

Freedom of Information (Amendment) Bill

No.

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By Authority L. V. North, Government Printer Melbourne

LEGISLATIVE ASSEMBLY

Read 1^o 5 May 1993

(Brought in by Mrs Wade and Mr Gude)

A BILL

to amend the **Freedom of Information Act 1982** and for other purposes.

Freedom of Information (Amendment) Act 1993

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1. *Purposes*

The purposes of this Act are—

- (a) to extend the operation of the **Freedom of Information Act 1982** to documents of municipal councils; and
- (b) to make machinery and other amendments to the **Freedom of Information Act 1982**.

Section headings appear in bold italics and are not part of the Act.
(See **Interpretation of Legislation Act 1984**.)

2. Commencement

- (1) Subject to this section, this Act comes into operation on the day on which it receives the Royal Assent.
- (2) Section 7 comes into operation on 1 July 1993.
- (3) Part 3 comes into operation on 1 January 1994.

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No. 9859.
Reprinted to
No. 12/1989
and
subsequently
amended by
Nos 12/1989
and 84/1990.

3. Principal Act

In this Act, the **Freedom of Information Act 1982** is called the Principal Act.

PART 2—GENERAL AMENDMENT OF PRINCIPAL ACT**4. Definitions**

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In section 5 of the Principal Act, for the definition of “department” substitute—

“**department**” means a department specified in column 1 of Schedule 1 to the **Public Sector Management Act 1992** or an office specified in section 17 (1) of that Act;’.

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5. Publication of information

- (1) In section 7 (1) (a) of the Principal Act—
 - (a) omit “in the prescribed form”;
 - (b) after “commencement of this Part” insert “in a form approved by the Minister administering this Act”.
- (2) In section 7 (1) of the Principal Act, for paragraph (b) substitute—
 - “(b) during the year commencing on 1 January next following the publication, in respect of an agency, of the statements under paragraph (a) that are the statements first published under that paragraph, and during each succeeding year, cause to be published statements bringing up to date the

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information contained in the previous statements.”.

(3) In section 7 (2) of the Principal Act, for “prescribed” **substitute** “approved”.

(4) In section 7 of the Principal Act, for sub-section (4) **substitute**—

“(4) The information to be published in accordance with this section by an agency must be published by including it—

(a) in the annual report of the agency to the responsible Minister of the agency; or

(b) if there is no such annual report—in the annual report of the department, or a department administered, or part of which is administered, by the responsible Minister of the agency.

(4A) Sub-section (1) applies to an agency that becomes an agency on or after the commencement of section 5 of the **Freedom of Information (Amendment) Act 1993** as if references in that sub-section to the commencement of this Part were references to the day on which that agency became an agency.”.

(5) Section 7 of the Principal Act, as amended by this section, also applies to an agency that, immediately before the commencement of this section, was required to comply with sub-section 7 (4) of the Principal Act as in force before that commencement but had not so complied.

6. Application fee

After section 17 (2) of the Principal Act **insert**—

“(2A) A request must be accompanied by a fee of \$20.

(2B) An application fee may be waived or reduced, whether or not the fee has been paid, if the payment of the fee would cause hardship to the applicant.”.

7. Access to documents

- (1) In section 22 (1) of the Principal Act, after “charge” (where first occurring) **insert** “(not being an application fee)”.
- (2) In section 22 (1) of the Principal Act, for paragraphs *(h)*, *(i)* and *(j)*, **substitute**—
 - “*(h)* a charge, other than a charge for the reasonable costs incurred by an agency in making copies of documents, in making a written transcript of the words recorded or contained in documents or in making a written document in accordance with section 19, shall not be made if—
 - (i) the applicant’s intended use of the document is a use of general public interest or benefit; or
 - (ii) the applicant is a member of the Legislative Council or of the Legislative Assembly of Victoria; or
 - (iii) the request is for access to a document containing information relating to the personal affairs of the applicant; and
 - (i)* a charge under paragraph *(d)* shall be waived if the applicant is impecunious and the request is for access to a document containing information relating to the personal affairs of the applicant.”.
- (3) In section 22 (2) of the Principal Act, for “sub-section (3)” **substitute** “sub-sections (3), (4) and (5)”.
- (4) In section 22 (4) of the Principal Act, for “may require the applicant” **substitute** “must inform the applicant that the applicant will be required”.

8. New section 24A inserted

After section 24 of the Principal Act **insert**—

“24A. Repeated requests

5 (1) An agency or Minister dealing with a request under Part III for access to documents or under Part V for the correction or amendment of information may refuse to grant access to documents or to amend a record in accordance with the request, without having caused the processing of the request to have been undertaken or at any later time, if the agency or Minister is satisfied that—

15 (a) the request is made by, or on behalf of, a person who, on at least one previous occasion, has made a request to the agency or Minister, or to a predecessor of the agency or Minister, for access to the same documents or the same information; and

20 (b) the request was refused and the Tribunal, on reviewing the decision to refuse the request, confirmed the decision; and

25 (c) there are not reasonable grounds for making the request again.

