

Queensland



FREEDOM OF INFORMATION AMENDMENT BILL 2001



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TABLE OF PROVISIONS

Section		Page
1	Short title	4
2	Commencement	4
3	Act amended	4
4	Replacement of s 28 (Access may be refused in certain cases)	4
	28 Access may be refused in certain cases	4
	28A What an agency or Minister must do before refusing access under s 28(2)	5
5	Replacement of s 29 (Fees and charges for access to documents)	7
	29 Fees and charges for access to documents	7
	29A Liability to pay charges	7
	29B Contention that charge has been wrongly assessed or should not be imposed	8
	29C Contention relying on financial hardship	9
	29D Calculation of appropriate period if notice given of charges	10
6	Amendment of s 109 (Regulations)	11
	SCHEDULE	13

MINOR AMENDMENTS

2001

A BILL

FOR

An Act to amend the Freedom of Information Act 1992

The Parliament of Queensland enacts—

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Clause 1 Short title

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This Act may be cited as the *Freedom of Information Amendment Act 2001*.

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Clause 2 Commencement

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This Act commences on a day to be fixed by proclamation.

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Clause 3 Act amended

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This Act amends the *Freedom of Information Act 1992*.

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Clause 4 Replacement of s 28 (Access may be refused in certain cases)

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Section 28—

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omit, insert—

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‘28 Access may be refused in certain cases

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‘(1) An agency or Minister may refuse access to exempt matter or an exempt document.

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‘(2) An agency or Minister may refuse access to documents asked for in an application if it appears to the agency or Minister that the work involved in dealing with the application would, if carried out—

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- (a) substantially and unreasonably divert the resources of the agency from their use by the agency in the performance of its functions; or

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- (b) interfere substantially and unreasonably with the performance by the Minister of the Minister’s functions.

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‘(3) Without limiting the matters to which the agency or Minister may have regard in making a decision under subsection (2), the agency or Minister must have regard to the resources that would have to be used—

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- (a) in identifying, locating or collating the documents in the filing system of the agency or the Minister’s office; or

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Freedom of Information Amendment Bill 2001

- (b) in deciding whether to give, refuse or defer access to the documents, or to give access to edited copies of the documents, including resources that would have to be used—
- (i) in examining the documents; or
- (ii) in consulting with an entity in relation to the application; or
- (c) in making a copy, or edited copy, of the documents; or
- (d) in notifying any interim or final decision on the application.
- ‘(4) In deciding whether to refuse, under subsection (2), to give access to documents, an agency or Minister must not have regard to—
- (a) any reasons the applicant gives for applying for access; or
- (b) the agency’s or Minister’s belief about what are the applicant’s reasons for applying for access.
- ‘(5) If—
- (a) an application is expressed to relate to all documents, or to all documents of a specified class, that contain information of a specified kind or relate to a specified subject matter; and
- (b) it appears to the agency or Minister concerned that all of the documents to which the application relates are exempt documents;
- the agency or Minister may refuse access to all of the documents without having identified any or all of the documents and without specifying the reason that any matter in the documents is claimed to be exempt matter.
- ‘28A What an agency or Minister must do before refusing access under s 28(2)**
- ‘(1) An agency or Minister may refuse access to a document under section 28(2) only if —
- (a) the agency or Minister has given the applicant a written notice—
- (i) stating an intention to refuse access; and
- (ii) advising that, for a consultation period, the applicant may consult with a specified officer of the agency or a specified member of the staff of the Minister with a view to making an application in a form that would remove the ground for refusal; and

