

11 September 1992

The Big Scrub Environment Centre
149 Keen Street
LISMORE NSW 2480

Via Facsimile: (066) 222676

Attention: Aiden Ricketts

Dear Aiden

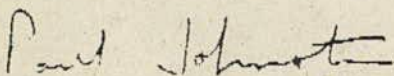
As discussed with Mike Hickman, attached are two lists of documents. The first list ("A") contains documents which are available without the need for a Freedom of Information ("FOI") request. The second list ("B") contains documents which will require the lodging of an FOI application.

In respect of list "A" the relevant Forestry Commission Office should be contacted by telephone to determine if the required documents are readily available and the cost of acquiring same. If the document(s) required are not readily available the Office will phone back with time and costs details of making the document available.

Documents within list "B" require an FOI application. However, in respect of the Big Scrub and Megan Edwards' existing applications it is intended to provide you with decisions of these in about two weeks. As discussed it may well be that some "grey" areas exist and it would be the Commission's intention to resolve these (possibly by way of meetings) at the earliest possible time.

A copy of this letter and the lists has been forwarded to David Watson of the Ombudsman's Office today.

Yours faithfully



Paul Johnston
MANAGER, PLANNING AND SUPPORT

PJ:BIGSCRUB

"A"

FORESTRY COMMISSION DOCUMENTS

Documents listed below are available without a formal request under the Freedom of Information Act. See footnotes *, 1 and 2 at end.

ANNUAL REPORTS

BUSH TELEGRAPH

DIAGRAMS D1-2

EDUCATION SHEETS ES1-ES20

EXOTIC SOFTWOOD PLANTATION POLICY 1982

EXTENSION INFORMATION LEAFLETS - NOs X1-X52

FOREST PROTECTION SERIES

GENERAL PUBLICATIONS G1-G26

INDIGENOUS FOREST POLICY 1976

COMMISSION PUBLICATIONS BOOKLET

MANAGEMENT PLANS - as per attached list

NURSERY INFORMATION

STATE FOREST MAP SERIES PUBLISHED AT 1:25 000

(These provide information on location and extent of State forests and their road networks and land tenure information)

SUMMARY SERIES

TREE NOTES TN1-TN18

TREES ON FARMS SERIES

"YOUR FORESTS FOREVER" SERIES

FIRE PROTECTION SERIES F2-F5

FOREST RESOURCES SERIES

PUBLISHED RESEARCH PAPERS

TECHNICAL PAPERS

TECHNICAL PUBLICATIONS (some)

WOOD TECHNOLOGY LEAFLETS

BOOKS, MANUALS, BROCHURES, RESEARCH NOTES, PAPERS AND
VARIOUS TECHNICAL PUBLICATIONS AS LISTED IN THE MOST RECENT
FORESTRY PUBLICATIONS BOOKLET

CORPORATE PLAN 1990/93

CODES OF LOGGING PRACTICE

CURRENT SOIL EROSION MITIGATION CONDITIONS

EQUAL EMPLOYMENT OPPORTUNITY POLICY

FERAL PIG REPORTS

FOREST GRAZING POLICY

INTERNAL AUDIT POLICY

POLICY STATEMENTS 1-26 - as listed below

SECTION 10 EMPLOYEES GUIDE TO THE FORESTRY COMMISSION OF NSW

SICK LEAVE POLICY

WEATHER RECORDS

- 3 -

COMPARTMENT MAPS 1,2

FOREST TYPE MAPS 1,2

PREFERRED MANAGEMENT PRIORITY MAPS * 1,2

only after RO approval

access through DF only

LOGGING HISTORY MAPS 1,2

access through DF only

FIRE HISTORY MAPS 1,2

access through DF only

TREATMENT HISTORY MAPS 1,2

MARKETING BULLETIN, INCLUDING ROYALTY RATES 1,2

OPERATIONS MANUAL 1,2

ANNUAL FOREST MANAGEMENT REPORTS 1,2)

ENVIRONMENTAL ASSESSMENTS/REVIEWS)

AND/OR ENVIRONMENTAL IMPACT REVIEWS)

WHERE AVAILABLE 1)

) access through DF only

FIRE SUPPRESSION PLANS 1) only after RO approval

FUEL MANAGEMENT PLANS 1)

HARVESTING PLANS * 1)

ORDERS OF WORKING * (CURRENT YEAR) 1)

CLEAN WATERS ACT LICENCES * - available at relevant Regional Offices

NPWS LICENCES *

Notes: documents are only available when formally approved - drafts will not be supplied.

* - subject to amendment - valid as at date of supply.

The relevant office should be telephoned prior to visit to check that documents are available.

1. Documents only available by prior arrangement with the District Forester, and only when formally approved.
2. In some cases maps cannot be copied - hence available for inspection only. Coloured copies generally not available.

