feeling that we are still living in the convict era when the colonial administrators thought that the best way to run the society was in secret, and anyone who asked a question was a nuisance.

I used to take that secretiveness in Australia for granted; that's just the way a public service or a business must run. The Americans do not take it for granted; they take openness for granted. They come at the issue from the opposite point of view.

Here, if a public servant refuses to provide information he or she is just being efficient, and is probably rewarded for his or her actions. In America if a public servant refuses to provide information, he or she must have something to hide. The same would apply to officials in American companies. I'll give you a personal example of how openness works in American society.

## An example

You might recall in late 1986 the NSW Government announced that it was going to allow a casino to operate at Darling Harbour and it had awarded the licence to an

American company called Harrahs. The Government said that it had thoroughly checked out Harrahs and it was the ideal organisation to run the Sydney casino. I decided I would do a feature on how Harrahs ran its casino in Atlantic City, on the assumption that it was going to be fairly similar to the Sydney operation.

I phoned up the Chair of the Casino Control Commission which is the administrative body that oversees the casinos, and I asked, 'Could we talk about the background on how casinos run?' and she said, 'Yes, sure, come over for lunch', which is quite an unusual reaction right away for a public servant, in my experience.

So we were having lunch and talking in general terms about the way casinos operate. Journalists will always ask these questions and try it on so I said, 'I don't suppose there are any problems about Harrahs are there?' and she said, 'Oh, they're a very efficiently run company - well apart from the current allegations', and I said, 'What do you mean the current allegations?', and she said, 'Oh you don't know that they use the Mafia to solve their union disputes?'

I thought, 'Well this is one of those moments in a journalist's life when you think there might be a God; when something is about to open up from the sky!' And so I asked, 'Have you got some information on that?' and she said, 'Yeah sure, what's your fax number and I'll fax you our documents'.

Well, that I felt was quite an unusual response, and indeed she did. I said to her, 'You of course passed all this on to the investigators from NSW'. She said, 'Well, we didn't have any enquiries from NSW'. And I said, 'What nothing?' She checked back in her office, and said 'No, nobody enquired'.

Then she said 'But of course they may not have directed themselves to us because the New Jersey Police Department is also running an investigation into Harrahs. They may have spoken to them'.

So she referred me to the appropriate officer in the New Jersey Police Department and he said, 'Oh yeah we've got a good file on Harrahs. We'll fax it over to you'. I asked, 'Well, you did send that to the investigators from NSW?' He said, 'Well, no they didn't ask us about that. We did actually get a letter from NSW, I think, from the Department of Treasury and they asked us for a copy of the legislation controlling the casinos in the State of New Jersey. But no questions about Harrahs itself. Of course, they may have directed themselves to the FBI because they're running an investigation'.

So I phoned the local FBI Senior Agent and he again sent me a great deal of material about Harrahs. So then I thought it would be sensible to find out from the source what this was all about. I tracked down the man who, on Harrah's behalf, had been running the casino at the time of these allegations. He was at this stage working in the Bahamas at a different casino. Well such is the attitude about talking in America, this guy spoke to me for an hour on the phone about what had been happening at the time when the Mafia had been solving their union disputes and he said, 'Yeah I did wonder about these guys a bit, you know, but they were so fast!'

And so all that information resulted in a couple of stories in the *Sydney Morning Herald* and there was a bit of fuss about it over here.

As a sequel to the stories appearing in the *Sydney Morning Herald* I got a phone call from the FBI man I had spoken to and he said, 'Oh, I've been sent copies of your articles. Very interesting. Did you speak to that guy from Harrahs?' I said yes. He said, 'Have you got that on tape?' I said, 'Yes, I taped the phone conversation'. He asked 'Could you send us a copy of the tape?'

Now it seemed to me that FoI has to work both ways. The man I contacted spoke entirely on the record. I could, if I wished, publish the entire transcript of everything he said to me on the tape. As there was nothing secret about that conversation, I made a copy and sent it over to the FBI. I gather it has been helpful to them since then.