Freedom of Information Amendment Bill 2001

- (iii) advising that the consultation period ends 21 days after the day the applicant is given the notice; and
 - (iv) stating the effect of subsections (2), (3), (5), (6) and (7); and
 - (b) the agency or Minister has given the applicant a reasonable opportunity to consult with the officer or member; and
 - (c) the agency or Minister has, as far as is reasonably practicable, provided the applicant with any information that would assist the making of an application in a form that would remove the ground for refusal.
- ‘(2) During consultation, the applicant and officer or member may agree what is to be the appropriate period for section 27 in relation to the application.
- ‘(3) Following consultation, the applicant may give the officer or member written notice either confirming or altering the application.
- Examples of alterations—*
1. An alteration of the documents to which the application relates.
 2. An alteration of the application to state that the appropriate period for section 27 in relation to the application is to be a period that has been agreed with the officer or member.
- ‘(4) If the application is altered, section 28 applies in relation to the altered application but the other provisions of this section do not apply to it.
- ‘(5) If the applicant fails to consult after being given notice under subsection (1)(a), the applicant is taken to have withdrawn the application.
- ‘(6) Without limiting subsection (5), the applicant is taken to have failed to consult if, by the end of the consultation period, the applicant has not given the officer or member written notice under subsection (3).
- ‘(7) For section 27—
- (a) the period commencing on the day an applicant is given notice under subsection (1)(a) and ending on the earlier of the following days—
 - (i) the day the applicant gives the agency or Minister written notice confirming or altering the application following the consultation;
 - (ii) the last day of the consultation period;

is to be disregarded in the calculation of the appropriate period;
and

- (b) if an alteration mentioned in example 2 of subsection (3) is made,
the agreed period is taken to be the appropriate period.’.

Clause 5 Replacement of s 29 (Fees and charges for access to documents)

Section 29—

omit, insert—

‘29 Fees and charges for access to documents

‘(1) A regulation may require an applicant applying for access to a document that does not concern the applicant’s personal affairs to pay an application fee at the time the application is made.

‘(2) A regulation may require an applicant applying for access to a document that does not concern the applicant’s personal affairs to pay a charge at the time required under the regulation.

‘(3) A fee or charge may be waived or remitted only under this Act.

‘29A Liability to pay charges

‘(1) This section applies if, under a regulation, an agency or Minister decides that an applicant is liable to pay a charge in relation to an application for access to a document, or the provision of access to a document.

‘(2) The agency or Minister must give the applicant a written notice stating the following—

- (a) that the applicant is liable to pay a charge;
- (b) the agency’s or Minister’s preliminary assessment of the amount of the charge, and the basis on which the assessment is made;
- (c) that the applicant may consult with a specified officer of the agency or a specified member of the staff of the Minister with a view to making an application in a form that would reduce the charge;
- (d) that the applicant may contend that the charge has been wrongly assessed, or should not be imposed;

Freedom of Information Amendment Bill 2001

- (e) any matters that may be taken into account under a regulation in deciding whether or not to impose the charge; 1 2
 - (f) the amount of any deposit that the agency or Minister has determined, under a regulation, that the applicant will be required to pay if the charge is imposed; 3 4 5
 - (g) that the applicant must within the period of 30 days, or the further period the agency or Minister allows, after the notice was given, notify the agency or Minister in writing of— 6 7 8
 - (i) the applicant's agreement to pay the charge or that the applicant withdraws the application; or 9 10
 - (ii) if the applicant contends that the charge has been wrongly assessed, or should not be imposed, or both—the applicant's contention, giving the applicant's reasons; and 11 12 13
 - (h) that if the applicant fails to give the notice within that period or further period, the application will be taken to have been withdrawn. 14 15 16
- ‘(3) If the applicant fails to notify the agency or Minister in the way mentioned in subsection (2)(g) within the period or further period mentioned in that paragraph, the applicant is to be taken to have withdrawn the application for access to the document concerned. 17 18 19 20
- ‘(4) An agency or Minister must not impose a charge in relation to an application for access to a document, or the provision of access to a document, until— 21 22 23
- (a) the applicant has notified the agency or Minister in a way mentioned in subsection (2)(g); or 24 25
 - (b) the end of the period or further period mentioned in subsection (2)(g). 26 27
- ‘29B Contention that charge has been wrongly assessed or should not be imposed 28 29**
- ‘(1) This section applies if an applicant notifies an agency or Minister, in a way mentioned in section 29A(2)(g)(ii), that the applicant contends that a charge has been wrongly assessed or should not be imposed. 30 31 32
- ‘(2) Subject to section 29C, the agency or Minister may decide that the charge is to be reduced or is not to be imposed. 33 34

Freedom of Information Amendment Bill 2001

‘(3) The agency or Minister must take all reasonable steps to enable the applicant to be notified of the decision on the amount of charge payable as soon as practicable but in any case no later than 30 days after the day on which the applicant notified the agency or Minister of the applicant’s contention.