(2) An agency or Minister must give notice of a refusal under sub-section (1) and must inform the applicant of—

30 (a) the right to apply for review of the decision; and

(b) the authority to which the application for review should be made; and

35 (c) the time within which the application for review must be made.”.

9. New section 25A inserted

After section 25 of the Principal Act insert—

“25A. Requests may be refused in certain cases

- (1) The agency or Minister dealing with a request may refuse to grant access to documents in accordance with the request, without having caused the processing of the request to have been undertaken, if the agency or Minister is satisfied that the work involved in processing the request—
 - (a) in the case of an agency—would substantially and unreasonably divert the resources of the agency from its other operations; or
 - (b) in the case of a Minister—would substantially and unreasonably interfere with the performance of the Minister’s functions.

- (2) Subject to sub-section (3) but without limiting the matters to which the agency or Minister may have regard in deciding whether to refuse under sub-section (1) to grant access to the documents to which the request relates, the agency or Minister is to have regard to the resources that would have to be used—
 - (a) in identifying, locating or collating the documents within the filing system of the agency, or the office of the Minister; or
 - (b) in deciding whether to grant, refuse or defer access to documents to which the request relates, or to grant access to edited copies of such documents, including

resources that would have to be used—

(i) in examining the documents;
or

(ii) in consulting with any person or body in relation to the request; or

(c) in making a copy, or an edited copy, of the documents; or

(d) in notifying any interim or final decision on the request.

(3) The agency or Minister is not to have regard to any maximum amount, specified in regulations, payable as a charge for processing a request of that kind.

(4) In deciding whether to refuse, under sub-section (1), to grant access to documents, an agency or Minister must not have regard to—

(a) any reasons that the person who requests access gives for requesting access; or

(b) the agency's or Minister's belief as to what are his or her reasons for requesting access.

(5) An agency or Minister may refuse to grant access to the documents in accordance with the request without having identified any or all of the documents to which the request relates and without specifying, in respect of each document, the provision or provisions of this Act under which that document is claimed to be an exempt document if—

(a) it is apparent from the nature of the documents as described in the

Freedom of Information (Amendment)

- request that all of the documents to which the request is expressed to relate are exempt documents; and
- (b) either—
- (i) it is apparent from the nature of the documents as so described that no obligation would arise under section 25 in relation to any of those documents to grant access to an edited copy of the document; or
- (ii) it is apparent, from the request or as a result of consultation by the agency or Minister with the person making the request, that the person would not wish to have access to an edited copy of the document.
- (6) An agency or Minister must not refuse to grant access to a document under sub-section (1) unless the agency or Minister has—
- (a) given the applicant a written notice—
- (i) stating an intention to refuse access; and
- (ii) identifying an officer of the agency or a member of staff of the Minister with whom the applicant may consult with a view to making the request in a form that would remove the ground for refusal; and
- (b) given the applicant a reasonable opportunity so to consult; and
- (c) as far as is reasonably practicable, provided the applicant with any information that would assist the

making of the request in such a form.

5 (7) For the purposes of section 21, the period commencing of the day an applicant is given a notice under sub-section (6) (a) and ending on the day the applicant confirms or alters the request following the consultation referred to in sub-section (6) is to be disregarded in the computation of the 45 day period referred to in section 21.

10 (8) If a complaint is made to the Ombudsman about a decision to refuse access to a document under this section, the Ombudsman must deal with the complaint within 28 days.

15 (9) If the applicant is not satisfied with a decision of the Minister or the agency about which a complaint has been made to the Ombudsman, the applicant may, after the expiration of 28 days after making the complaint, apply to the Tribunal for review of the decision.

20 (10) If an applicant applies to the Tribunal for review of a decision of the Minister or agency about which a complaint has been made to the Ombudsman, the Ombudsman must provide a written report to the Tribunal.”.

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30 **10. Amendment of section 26**

In section 26 (1) of the Principal Act—

(a) **omit** “subject to the regulations,”; and

(b) **omit** “, and published in the Government Gazette”.