- 5 -

POLICY STATEMENTSITEMSUBJECT

- 1 PREPARATION OF POLICY STATEMENTS
- 2 TREE NURSERIES
- 3 WILD DOG MANAGEMENT
- 4 TREES ON FARMS
- 5 FUEL MANAGEMENT IN INDIGENOUS FOREST
- 6 INTEGRATED HARVESTING IN HARDWOOD FORESTS
- 7 FIRE MANAGEMENT AND CONTROL
- 8 ELIMINATION OF ALL FORMS OF HARASSMENT
- 9 USE OF STATE FOREST BY RECREATION VEHICLES
- 10 HEARING PROTECTION - OPERATIONS ON CROWN TIMBER LAND
- 11 EXTRACTION OF FOREST MATERIALS ON STATE FORESTS BY
OUTSIDE BODIES
- 12 RADIATA PINE PLANTATION PRUNING
- 13 STAFF DEVELOPMENT AND TRAINING
- 14 TIMBER VALUATION FOR OTHER GOVERNMENT DEPARTMENTS
- 15 WILDLIFE CONSERVATION
- 16 NATIVE FOREST PRESERVATION
- 18 SAFETY
- 19 SAFETY HATS
- 21 FOREST HEALTH
- 22 HUNTING WITHIN STATE FORESTS, TIMBER & FLORA RESERVES
- 23 USE OF FIREARMS WITHIN STATE FORESTS, TIMBER & FLORA RESERVES
- 24 FORESTRY COMMISSION NON-SMOKING POLICY
- 25 FIREWOOD
- 26 CONTROL OF FRAUD & CORRUPTION AGAINST THE FORESTRY
COMMISSION

FORESTRY COMMISSION OF N.S.W.

Freedom of Information Act 1989

The following is a list of categories of documents for which an F.O.I. Application is required. The list is not necessarily exhaustive, but is intended as a guide only.

Inclusion on the list should not be taken to imply that a document will be released or that exemptions will be claimed.

1. Documents which might be exempt under Schedule 1 of the Act. Documents commonly sought in this category are:
 - (a) documents requiring consultation with third parties, e.g. timber licences,
 - (b) documents which might affect the conduct of research (this includes any document relating to research which is not yet completed),
 - (c) internal working documents,
 - (d) documents containing confidential material,
 - (e) documents which might affect financial or property interests of the State or an agency.
2. Documents contained in files. Access to documents on files can only be given after the file has been examined by a Commission officer to ensure that there are no Cabinet documents, documents requiring consultation, or other potentially exempt documents.
3. Broad categories of documents.
4. Draft documents.
5. Documents which relate to future decisions.
6. Reports prepared by the Commission which are still under consideration by Managers.

INFORMATION AVAILABLE TO THE PUBLIC

- 1) CURRENT HARVESTING PLAN
- 2) ANNUAL REPORTS ONCE R.O. HAS COMMENTED ON DISTRICT'S DRAFT REPORT
- 3) ORDER OF WORKING FOR NEXT 12 MONTHS
- 4) CURRENT TIMBER LICENCES
- *5) QUOTA SCHEDULE AND PARCEL ALLOCATION
- 6) COMPARTMENT MAPS
- 7) POLICY DOCUMENT
- *8) PMP MAPS
- 9) GLEN INNES REGION - CODES OF LOGGING PRACTICES
- 10) STANDARD EROSION MITIGATION CONTROL
- **11) WALCHA/NUNDLE MANAGEMENT PLAN

TO BE KEPT IN FOLDER UNDER THE COUNTER, EXCEPT THOSE MARKED (*) AND THESE ARE IN VERTI-PLAN OR MAP DRAW (**) IN LIBRARY DF'S ROOM

ANYTHING ELSE MUST BE APPLIED FOR UNDER FREEDOM OF INFORMATION ACT.

IF COPIES WANTED THE FEES ARE
(STANDARD CHARGE)

DYELINE MAPS (1/2 SHEETS)	\$10
HARVESTING PLAN	\$5

IF NO SUBSTANTIAL TIME (I.E. < 15MINS) \$0.40/PAGE

IF SUBSTANTIAL TIME \$30/HR (OR PART THERE OF) AND \$0.20/PAGE.

Timber licence

No. 7240

Fennings Timber 1.1.92

Waleha & Tannierth
hardwood sawlogs

compulsory (quota) logs \$21.30 as at 2/1/92

minimum rate (optional) \$6.50

license fee \$153.0

7241

F.T. Waleha

Cpt. 144 include firewood \$1.00 salvage
reject logs older than 2 years \$4.00 here
to salvage new logs

reject compulsory \$21.30

optional \$6.50

as of 2/3/92 falling of trees cease

in 144, 177, 168, 167

New description includes: Form 61 (5/3/92)

Avamukha: 82, 84, 95, 98, 99, 100, 147, 148, 149, 15

152, 153, 154, 155, 156, 157, 158, 159,

160, 164, 165

Navendae: 202, 203, 204, 212, 220, 221, 222

Modification - from 20.3.92

(20/3/92) include Avamukha 77, 168, 167, 170, 171
144, 143.



NSW
NATIONAL
PARKS AND
WILDLIFE
SERVICE

Mr D Pugh
Big Scrub Environment Centre
149 Keen Street
LISMORE NSW 2480

Our reference:
Your reference:

Dear Mr Pugh,

I refer to your application under the provisions of the Freedom of Information Act for access to National Parks and Wildlife Service files dealing with New England National Park and Urunga Management Area.

The matter is receiving attention and you will be notified of the Service's determination within 45 days from 16 April 1992. As you have requested access to the various files in the different locations it will be necessary for several officers to make independent determinations and this could add to the costs incurred in dealing with the application.

In terms of your request for a reduction in fees and charges, this concession is extended where the applicant is a non-profit organisation and public interest in release of the information can be demonstrated. Please provide me with documentation verifying that the Big Scrub Environment Centre is a non-profit organisation and advice of your reasoning that public interest can be demonstrated.