‘(4) If—

- (a) the period of 30 days mentioned in subsection (3) has ended; and
- (b) the applicant has not received notice of a decision on the amount of charge payable;

the agency or Minister is, for all purposes of this Act, taken to have made, on the last day of the period, a decision to the effect that the amount of charge payable is the amount equal to the agency’s or Minister’s preliminary assessment of the amount of the charge mentioned in section 29A(2)(b).

‘(5) If the agency or Minister makes a decision to reject the contention, the agency or Minister must give the applicant written notice of the decision and of the reasons for the decision.¹

‘(6) A notice under subsection (5) must also state the name and designation of the person making the decision and give the applicant appropriate information about—

- (a) the applicant’s rights to review of the decision; and
- (b) the procedure for the exercise of those rights, including, if applicable, particulars of the way in which an application for review under section 52² may be made.

‘(7) A notice under subsection (5) is not required to contain matter of a nature that its inclusion in a document of an agency would cause that document to be an exempt document.

‘29C Contention relying on financial hardship

‘(1) This section applies if an applicant notifies an agency that is a department, in a way mentioned in section 29A(2)(g)(ii), that the applicant

1 Note *Acts Interpretation Act 1954*, section 27B (Content of statement of reasons for decision).

2 Section 52 (Internal review)

Freedom of Information Amendment Bill 2001

contends that a charge should not be imposed because the applicant is in financial hardship.

‘(2) The agency must give a copy of the applicant’s notification to the person prescribed by regulation as the person who decides whether a charge may be waived because the applicant is in financial hardship.

‘(3) The prescribed person must decide, under a regulation, whether or not to waive the charge because the applicant is in financial hardship.

‘(4) The prescribed person must advise the agency of the decision and the reasons for the decision.

‘(5) For applying section 29B(3) to (7) and for having the prescribed person’s decision reviewed under this Act, the prescribed person’s decision is taken to be the decision of the agency’s principal officer.

‘29D Calculation of appropriate period if notice given of charges

‘(1) This section applies if an applicant is given notice under section 29A(2) or 29B(3) before the end of the original section 27(4) period applying to the application.

‘(2) For section 27, the period commencing on the day the applicant is given notice under section 29A(2) or 29B(3) and ending on the relevant day is to be disregarded in the calculation of the appropriate period.

‘(3) In this section—

“original section 27(4) period”, for an application, means the period under section 27(4) that would apply to the application in the absence of this section.

“relevant day” means whichever of the following days first happens—

- (a) if the applicant pays the charge or the deposit on account of the charge that the applicant is required to pay under a regulation, whether or not the applicant contends that the charge should not be imposed or seeks a review of the decision relating to the charge—the day on which the charge or deposit is paid;
- (b) if the applicant, having not paid the charge or deposit, contends that the charge should not be imposed and the charge is waived because the applicant is in financial hardship—the day on which the applicant is notified of the decision not to impose the charge;