11. Amendment of section 27

In section 27 of the Principal Act—

- (a) in sub-section (1) (e) for “section 31” **substitute** “section 28 or 31”;
- (b) in sub-section (2) (b), for “section 31” **substitute** “section 28 or 31”. 5

12. Cabinet documents

- (1) In section 28 (1) of the Principal Act, for paragraphs (b) and (c) **substitute**—
 - “(b) a document that has been prepared by a Minister or on his or her behalf or by an agency for the purpose of submission for consideration by the Cabinet or a document which has been considered by the Cabinet and which is related to issues that are or have been before the Cabinet; 10 15
 - (ba) a document prepared for the purpose of briefing a Minister in relation to issues to be considered by the Cabinet;
 - (c) a document that is a copy or draft of, or contains extracts from, a document referred to in paragraph (a), (b) or (ba); or” 20
- (2) In section 28 of the Principal Act, for sub-sections (3), (4) and (5) **substitute**—
 - “(3) Sub-section (1) does not apply to a document referred to in a paragraph of that sub-section to the extent that the document contains purely statistical, technical or scientific material unless the disclosure of the document would involve the disclosure of any deliberation or decision of the Cabinet. 25 30
 - (4) For the purposes of this Act, a certificate signed by the Secretary to the Department of Premier and Cabinet certifying that a document as described in a request would, if it existed, be one of a kind referred to in a specified paragraph of sub-section (1), establishes that, if such a document exists, it is an exempt document. 35

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- (5) The Ombudsman may not conduct an investigation in respect of a certificate under sub-section (4) or a question whether a document is of a kind referred to in sub-section (1) or a decision to sign such a certificate.
- (6) Nothing in Part V applies to a document to which a certificate under sub-section (4) applies.
- (7) In this section—
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- (a) “**Cabinet**” includes a committee or sub-committee of Cabinet;
- (b) a reference to a document includes a reference to a document whether created before or after the commencement of section 12 of the **Freedom of Information (Amendment) Act 1993**.
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13. Amendment of section 50

After section 50 (5) of the Principal Act **insert—**

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- “(6) The Tribunal may refuse to review a decision of an agency or Minister to refuse the request of a person for access to a document if the Tribunal is satisfied that it has previously reviewed a decision of the agency or Minister to refuse access to the same document or the same information.

14. Amendment of section 66

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In section 66 (1) of the Principal Act, paragraph (b) is **repealed**.

15. Statute law revision

Section 2 of the Principal Act is **repealed**.

**PART 3—APPLICATION OF PRINCIPAL ACT TO
DOCUMENTS OF COUNCILS**

16. Amendment of section 5

In section 5 of the Principal Act—

- (a) in the definition of “**agency**”, after “department” **insert** “council”; 5
- (b) after the definition of “**applicant**” **insert**—
- “**closed meeting**” in relation to a council, means a meeting closed to the public under section 89 (2) of the **Local Government Act 1989**; 10
- “**council**” has the same meaning as in section 3 (1) of the **Local Government Act 1989**;’;
- (c) in the definition of “**officer**”—
- (i) after “officer” **insert** “—(a);”
- (ii) after “agency” (where first occurring) **insert** “, other than a council,”; 15
- (iii) at the end of the definition **insert**—
- “and
- (b) in relation to a council, includes a member of the council, a member of the staff of the council and any person employed by or for the council; 20
- (d) in the definition of “**prescribed authority**”—
- (i) at the end of paragraph (a) (iii) **insert** “or”;
- (ii) in paragraph (a), sub-paragraph (iv) is **repealed**; 25
- (e) in the definition of “**principal officer**”, after paragraph (a) **insert**—
- “(aa) in relation to a council, the person holding, or performing the duties of, the office of chief administrative officer of the council (by whatever name called); and”. 30

17. Publication of information by council

- (1) In section 7 (1) of the Principal Act, after “agency” (where first occurring) **insert** “, other than a council.”.
- (2) After section 7 (1) of the Principal Act **insert**—
- 5 “(1A) Sub-section (1) applies to an agency that is a council as if the reference to the responsible Minister of an agency were a reference to the council.”.
- (3) In section 7 (4) of the Principal Act, after “agency” (where first occurring) **insert** “, that is a department or prescribed agency,”.
- 10
- (4) After section 7 (4) of the Principal Act **insert**—
- 15 “(4AA) The information to be published in accordance with this section by an agency that is a council must be published—
- (a) by including it in the annual report of the council under the **Local Government Act 1989**; or
- (b) separately, as soon as practicable after the commencement of section 17 of the **Freedom of Information (Amendment) Act 1993** and at intervals of not less than 12 months.”.
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18. Amendment of sections 11 and 12

25 In the Principal Act—

- (a) in section 11 (1), after “agency” (where first occurring) **insert** “other than a council”;
- (b) in section 12 (1), after “agency” **insert** “, other than a council”.

