

Legislative Council—No 1A

As reported with amendments, report adopted, Standing Orders suspended and passed remaining stages, 18 October 2018

South Australia

**Freedom of Information (Miscellaneous)
Amendment Bill 2018**

A BILL FOR

An Act to amend the *Freedom of Information Act 1991*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

5 This Act may be cited as the *Freedom of Information (Miscellaneous) Amendment Act 2018*.

2—Commencement

This Act will come into operation 6 months after the day on which it is assented to by the Governor.

3—Amendment provisions

10 In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Freedom of Information Act 1991*

4—Insertion of section 8A

After section 8 insert:

15 **8A—Public interest**

(1) In deciding whether disclosure of matter contained in a document would, on balance, be contrary to the public interest for the purposes of this Act, the following factors must be taken into account:

20 (a) the general public's need for government information to be accessible;

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- (b) whether the disclosure would contribute to or hinder debate on a matter of public interest;
 - (c) whether the disclosure would inform a person about the reasons for a decision;
 - (d) whether the disclosure would provide the contextual information to aid in the understanding of government decisions;
 - (e) whether the disclosure would inform the public about the rules and practices of government in dealing with the public;
 - (f) whether the disclosure would enhance scrutiny of government decision-making processes and thereby improve accountability and participation;
 - (g) whether the disclosure would enhance scrutiny of government administrative processes;
 - (h) whether the disclosure would promote or hinder equity and fair treatment of persons or corporations in their dealings with government;
 - (i) whether the disclosure would promote or harm public health or safety or both public health and safety;
 - (j) whether the disclosure would promote or harm the administration of justice, including affording procedural fairness and the enforcement of the law;
 - (k) whether the disclosure would promote or harm the economic development of the State;
 - (l) whether the disclosure would promote or harm the environment and or ecology of the State;
 - (m) whether the disclosure would promote or harm the interests of an individual or group of individuals;
 - (n) whether the disclosure would prejudice the ability to obtain similar information in the future;
 - (o) whether the disclosure would prejudice the objects of, or effectiveness of a method or procedure of, tests, examinations, assessments or audits conducted by or for an agency;
 - (p) whether the disclosure would have a substantial adverse effect on the management or performance assessment by an agency of the agency's staff;
 - (q) whether the disclosure would be contrary to the security or good order of a prison or detention facility;
 - (r) whether the applicant is resident in Australia;
 - (s) whether the matter is related to the business affairs of a person which if released would cause harm to the competitive position of that person;

(t) whether the matter is related to the business affairs of a person which is generally available to the competitors of that person;

(u) whether the matter is related to the business affairs of a person, other than an agency, which if it were information of an agency would be exempt information.

(2) The following factors must not be taken into account in deciding whether access to a document would, on balance, be contrary to the public interest for the purposes of this Act:

(a) the seniority of the person who is involved in preparing the document or who is the subject of the document;

(b) that access to the document could result in embarrassment to the government;

(c) that disclosure would cause a loss of confidence in the government;

(d) that access to the document could result in any person misinterpreting or misunderstanding the document.

5—Insertion of section 18A

After section 18 insert:

18A—Documents that cannot be found or do not exist

An agency may determine that it is not possible to give access to a document if—

(a) all reasonable steps have been taken to find the document; and

(b) the agency is satisfied that the document—

(i) is in the agency's possession but cannot be found; or

(ii) never existed.

18B—Nature and scope of application

A decision by an agency in respect of the nature and scope of an application for access to a document of the agency and whether a document, or information contained within a document, is or is not within the scope of the application is a determination for the purposes of this Act.

6—Amendment of section 19—Determination of applications

Section 19(3)—delete subsection (3) and substitute:

(3) This section does not require an agency to determine an application for access to a document in accordance with subsection (1) if the agency has, in accordance with this Act—

(a) transferred the application to another agency; or

- (b) determined that it is not possible to give access to the document because it cannot be found or never existed; or
- (c) refused to deal with, or to continue to deal with, the application.

5 **7—Amendment of section 23—Notices of determination**

(1) Section 23(1)(a)—delete paragraph (a) and substitute:

- (a) of its determination of the person's application (including any determination made under section 18A); or

(2) Section 23(1)(b)—after "not held by the agency" insert:

10 (other than in circumstances contemplated by section 18A)

(3) Section 23(2)—after paragraph (f) insert:

- (fa) if the determination is to the effect that it is not possible to give access to a document because it cannot be found or never existed—the fact that the document cannot be found or never existed (as the case requires) and a summary of the steps taken to find the document; and
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8—Insertion of section 49A

After section 49 insert:

49A—Improper direction or influence

20 A person must not—

- (a) direct an accredited FOI officer to make a decision or determination for the purposes of this Act that the person knows, or ought reasonably to know, is not a decision or determination that the officer should, in the circumstances, make; or
 - (b) improperly influence (whether directly or indirectly) the making of a decision or determination for the purposes of this Act by an accredited FOI officer.
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Maximum penalty: \$5 000.