Yours sincerely,

P.I. CARTER
FOI Manager

22. 4. 92

Head Office
43 Bridge Street
Hurstville NSW
Australia
PO Box 1967
Hurstville 2220
Fax: (02) 585 6555
Tel: (02) 585 6444

Dailan Pugh
Big Scrub Environment Centre
149 Keen St Lismore
ph. 213278 fax 222676

Paul Carter
F.O.I. Manager
National Parks and Wildlife Service
fax 02 5856317

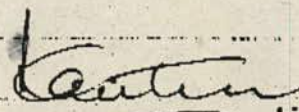
Dear Paul,

Due to circumstances beyond our control we wish to change our nominees to gain access to head office files regarding our FOI request for the Urunga Management Area and the New England Wilderness area. We wish ~~to~~ our new nominee to be J.R. Corkill and request access later this week. ~~Mr~~ Mr. Corkill will ring to arrange a mutually convenient time. Could you please respond as soon as possible so that we can finalise this FOI request.

Yours sincerely



APPROVAL IS GIVEN FOR MR. J. R. CORKILL TO
SUBSTITUTE FOR MR. M. DICKINSON IN OBTAINING
ACCESS TO FILES UNDER FOI APPLICATION No. 51.



FOI MANAGER

24-6-92

Mr. D. PUGH

R.A.C.

Version as at 13 September, 1991

PROPOSED STRUCTURE OF FINAL REPORT

1. OVERVIEW

2. INTRODUCTION

2.1 Terms of reference

2.2 Inquiry procedures

Public participation

Consultancies and research

2.3 Conceptual approach

2.4 Sustainable development

2.5 Methods

2.6 Summary

3. THE NATIVE FORESTS

3.1 Definitions

3.2 Description of tenures

State forest (includes special gazetted reserves)

Unallocated crown land

Conservation reserves

Private forests (industrial, investment, individual landowners)

3.3 Trends in forest tenure

State forest

Private forests

Conservation reserves (total and forested)

Summary/conclusions

Other crown land

3.4 Current extent

By state/territory, tenure and forest group

3.5 Old growth or unlogged forest

Definition(s)

Estimate of extent

Importance

3.6 Summary

4. CONSERVATION MANAGEMENT

4.1 National conservation goals

World Conservation Strategy

National Conservation Strategy of Australia

State and national goals

4.2 Effectiveness of conservation reserve management

Reserve types

4.3 Effectiveness of management for conservation outside reserves

Codes of Practice

MEDIA RELEASE FRIDAY 4/10/91

FORESTRY COMMISSION BREAK THE FREEDOM OF INFORMATION ACT

NEFA has slammed the NSW Forestry Commission for failing to comply with the Freedom of Information (FOI) Act 1988. For 5 months the Commission has failed to process a request for access to routine forest management information in the proper manner, according to allegations made by the North East Forest Alliance.

"This is typical of the Commission's tactics to keep the truth from the public. NEFA has followed all the correct FOI procedures, but the Commission has effectively refused access by not processing our application within the allowable time period," NEFA spokesperson Mr Steed said today.

"What is the point of FOI legislation if entrenched bureaucracies such as the NSW Forestry Commission ignore it in order to prevent public access to public information?" Mr Steed asked.

"The Forestry Commission have broken the Forestry Act, the Environmental Planning and Assessment Act, the National Parks and Wildlife Act and now the freedom of Information Act. The situation is ridiculous," Mr Steed said.

NEFA requested access to the Commission's Annual Reports, Management Plans, Environmental Reviews, Harvesting plans, Logging and Fire History maps and other relevant forestry management information, including files about fauna in the Dorrigo Management Area.

NEFA applied for FOI access in April this year, and after 5 months still has not received a proper determination. When the statutory 45 day period for reply expired NEFA wrote to the Commission and requested an internal review into our application. After the statutory 14 days for internal review passed without the Commission acknowledging, or determining, our applications NEFA lodged a complaint with the NSW Ombudsman requesting investigation into the matter under section 52 of the Freedom of Information Act.

"We have made a number of complaints to the Ombudsman, including withholding the Harvesting Plan for Compartment 198 in Chaelundi State Forest for 3 weeks, despite repeated requests for a copy of the plan.

As a result of our complaints the Ombudsman has formally asked the Commissioner for Forests, Dr Hans Drielsma to respond to our claims and to meet with NEFA representatives to clarify our FOI requests.

"Dr Drielsma has failed to answer the Ombudsman's inquiry within the requested 21 days and has made no approach to NEFA to clarify our requests.

"It is a very serious matter when the public can not get access to documents to allow for informed participation in forest management. The Commission's action basically amounts to discrimination against the North East Forest Alliance," Mr Steed said.

The Public Accounts Committee slammed the Commission for its deplorable relations with the conservation movement, but the situation has only got worse since their report was made public, contrary to attempts by the Minister for Conservation and Land Management, Gary West, to convince the public otherwise.

For further information, contact Andrew Steed Ph 066 222 676

OMBUDSMAN INVESTIGATES FORESTRY COMMISSION HANDLING OF FREEDOM OF INFORMATION ACT

The North East Forest Alliance (NEFA) has condemned the Forestry Commission in light of an investigation by the NSW Ombudsman into the Commission's processing of Freedom of Information (FOI) applications made on behalf of NEFA.