The right to know — make it a political issue

I wondered if any of this could have been discovered by a journalist operating in Australia. I suspect that if anybody had rung public servants involved in the decision about the casinos they would have said, 'We can't talk, you have to check with the Minister', or they'd have said 'Of course we made enquiries', 'Don't be a nuisance', or 'Typical of you journalists to have suspicious minds'; and I don't think anything would have emerged from it.

So you see why I admire investigative journalists in Australia more than I do those in America, because there the information is yours for the asking. The people that I spoke to felt that they had an obligation to talk, and could see no reason to be secretive about any of the activities going on.

We can laugh at all that Mafia stuff, but let me come back to my main point which is about the difference between America and Australia in openness. Politicians talk about FoI laws when they're in opposition and it all fades away when they get into government.

Then we go back to the colonial mentality which is: why should we tell the inmates of the prison what we're doing, it's none of their business. The Wran government had FoI

legislation sitting on the table for 10 years and never actually brought it before Parliament. Nick Greiner actually did put through the legislation, so he did something.

You probably remember the case of Phillip Arantz, the policeman who was sacked from the force in the early 1970s because he gave out accurate figures on the clear up rate for crime. Well, he's had his compensation.

Now tell me, do we now have an automatic right to that information? Or is it still at the whim of the government to release crime statistics? They seem to me to still be released at the convenience of the government unless outside bodies like federal research organisations are able to find them out. We're not entitled to know them unless the government judges that they will suit its interests.

In America it's not in the hands of the politicians; those statistics just come out. It's not assumed to be of any concern to the politicians. If it looks bad for them, well tough luck. It is part of the mechanism of the public's right to know that you will be always able to find out the clear up rates for crime in say, New York City.

Now I'm not suggesting that this is a problem for just a few journalists who can't get stories, I believe all citizens are being deprived of information which would allow them to judge if the people they elect and pay are doing their jobs properly. We let it happen because we take the system for granted.

So I'm suggesting we all become foreign correspondents, stand back, realise this is not the natural way it has to be, and make the right to know a political issue. There may be a lot of things wrong with America, but in this case they have a great deal to teach us.

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## VICTORIAN FOI DECISIONS

### Administrative Appeals Tribunal

#### HALLIDAY and CORPORATE AFFAIRS

(No. 90/04546)

**Decided:** 31 January 1991 by J.M. Rosen (Member).

*Request for access to documents relating to investigations into companies in which the applicant was a director — claims for exemption under ss.30(1), 32(1), 33(1) and 35(1)(b) — request for statistics — whether s.19 applicable.*

The applicant, who had successfully appealed against an order prohibiting him from being a director which was made following his conviction for breaches of the *Companies (Victoria) Code*, requested access to documents relating to investigations carried out by the respondent.

The Tribunal upheld claims for exemption under s.33(1) in respect of two documents which contained personal details about two individuals, both of whom objected to their disclosure. In so doing, it applied the definition of 'personal affairs' and to the principles for determining the reasonableness of disclosure which were expounded in *Re Page and Melbourne Transport Authority* (1988) 2 VAR 243. It also upheld a claim under s.33(1) in respect of parts of a document which contained information about the personal affairs of the applicant's estranged wife, but ordered the disclosure of the remainder on the basis that it contained factual material which was on public record.

Further claims for exemption under s.32(1) were upheld relating to an em-

ployee solicitor's file note which detailed possible offences by the applicant and the evidence required to prove them and another document which contained legal advice in relation to proposed legal proceedings.

The Tribunal also upheld a claim under s.35(1)(b) in respect of a note describing an investigator's interview with a third party. It expressed the view that it was in the public interest for people to provide information to assist an agency such as the respondent in prosecuting possible breaches of the law and that, while there might be circumstances where there was a countervailing public interest in a person knowing the substance of an allegation against him, they did not exist in this case. It, however, rejected various