30 **19. Access to documents of a council**

- (1) In section 23 (3) (c) of the Principal Act, after “State” **insert** “, or, in the case of an application to a council, other than the council”.
- (2) In section 24 (1) of the Principal Act—

- (a) after paragraph (a) **insert**—
 “(aa) for presentation to a council;”;
- (b) in paragraph (c), after “(a)” **insert** “, (aa)”.

20. Amendment of section 30

After section 30 (1) of the Principal Act **insert**— 5
 ‘(1A) Sub-section (1) applies in relation to a council as if for “Minister” there were substituted “member of the council”.’

21. Disclosure contrary to public interest

- (1) In section 36 of the Principal Act— 10
 - (a) before “A document” **insert** “(1)”;
 - (b) after “(a)” **insert** “in the case of documents of a department or prescribed authority”;
 - (c) after “(b)” **insert** “in the case of documents of a department or prescribed authority”. 15
- (2) At the end of section 36 of the Principal Act **insert**—
 - “(2) A document is an exempt document if—
 - (a) in the case of a document of a council, its premature disclosure under this Act would be contrary to the public interest by reason that the disclosure would be reasonably likely to have a substantial adverse effect on the economy of the municipal district, including but not limited to, revealing consideration of a contemplated movement in rates, fees, charges, interest charges or other levies, the sale or acquisition of land or property by the council, urban re-zoning, the formulation of land use and planning controls and the formation of imposts; or 20
 - (b) in the case of a document of a council, its disclosure under this Act would be contrary to the public interest by reason that it would disclose instructions issued to, or provided for the use of guidance of, officers of a 2530

5 council on the procedures to be followed or
the criteria to be applied in negotiation,
including financial, commercial and labour
negotiation, in the execution of contracts, in
the defence, prosecution and settlement of
cases, and in similar activities relating to the
financial property or personnel management
and assessment interests of the council.”.

22. *New section 38A inserted*

10 After section 38 of the Principal Act **insert**—

“38A. *Council documents*

(1) A document is an exempt document if it
is—

15 (a) the official record of any
deliberation or decision of a closed
meeting or part of a closed meeting
other than the official record under
section 89 (3) of the **Local
Government Act 1989** in the
minutes of a meeting of the reason
20 for closing a meeting to the
public);

25 (b) a document which, in the opinion
of the principal officer of a council,
has been prepared for, or will be
used for, consideration of any
matter by the council at a meeting,
that in the opinion of the principal
officer, is likely to be a closed
meeting of the council;

30 (c) a document that is a copy of, or of
a part of, or contains an extract
from, a document referred to in
paragraph (a) or (b);

35 (d) a document the disclosure of which
would involve the disclosure of
any deliberation or decision of a

- closed meeting (other than the official record under section 89 (3) of the **Local Government Act 1989** in the minutes of a meeting of the reason for closing a meeting to the public) or of a meeting that is likely to be a closed meeting; 5
- (e) a document that is ancillary to, associated with or accompanying a document referred to in paragraph (a), (b), (c) or (d). 10
- (2) Sub-section (1) does not apply to a document by reason of the fact that it was submitted to a closed meeting of a council for its consideration or is proposed to be so submitted if it was not brought into existence for the purpose of submission for consideration by a closed meeting.”. 15
- 23. Amendment of sections 61 to 63** 20
- (1) In section 61 of the Principal Act—
- (a) in paragraph (a), for “an agency” **substitute** “a department or prescribed authority”;
- (b) in paragraph (a), for “that agency” **substitute** “that department or prescribed authority”; 25
- (c) after paragraph (a) **insert**—
- “(aa) if a person is the principal officer of a council—to the council;”.
- (2) After section 62 (1) of the Principal Act **insert**—
- ‘(1A) Sub-section (1) applies in relation to a document of a council as if for “Minister” (except where lastly occurring) there were substituted “council, a member of a council’.
- (3) In section 63 (b) of the Principal Act, after “Minister” **insert** “or a council”. 35

24. New section 65AA inserted

After section 65 of the Principal Act **insert—**

“65AA. Report by council

5 (1) As soon as practicable after the end of each year, the principal officer of each council—

10 (a) must cause to be prepared a report of the operation of this Act during the year ended on the preceding 30 June; and

(b) must give the report to the Minister administering this Act.

15 (2) A report under sub-section (1) must include the matters referred to in paragraphs (a) to (j) of section 64 (3).

20 (3) A council must make a copy of each report under this section available for public inspection during ordinary business hours at the main office of the council.”.

25. Retrospective operation in relation to councils

After section 67 (3) of the Principal Act **insert—**

25 “(4) Sub-sections (1) and (2) apply in relation to access to a document of an agency that is a council as if a reference to the date of commencement of this section were a reference to the date of commencement of section 25 of the **Freedom of Information (Amendment) Act 1993.**”.