"The Commission has failed to properly follow the FOI Act and so we referred the matter to the Ombudsman who has chosen to investigate the complaint as a matter of priority. As a result the Ombudsman has asked Commissioner for Forests, Hans Drielsma, to provide detailed responses to over 40 questions." NEFA Spokesperson Andrew Steed said today.

"The Commission has clearly failed in its responsibilities under the FOI Act. This clearly shows that unacceptable Forestry Commission mismanagement, as shown by the NSW Public Accounts Committee and numerous Land and Environment Court cases, is still continuing unchecked.

"By failing to process our FOI requests for public documents the Commission has once again flouted NSW laws in an effort to keep the public in the dark about forest management. They are also making it very difficult to access documents to which approval has been granted. In some cases we have been waiting over 9 months for access to certain documents." Mr Steed said.

In a recent example of inconsistencies in applying the Act, the Commission charged 80 cents per page for photocopying of an Environmental Review at Dorrigo, while only 20 cents per page was charged for photocopying similar documents at Urbenville.

Similarly, representatives granted FOI access were not allowed to obtain a copy of an Environmental Review (HD 6 and subsequent Codicil) for an old growth forest under imminent threat of logging in the Wild Cattle Creek State Forest near Dorrigo.

"As the Environmental Review is a public document there should be no need for it to be processed under the FOI Act. Nevertheless, the withholding of this document for raises serious questions about the Commission's ability and willingness to comply with FOI legislation.

"For it to be withheld after it has been completed is yet another example of the numerous attempts made by the Commission to frustrate public access to information. This situation is outrageous and totally unacceptable, and has also been referred to the Ombudsman who we trust will produce an objective and thorough report on all of these matters," Mr Steed said.

COASTAL DEVELOPMENT

The State Government has handed down another set of recommendations about coastal development, while the Federal Government is holding another inquiry into coastal development. No doubt there'll be even another set of recommendations - same as it ever was.

Over the last 20 years we have seen many inquiries making hundreds of recommendations, yet few are adopted. If the money spent on these duplicate inquiries was spent on the recommended solutions our coastline would be in much better shape than it is today. But then, that's politics...round and round in circles....

Along our coast we have Club Med resorting to old tactics like jobs jobs jobs to convince the community Byron needs a total destination resort, while at Lennox a Commission of Inquiry has been taking evidence over the proposed beach 'improvement' works ie seawalls and groynes.

Enrol to vote

Endangered species can't vote:
but you can

Concern for the environment cannot be reconciled with political apathy or anti-voting ideology. Any form of environmental activism is contained within the political arena, whether we like it or not.

It is therefore essential that the most favourable political representatives attain power. Previous voting disregard within the alternative movement has resulted in a very unsympathetic state government.

Fridays only: Nimb
Terania Creek Road
The Channon Phone
886 120 or 886 335

* Identification surveys
* Subdivisions
Terania Creek Road
The Channon Phone
886 120 or 886 335
Fridays only: Nimb
Bush Theatre Annex
Phone 891 144

The Future

The history of the world part one
Part two has just begun
Capitalism has lost the plot
Communism is utter rot
Where does the world go from here
The politicians know, O Dear!
I don't think they do in fact
If so they'd better lift their act
The Alternates might have a plan
The pollies think it's just a scam
They're green when it suits and black when it does
Eventually they'll have to answer above

The world is round earth and sea
It means a lot to me
There are people, who think the same
Still more who have to lift their game
It's full of people young and old
The time has come for the bold
People who care and people who think
It's real, the world is on the brink
It's changing. It's happening all around
The air, the animals, the trees, the ground
The world has a future it's up to us
With time, patience and a lot of guts

Steve Richens

Ken Chelsworth

- * Registered Surveyor
- * Boundaries marked
- * Building set-outs
- * Contours

Not voting implies that you are supporting the degradation and pillage of the environment.
If you have any concern for the preservation of our forests and endangered fauna, then get on the electoral roll and get on it now!

Not voting is effective
right-wing government
on your apathy.
Not voting implies that you are supporting the degradation and pillage of the environment.
If you have any concern for the preservation of our forests and endangered fauna, then get on the electoral roll and get on it now!

Billboard

New Freedom of Information Law in NSW

Agenda brings you a **NEW** regular feature with this issue. Billboard will keep you posted on new bills and regulations covering environmental planning and protection, land and resource management, pollution, conservation, heritage, recreation and tourism issues.

Policy analysts, parliamentarians, developers and council officers - all the decision makers in development will find this unique service a valuable tool. Billboard will deliver the facts on new bills with incisive analysis and comment. In this issue Billboard covers Nick Greiner's new Freedom of Information Act.

By Peter Prineas

Last week the NSW Parliament enacted a Freedom of Information Act which fails to broaden the scope of FOI legislation, which retreats from the draft legislation proposed by Dr Peter Wilenski in his 1982 Report "Unfinished Agenda", and which gives less opportunity to the public to seek out information in the hands of government than either the Commonwealth or Victorian freedom of information Acts.

