



Parliament of Australia
Joint Standing Committee on the Parliamentary Library

20 December 2012

Richard Glenn
Assistant Secretary
Business and Information Law Branch
Attorney-General's Department
3-5 National Circuit
BARTON ACT 2600

Dear Mr Glenn,

Submission to the Review of the Freedom of Information Act 1982 and the Australian Information Commissioner Act 2010

The Joint Standing Committee on the Parliamentary Library (the Committee) wishes to make the following submission to the review of freedom of information (FOI) legislation to be conducted by Dr Allan Hawke.

The Library Committee's primary role is to report and provide advice to the Presiding Officers of the Parliament on matters to do with the Parliamentary Library and to receive advice and reports from the Parliamentary Librarian on library developments and issues.

The Committee notes that the common and long held view of successive governments and presiding officers had been that the parliamentary departments were exempt from the application of the *Freedom of Information Act 1982* (FOI Act). However, it is not our intention to pursue the broader issue but to address the appropriateness of the Parliamentary Library being subject to the FOI Act.

The Parliamentary Library provides vital services to support the work of Senators and Members. The *Parliamentary Service Act 1999* establishes the office of the Parliamentary Librarian. Section 38B of that Act provides that the functions of the Parliamentary Librarian in providing high quality information, analysis and advice to senators and members in support of their parliamentary and representational roles must be carried out in a timely, impartial and **confidential** manner, having regard to the independence of the Parliament from the Executive

However, correspondence between the Parliamentary Librarian and the Australian Information Commissioner seeking to clarify the status of the Parliamentary Library under the FOI Act indicates that in the Commissioner's view, the Parliamentary Librarian's statutory functions are not specific enough to operate as a blanket exclusion from FOI access to client advice provided by the Library. Furthermore, while advices between parliamentarians and the Library may in many cases qualify for specific exemption under the FOI Act (for example under section 45 – breach of confidentiality and section 46 – infringes the privileges of parliament), this may not be free from doubt in all cases.

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The Library Committee is extremely concerned by these developments which threaten to undermine the integrity of the Parliamentary Library.

The provision of confidential and individually commissioned analysis and advice to assist and support clients in their Parliamentary duties is at the heart of the Library's service. Indeed, provision of confidential, accurate and impartial information and advice by legislative libraries is recognised internationally as fundamental to democratic legislatures. Such advice is an important part of policy development and public administration.

However, senators and members may be reluctant to request such advice and analysis in the absence of certainty that this information will not be released under the FOI Act.

We note that the Parliament has recently enacted amendments to the FOI Act to strengthen the exemptions for the newly established Parliamentary Budget Office (PBO). The Library is of no less importance to the Parliament, and warrants the same protections. Indeed, it is our view that subjecting client requests and advice to the FOI regime is contrary to the will of the Parliament as set out in the Parliamentary Service Act, and would have the effect of jeopardising the Parliamentary Librarian's ability to carry out her statutory obligations to provide a confidential service 'having regard to the independence of Parliament from the Executive'.

The Committee therefore asks that the FOI Act be amended to provide the Parliamentary Library with an exemption from the FOI regime.

We do not have a view as to what form that exemption might take, for example whether it be a blanket exclusion similar to the PBO exemption (given the similar functions of the two organisations) or whether it should be a partial exemption applying only to certain types of documents such as client communications, or to certain services (similar to the exemption applying to court proceedings). Either model would, in the Committee's view, provide protection of that confidential relationship so necessary to allow the Parliamentary Library to continue to provide high quality research and information services to the Parliament. Without such an exemption, the Committee believes the Parliamentary Library's effectiveness as a source of confidential research and analysis will be significantly compromised.

Yours sincerely



The Hon Dick Adams MP
Joint Chair



Senator Gary Humphries
Joint Chair