Freedom of Information Amendment Bill 2001

- (c) if the applicant, having not paid the charge or deposit, applies to the agency under section 52³ for a review of the decision to impose the charge and the agency decides to set aside the decision—the day on which the applicant is notified by the agency of the review decision;
- (d) if the applicant, having not paid the charge or deposit, applies to the agency under section 52 for a review of the decision to impose the charge and the agency decides to set aside the decision and make another decision in substitution for the decision—the day on which the applicant pays the charge specified in the substituted decision, or the deposit on account of the substituted charge that the applicant is required to pay under a regulation;
- (e) if the applicant, having not paid the charge or deposit, applies to the commissioner under part 5⁴ for a review of the decision to impose the charge and the commissioner decides to set aside the decision—the day on which the applicant is notified by the commissioner of the decision;
- (f) if the applicant, having not paid the charge or deposit, applies to the commissioner under part 5 for a review of the decision to impose the charge and the commissioner decides to set aside the decision and make another decision in substitution for the decision—the day on which the applicant pays the charge specified in the substituted decision, or the deposit on account of the substituted charge that the applicant is required to pay under a regulation.’.

Clause 6 Amendment of s 109 (Regulations)

(1) Section 109(2)(b)—

omit, insert—

- ‘(b) the making of charges of amounts, or at rates, fixed under the regulation in relation to applications for access to, or in relation to the provision of access to, documents under this Act (including the provision of copies or transcripts) that do not concern the

3 Section 52 (Internal review)

4 Part 5 (External review of decisions)

Freedom of Information Amendment Bill 2001

applicant's personal affairs, including requiring deposits on
account of the charges; and'.

(2) Section 109—

insert—

'(3) Without limiting subsection (2), a regulation may provide for—

- (a) payment of charges, including deposits on account of charges,
before access to a document is given; and
- (b) a charge to be made that takes into account the direct costs
incurred by an agency or a Minister in making available an
officer to supervise the inspection by a person of any document
for which an application for access has been made under this Act;
and
- (c) waiver of charges for applicants in financial hardship; and
- (d) criteria for determining whether an applicant is in financial
hardship; and
- (e) waiver of charges for up to 3 hours at the hourly rate.

'(4) However, a regulation providing for the making of charges—

- (a) must not allow the amount or rate of charge to vary according to
whether—
 - (i) the applicant is included in 1 class of applicant or another
class of applicant; or
 - (ii) a document is a document of 1 agency or of an agency
included in 1 class of agency or is a document of another
agency or of an agency included in another class of agency;
and
- (b) must, if a charge is made for time that is spent by an agency or a
Minister in undertaking any of the following activities—
 - (i) searching for or retrieving a document;
 - (ii) making, or doing things related to making, a decision on an
application for access;

provide for the charge for the activity to be calculated at a single
hourly rate that will be applied by the agency or Minister for any
application, regardless of the classification or designation of the
person who undertakes the work involved'.

SCHEDULE	1
MINOR AMENDMENTS	2
section 3	3
1 Section 7—	4
<i>insert—</i>	5
‘ “charge” does not include an application fee under section 29(1).’.	6
2 Section 27(5)—	7
<i>omit.</i>	8
3 Section 27(6) and (7)—	9
<i>renumber</i> as section 27(5) and (6).	10
4 Section 33(1), ‘An’—	11
<i>omit, insert—</i>	12
‘Subject to section 29C(3), ⁵ an’.	13
5 Section 52(7)(a)(iv) and (v)—	14
<i>omit, insert—</i>	15
‘(iv) an application fee is payable; or	16
(v) access to a document is to be given to the applicant subject	17
to a charge relating to the application, or relating to giving	18
access to a document, that the applicant considers to be	19
wrongly assessed or, if the agency is not a department,	20
should not be imposed; or’.	21

5 Section 29C (Contention relying on financial hardship)

SCHEDULE (continued)

6	After section 71(1)(d)—	1
	<i>insert—</i>	2
	‘(da)decisions about whether application fees are payable;’.	3
7	Section 88(1)(b), after ‘Minister’—	4
	<i>insert—</i>	5
	‘, or prescribed person under section 29C’.	6
8	Section 88(1), ‘the agency or Minister’—	7
	<i>omit, insert—</i>	8
	‘the agency, Minister or prescribed person’.	9
9	Section 108(4)(h), before ‘charges’—	10
	<i>insert—</i>	11
	‘fees and’.	12
		13