Legislative Council Opposition Leader, Jack Hallam, expressed a widely held view of the legislation when he said "the bill is filled with impediments to true freedom of information. It will lead the innocent into many a blind alley only to be met by a stone wall masquerading as yet another exemption. The bill is a triumph for bureaucrats ... Unfortunately, the Premier and the Cabinet have been snowed by these talented, charming and influential people." Just as widely held is the view that Hallam and the ALP have nothing to



Documents you are not likely to get under the NSW Freedom of Information Act:

Restricted Documents

1. Cabinet documents;
2. Executive Council documents;
3. documents exempt under FOI Acts of the Commonwealth or of another State;
4. documents affecting law enforcement or public safety;

Documents requiring consultation

1. documents affecting relations between the NSW Government and the government of another State or the Commonwealth;
2. documents disclosing information on the personal affairs of a person other than the applicant;

3. documents affecting the business affairs of a person other than the applicant

Other documents

1. internal working documents;
2. documents subject to legal professional privilege;
3. documents relating to judicial functions;
4. documents the subject of secrecy provisions under another Act;
5. documents containing confidential material;
6. documents affecting the economy of the State;
7. documents affecting the financial or property interests of the State or an Agency;

8. documents the disclosure of which could constitute contempt of court, contravene an order or direction, or infringe the privilege of Parliament;
9. documents arising out of companies and Securities legislation;
10. private documents in public library collections;
11. documents disclosing matter relating to an adoption; and
12. information contained in the Register of Interests kept by the Premier pursuant to the Code of Conduct for Ministers adopted by Cabinet.

be proud of in their record on FOI. Former Premier Neville Wran commissioned Dr Peter Wilenski in 1977 to comprehensively review the administration of government in NSW and then proceeded to ignore most of his recommendations. Wilenski doggedly pressed his proposals for more open government and at last in December 1983 the Wran Government introduced a Freedom of Information bill. It was allowed to lapse after Parliament rose that year and was never revived.

One of the most criticised shortcomings in the new Act is that it misses the opportunity to extend general FOI principles to the administration of local government. Local councils will only be required to respond to applications for documents where they concern the applicant's personal affairs. An amendment proposed by Democrat Elizabeth Kirkby in the Legislative Council which would have generally extended the operation of FOI to local government was defeated by the opposing vote of the Government, ALP and Call To Australia parties.

Amendments to the bill by the Legislative Council corrected only a few of its more objectionable features, such as the proposed inclusion of scientific research papers in the list of exempt documents, and the denial of any right of appeal when an application for access is refused by an agency on the basis that it will "substantially and unreasonably divert the agency's resources".

Exceptions more prevalent than the rule

The passage of this Act could even be seen as a contraction of access to information in the hands of government administrations because for the first time it codifies in law all the information for which access may not be given to the public. The number and scope of the exemptions (see box) create a very large gap in the general scheme of FOI.

But don't abandon hope

There are some qualifications to this daunting list of exemptions. If a Cabinet document contains only factual or statistical material that doesn't disclose Cabinet deliberations or decisions, access can be given to it. The same applies to Executive Council documents.

After the Act has been in operation for 10 years, old Cabinet and Executive Council documents will begin to become accessible because of the 10 year cut off which applies to their exempt status.

The internal working document exemption similarly does not prevent access where the document contains only factual or statistical material.

The business affairs exemption is limited to documents which disclose trade secrets, or which contain information of commercial value that could reasonably be expected to be diminished by disclosure, or which if disclosed could be expected to have some adverse affect or prejudice the future supply of information.

An agency cannot refuse access to a document which is exempt (even that class of exempt documents which is 'restricted' and the subject of a Ministerial certificate) if it is practicable to give access to a copy from which the exempt matter has been deleted.

The Act expressly gives a "legally enforceable right" to access under its limited terms to Ministers' documents but draws back from giving any power of review of a Minister's determination to the Ombudsman. There is, however, a right of appeal to the District Court.

And don't bother this lot at all

As well as exempting classes of information from FOI, the Act specifies certain bodies and offices which will be immune from the operations of the Act. These are the offices of Auditor-General, and of Director of Public Prosecutions, the Government Insurance Office, the Independent Commission Against Corruption and the State Bank.

Certain other bodies will have limited immunity against FOI access. They are the office of the Public Trustee (for functions exercised in the capacity of executor, administrator of trustee), the state Authorities Superannuation Board (investment functions) and the Treasury Corporation (borrowing, investment and liability and asset management functions).

All documents created by the State Intelligence Group of the Police Force, the former Special Branch or the former Bureau of Criminal Intelligence are also exempt from FOI access.

Courts and tribunals exercising judicial functions are outside the scope of the Act.

More reasons NOT to ask...

An agency can also refuse access to a document on the grounds that it came into existence more than 5 years before the commencement of the FOI Act. However, the five year limit does not apply in the case of a document relating to the personal affairs of an applicant, or where access to an old document is necessary to enable another document, to which access has been given by the agency, to be understood.

In addition to applications relating to the exempt documents and exempt agencies, FOI applications can be refused if the document sought can be inspected on a public register, is usually available for purchase, or is held in the agency's library.

An agency can also defer access to a document sought under FOI on the grounds that it is required to be published, is to be presented to Parliament or is to be submitted to a particular person or body.

A potentially severe restriction on FOI applications under the NSW Act is contained in section 22 which permits an agency to refuse to deal with an application on the grounds that "it appears to the agency that the nature of the application is such that the work involved in dealing with it would, if carried out, substantially and unreasonably divert the agency's resources away from their use by the agency in the exercise of its functions." It is not clear how much work or how many documents are needed to bring section 22 into play or whether it will be applied to an aggregation of applications from the same party or even from different

parties applying for different documents concerning the same or related subject matter.

While there must be a reasonable limit to an agency's obligation to comply with requests for voluminous or numerous documents, this section seems to mean that we will have FOI in NSW only to the extent that it does not inconvenience government departments.

