

Information Freedom, a policy of reform¹

Senator the Honourable Joe Ludwig

We all hold our hard-won freedom of information laws precious. Without Freedom of Information (FOI) laws guaranteeing your right to access government information, your ability — as members of the press, researchers and advocates — to perform your democratic function of disseminating information and ideas to the public, would be significantly impaired.

Australia didn't pass its FOI Act until 1982, after 16 years of discussion sparked when President Johnson signed the US FOI Act into law in 1966.

Australia's FOI Act was typical for that first tranche of FOI laws across the globe. It was conceived relatively narrowly, as a rigid, legally enforceable right citizens could use to access some government information. This was a big step forward for Australia.

However, the world quickly moved on. By the time this Government was elected in late 2007, over 60 new FOI laws had been enacted around the world, and Australia's laws were lagging behind world's best practice.

Our FOI Act hadn't been reformed since its enactment. Its exemptions were heavily used. It allowed ministers to make a blanket and unreviewable decision to refuse information by issuing what was called a 'conclusive certificate'. Without a champion of FOI within government, the system had come to resemble an adversarial and technical legal contest between the government on the one hand, and individual citizens, the press or civil society organisations on the other.

As many of you here today will have experienced, in spite of the intent of the original regime and the object specified in the Act, the Act has been interpreted in a way that leaves much room for improvement, with a long way to go before we can honestly say we've achieved open government.

This is the situation that we inherited. We set about fixing it. We moved quickly and abolished conclusive certificates in 2009. The second part of reform was a complete overhaul of the law, establishing a pro-disclosure

¹ Senator the Hon Joe Ludwig, (Excerpt of Speech delivered at UNESCO World Press Freedom Day Conference) Brisbane, 2 May 2010.

culture across government and ushering in a fundamental and irreversible shift in the way government information is handled in this country.

This Government recognises that a freer flow of information can improve service delivery, policy debate and government accountability. And we understand that government information is a national resource held by the government but not belonging to it. It belongs to the people who paid for it through their taxes — the community.

Our FOI reform, which passed through the Australian Parliament on 13 May 2010², will mean the system is weighted towards disclosure. The right of access to documents will be as comprehensive as possible, limited only where a stronger public interest lies in refusing access. Notably, the possibility for a document to cause public debate about policy will be considered a good reason to disclose it, not a reason to keep it concealed.

Significant changes to the administration of the Act are aimed at ensuring information can be accessed. For instance the reforms establish an Office of the Australian Information Commissioner. The Australian Information Commissioner will, at the highest level, be a strong advocate for disclosure within government. He or she will provide advice to government on information policy and act as a review body, hearing appeals on government decisions for free. I'm pleased to say that Professor McMillan, a passionate FOI advocate of many years' standing, will be the first person to fill that role.

Part of our FOI reforms which will really bring Australia's information laws back up to world's best practice is our publication scheme. This turns the old concept of FOI — the request and release model — on its head. When our reforms are passed each government agency will have to publish certain information, including information released under an FOI request. In addition, the publication scheme will mean that government agencies will need to decide what information they have that can and should be made available to the public, and publish it as a matter of course.

For the publication scheme to work, the information an agency publishes will need to be relevant, accurate, up to date and complete. It will also need to be accessible — it's not good enough for information to be nominally 'public' but really only available filed under 'I' for interesting in drawer C, aisle 652, folio 19 of some dusty archival storage facility.

² On the 13th May 2010, the Parliament of the Commonwealth of Australia passed both the Freedom of Information Amendment (Reform) Bill 2010 and Australian Information Commissioner Bill 2010.

That is to say, information will have to be placed online in a format that's searchable, usable and reusable, or, to use the new buzzword — mashable.

This means politicians and public servants alike will have to outgrow the old mindset that the best way to protect responsible government is by keeping information about the government as confidential as possible. We're already seeing some real progress here.

The culture around government information is already changing, here in Australia and in many corners of the globe. In large part this is due to the collaborative, participatory tools, strategies and ways of thinking that we know as web 2.0, and to the generations for whom those tools are second nature.

This Government recognises that blogs, wikis — any device that allows information not just to flow in one direction but in all directions at once — have great potential for government and society. That's why we asked a taskforce on Government 2.0 to come up with recommendations for how the government could use web 2.0 tools to make sure our information publication scheme has wings.

We also asked the taskforce to investigate how we can use the social web to facilitate closer government engagement with the community, strengthen public administration, improve government decision making, and allow Australians to reap the democratic, social and economic benefits that can come when government information is set free.³

Our FOI reforms and our embrace of Government 2.0 will help us to make the best use of the rich resource that is government information.

Let's take the field of education as an example. For years Australian parents had been demanding access to the vast stores of information about Australia's schools that we all knew existed. This government took that information and for the first time put it on a website in a consolidated and easily accessible format. The public response was overwhelming — the website, known as MySchool, got 1.5 million hits on its very first morning.⁴ Parents are using that information to inform their choice of school and the community is using it to feed a vigorous national conversation about what makes for good schools and good teaching.

³ The Australian Government released its response to the Gov 2.0 Report on 2nd May 2010.

⁴ The resident population of Australia is approximately 22 million as at 26 May 2010. This means that approximately 6.8 per cent of the total population visited this website on the first day.

Meanwhile, the website for the proposed new national school curriculum presents one of the most radical consultation exercises this country has ever seen, providing an easy and direct way for any interested party to comment in detail on any point in the proposed curriculum. These processes are a step in the right direction — towards a more open government and a fuller use of government information.

These changes to the way public information is handled will empower citizens, industry, academia and civil society in their relationship with government.

With information out in the community, there can be more and better informed public debate about programs and policy. Government and Opposition claims can be tested and conclusions challenged. And Government can be held accountable, not just on election-day, but every day of the year.

There are some thorny questions we need to work through as we incorporate the publication scheme and web 2.0 tools into the everyday business of governing.

Beside our ageing FOI laws, advocates for open government have often criticised Australia's lack of protection for whistleblowers — people who release government information to a third party such as the media out of serious concerns over corruption, misconduct, mismanagement or public safety. We're introducing world-leading public interest disclosure legislation to ensure that public disclosure of such concerns is protected in those circumstances where it is ultimately deemed justifiable.

We also need to build privacy protection into the system. We need make sure that those who aren't online aren't left behind. And we need to switch the mindset in the public service from information control to information sharing. This year I'll be asking agencies to identify what's stopping them from engaging more online and to chip away at those barriers.

Journalists, researchers, advocates and the wider community have told us time and time again that the biggest problem with FOI in this country is the attitude of government agencies towards the information they collect and store. We're working to change that public sector culture so that it's focused on disclosure, not concealment.

Our new attitude to information — our FOI reforms, our embrace of government 2.0 and our protection of whistleblowers — will make for a lot of public debate about our policies and decisions. It will result at times in criticism and robust challenges to our conclusions. But we're unafraid to do that in the service of creating better informed public debate, and so a stronger democracy.