It can be predicted with some certainty that section 22 will be the center of heated disputes between non government organisations seeking to use the FOI Act as a means of getting a clearer picture of agency operations, and the agencies they are trying to examine.

Where to start looking

The Act assists people intending to lodge an FOI application by requiring each agency to which it applies to prepare a Statement of Affairs. This Statement should contain a description of the agency's structure and functions, how its operations affect the public, its arrangements for public involvement in the formulation of its policies and the exercise of its functions, a description of the various kinds of documents usually held and an outline of the procedures for gaining access to those documents. The Act allows 12 months after its commencement for the preparation of a Statement of Affairs. In addition, the Act requires a Summary of Affairs to be published in the Government Gazette and to be regularly updated; the Summary is required to identify each agency's policy documents, the most recent Statement of Affairs and the officers to whom FOI enquiries and applications should be made.

Don't be in a hurry

Anyone seeking access to information under the FOI Act should expect to wait at least the 45 days allowed for an Agency response. Unlike the Commonwealth and Victorian FOI Acts, the NSW legislation does not require an agency response "as soon as practicable" within a set maximum period. The Commonwealth Act sets a 30 day limit. In the USA a 10 day limit applies in routine requests under the federal FOI Act, with provision for a 10 day extension in special circumstances.

Where an agency fails to make a determination under the NSW Act within 45 days this is a deemed refusal giving rise to appeal rights in the applicant.

What it will cost...

The Act does not prescribe fees to be charged for FOI applications and leaves it to each Agency to set its own fees (subject to guidelines to be gazetted by the Minister administering the Act, that is, the Premier). An FOI application must be accompanied by the fee determined by the agency. In addition, an agency is able to ask for an advance deposit from an applicant where it is of the opinion that the costs to the agency of dealing with the application will exceed the usual fee. An amendment which was proposed by the Democrats in the Legislative Council would, if accepted, have brought FOI fee setting within the purview of Parliament by making it a matter for regulations, but this failed to receive the support of the other parties.

Under the Federal FOI Act, basic charges are set by Regulation at a flat fee for applications of \$30.00, a search fee of \$15.00 per hour and a

decision-making fee of \$20.00 per hour. The Senate Standing Committee on Legal and Constitutional Affairs recently recommended an upper limit on charges under the Federal FOI Act of \$85.00 for personal records and \$540.00 for other documents.

It is not known whether NSW will follow these examples, but fee setting is in the hands of the Executive and open-ended in terms of the rate and incidence of charges and, given the predilection of the Greiner government for extracting better levels of efficiency and performance from its departments and authorities, FOI fees in NSW can be expected to be comparatively high, possibly to the point where some applicants may be deterred by the costs likely to be incurred in pursuing an application.

Who to complain to

Where an FOI application is determined adversely to the applicant, or adversely to any party required to be consulted about the application (such as another state government, the Commonwealth, or another person whose personal or business affairs would be affected) the Act gives the applicant, or that affected party, a right of appeal.

Appeal in the first instance must be by way of internal review by the principal officer of the agency (unless the determination was made by the principal officer, when the appeal would be made to the Ombudsman or the District Court). Such appeals are required to be heard "de

novo", that is, as if the application had not previously been made and determined. A fee may be charged for an internal review. The internal review must be determined within 14 days failing which there is a deemed refusal giving the appellant further appeal rights.

The Ombudsman's power to review an FOI determination is quite limited. The role of the Ombudsman is confined to the investigation of complaints of wrong conduct under the Ombudsman Act, 1974 and is not extended in any sense by the FOI Act. Indeed, if the complainant has previously complained against an agency under the Ombudsman Act, this precludes a further complaint in respect of a determination by the same agency under the FOI Act. There is no recourse to the Ombudsman until the applicant has first sought an internal review, and no recourse at all where a Ministerial certificate has been issued or where the subject matter of the appeal is the Minister's determination.

A right of appeal to the District Court (after internal review) is given to aggrieved applicants and is required to be pursued in accordance with the rules of the Court. Those rules provide for costs to be awarded against an unsuccessful party, which could operate as a considerable deterrent to applicants wishing to pursue their rights under the NSW FOI Act. Under the Commonwealth and Victorian FOI Acts, the costs of an appeal are usually borne by each party. Costs in those jurisdictions can be awarded in favour of a successful applicant but not against an unsuccessful one.

It currently takes about two years to get a matter heard by the District Court which will further discourage applicants from challenging an unreasonable determination by an agency or Minister. It seems that the District Court can opt to hear an appeal "de novo" as if making an original determination, or treat it as an appeal from such a determination.

An objectionable feature of the District Court appeal procedure is the power of the Court to receive



evidence and hear argument in the absence of not only the public and the appellant but also the appellant's solicitor or barrister, where it is of the opinion that it is necessary to do so in order to prevent the disclosure of any exempt matter. Under a similar secrecy procedure, FOI appeals to the Commonwealth Administrative Appeals Tribunal are now characterised by strange scenes in which legal representatives for an appellant attempt to cross examine witnesses using copies of affidavits with almost all the words blanked out.

The District Court can examine the reasons why a "restricted" classification has been given to a document (notwithstanding that it is the subject of a Ministerial certificate) and may require the document to be produced and make an order to the effect that the Court is not satisfied that there are reasonable grounds for the claim. However, where the Minister administering the FOI Act (the Premier) confirms a Ministerial certificate, access to the restricted document will continue to be denied to an applicant notwithstanding a contrary order by the District Court.

If experience with the Commonwealth FOI Act is any guide, it may not be long before those hoping to use the NSW legislation for the purpose of advancing some social or political objective find themselves pitted against powerful opponents in an unequal paper war. Not many will survive the heavy barrages of red tape and the withering machine gun fire of fees laid down by the administrators from their well prepared



fortifications; and the few who do may linger for years in the muddy trenches of the appeal process with perhaps a fading memory of the Ombudsman's brief and erratic fly-over to cheer them.

Secrecy powers in doubt

The City of Sydney Act (Schedule 1, clause 16) applies Ordinance 1 to the members and meetings of that Committee in the same way as it applies to the members and meetings

of NSW councils "except in so far as provision is made by or under this Act". Ordinance 1 controls meeting procedures, record-keeping, requires meetings to be open to the public and the press and so on.

The Act is elsewhere silent on Ordinance 1 so the Major Planning Committee only has power to override Ordinance 1 if a regulation is made giving it the necessary power.

So it cannot exclude the public, etc until a regulation is made to that effect under the Act.*

* A regulation-making power is given to the Minister for Planning, Mr David Aberdeen Hay, over procedures of the Major Committee such as:

- the recording of determinations
- the public availability of determinations.

Agenda is only aware of 2 regulations by the Minister, neither of which suspends Ordinance 1. No regulation has been made which gives the Committee power to keep secret its rezoning and development decisions.

Agenda Billboard Users Guide

The NSW Freedom of Information Act in Summary

Who can apply?

Any person. You must give an address for the service of notices and lodge the application with the agency holding the information you want.

Does the application have to be in writing?

Yes.

Should I say it's an FOI application?

Yes. The application must state that it is made under the FOI Act.

Can I only apply for access to paper documents?

No. You can apply access to information held on video and audio tapes and computer disks.

Do I have to pay?

Yes. The Agency to which the application is made sets the fee. The fee must accompany the application. In the case an application for a lot of documents you may be asked to pay considerably more than the basic fee.

Can they charge whatever they like?

No. The fees must be in accordance with the guidelines of the Minister who administers the Act. These will be in the Govern-

ment Gazette.

Do I have to identify the document I want?

Yes, but the Agency should assist you.

How do I find out what documents they are likely to have?

Ask the Agency for a copy of their Statement of Affairs. Request the help of the person designated as the agency's FOI officer.

Can I ask for any amount of information?

Yes, but your application may be refused if the Agency determines that responding to it will involve an excessive amount of work.

If they do that, can I appeal?

Yes.

How long do I have to wait for my application to be determined?

Up to 45 days for the first determination.

What if they do nothing for the 45 days?

That is a deemed refusal and you can appeal.

What if they say no?

You can ask for an internal review of the decision. That determination must be made within 14 days.

What if they still say no?

You can ask for a review by the Ombudsman if you think there may

have been wrong conduct by an agency, or you can appeal to the District Court from a refusal by a Minister, or if you consider a decision by an agency to be unreasonable.

Can I apply for documents held by a Minister rather than by his department?

Yes. And in the event of a refusal you can appeal, to the District Court but not to the Ombudsman.

Can I apply to see my personal records?

Yes.

Can I have documents to which I have been given access under FOI amended or made subject to a notation?

You can request this and if your request is refused you may appeal.

Are all documents available under the FOI Act?

No. There are many categories of exempt document. You can appeal to the District Court against a claim for exemption, or even against a Minister's certificate that a document is restricted. You cannot appeal against a Minister's certificate that has been confirmed by the Minister administering the FOI Act (ie: the Premier).

You're free to ask, but the State is still free to say no

LUIS M. GARCIA

explains how you can use NSW's Freedom of Information Act. But he finds it is no unalloyed blessing.

TOMORROW will be something of a milestone in NSW political history — the day the State Government's much-promised and much-delayed Freedom of Information Act, first mooted over a decade ago, is finally gazetted.

But even the Premier, Nick Greiner, admits the legislation is not quite what many civil libertarians expected, preferring to describe it as "a fair and equitable balance between contending rights and contending interests".

Some civil libertarians and supporters of free speech go further. They claim the legislation is too restrictive because it not only exempts thousands of sensitive and potentially embarrassing documents, but entire departments and statutory authorities, including the State Bank, the Government Insurance Office, and the Independent Commission Against Corruption.

On the other hand, many senior bureaucrats, including the head of the Premier's Department, Mr Dick Humphry, have expressed serious doubts about the introduction of freedom of information, claiming that it will ultimately hinder efficiency in the public service and lead to political abuse.

According to the head of the Freedom of Information Unit in the Premier's Department, Mr David Roden, NSW public servants may expect about 10,000 requests for information in the first full year of operation. Three-quarters of the requests are likely to be for "personal" information, such as medical and school records and police files.

Mr Roden said the experience in Victoria, which has had freedom of information for some years, was that only 10 per cent of all requests were rejected, with another 20 per cent being rejected in part.

"People seek a range of information," he said. "People in public housing apply for information concerning tenancy disputes. People who have had treatment in mental health institutions seek information about their treatment, what drugs they have been administered, and so on. People raised as State wards ask how they came to be under wardship."

So, how do you go about using the legislation? Here is a guide.

● **May I ask for any document?** You

may ask for any kind of personal or non-personal information as long as the documents involved are not exempt. Personal information includes such things as school records, health records kept in a public hospital, police records, and records of superannuation benefits. Non-personal information includes government policy documents, research papers, some forms of legal advice and library records.

● **Are there any exemptions?** Many. Entire agencies are exempted. All Cabinet documents, including those documents prepared for Cabinet but never actually discussed, are also exempt. So too, are documents which may affect law enforcement or public safety, or documents which are deemed to be commercially sensitive, such as tendering details.

● **How do I ask?** First you must have some idea of what documents



Nick Greiner ... legislation "a fair balance" only.

you want. If you are unsure, you may call either the freedom-of-information officer in the department or agency in question, or the Government Information Service (221 3622). You may then ask for the documents, using an application form (they should be available in most departments by Monday), or by simply writing a letter. Give as much information as you can about the documents you want and specify clearly whether it is a personal or non-personal request.

● **How much do I have to pay?** All applications must be accompanied by a \$30 application fee. In the case of personal information, the \$30 covers up to 20 hours of processing time (the time it takes for the bureaucrats to search for the information, make photocopies, etc). For non-personal information, you will be charged a processing fee of \$30 an hour, and there is no upper limit.

● **How long does it take to get the**

documents? Under the legislation, your request must be handled "as soon as practicable" within 45 days. In the US, the time limit is just 10 days. One can only assume Australian bureaucrats are slower.

● **Am I entitled to a reduction?** Reductions of up to 50 per cent are available on application and processing charges for pensioners (you need to show your health-care card), low-income earners, and non-profit organisations that can show they are under financial hardship. You may ask for reductions if you believe the information you require is "in the public interest". The bureaucrats, however, decide what is in the public interest.

● **Can they refuse to give me what I want?** Most certainly. Even if the documents are not exempt, your request may be refused if the bureaucrats agree the application would cause "an unreasonable workload" on staff. They may also refuse to give you access to information, such as mental records, if they believe such information may affect you personally. However, you can ask for the information to be given to a doctor of your choice who will then explain what it all means.

● **May I change the information on the documents?** You have the right to ask for corrections if the information is incorrect, incomplete, misleading or out of date. You will need to fill in a separate form to have your documents amended — at no extra cost. If the documents are totally wrong or if you can prove the mistakes were not your fault, you may be entitled to a refund on all charges.

● **What if my request for information is turned down?** You may ask for an internal review if your request has been denied or if you believe you have been charged too much. The review will be conducted by a senior officer in the department and must be completed within 14 days. There is only one problem: a review will cost \$40.

● **What about the Ombudsman?** You may ask the Ombudsman to intervene if you are unhappy with the result of the internal review or if you feel you have been charged too much. The Ombudsman cannot reverse a decision not to give you access to documents. However, he can recommend changes within the department or agency involved. Complaining to the Ombudsman costs nothing.

● **What if I am still unhappy?** You may take the matter to the District Court, but you must lodge your appeal within 60 days of the internal review's being completed. The court does not have the power to order access to exempt documents and you will have to pay the legal costs involved. Good luck.

Luis Garcia is a staff reporter.

YOUR RIGHTS TO REVIEW AND APPEAL

1. INTERNAL REVIEW

Under S.34 of the F.O.I. Act, if you are dissatisfied or "aggrieved" with this determination you can apply to the agency concerned for an internal review of its determination.

A person is aggrieved by a determination on an application for access to records if it contains any of the following:

- "(i) an agency refuses to give the applicant access to a document; or
- (ii) access to a document is to be given to the applicant subject to deferral; or
- (iii) access to a copy of a document from which exempt matter has been deleted is to be given to the applicant; or
- (iv) access to a document is to be given to the applicant subject to a charge for dealing with the application, or for giving access to a document, that the applicant considers to be unreasonable; or
- (v) a charge for dealing with the application is payable by the applicant, being a charge that the applicant considers to have been unreasonably incurred" (S.34)

To apply for an internal review of a determination you must lodge an internal review application form with the same agency as made the determination within 28 days of being given the determination. If the determination has been posted, it is deemed to have been given to you on the fifth day after the letter was posted.

There is no right to an internal review of a determination regarding a Minister's document.

2. INVESTIGATION BY THE OMBUDSMAN

If you are still dissatisfied with the agency's determination after an internal review has been completed, you can request an investigation by the Ombudsman of the determination. The Ombudsman is empowered to investigate the conduct of any person or body in relation to a determination made by an agency under this Act.

Provided you have had an internal review, you can apply for an investigation by the Ombudsman at any time. However, if you wish to keep open the option of later appealing to the District Court, you must apply to the Ombudsman within 60 days of receiving the determination from your internal review.

Requests to the Ombudsman must be in writing, an application form is not required. Investigations by the Ombudsman are free. Further information is available from the Office of the Ombudsman, phone 235 4000

There is no right to an investigation by the Ombudsman of a Minister's determination under F.O.I. or in relation to the issue of a Ministerial certificate.

3. APPEAL TO THE DISTRICT COURT

If you are dissatisfied with a determination by either an agency or a Minister after internal review or after review by the Ombudsman, you can appeal to the District Court. The definitions of what "aggrieved" means under the FOI Act are the same as those which allow you to apply for an internal review (see above).

Applications must be made within 60 days after the relevant determination was given to the applicant or, if you have sought an investigation by the Ombudsman, within 60 days after the results of the Ombudsman's investigation of the complaint were reported to you.

The procedures relating to applications to the District Court are established by the Court.