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Queensland**



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Your Ref:  
Our Ref: 220060

25 November 2010

Mr Paul French  
Co-convenor  
Brisbane Central Business District Bicycle User Group  
GPO Box 2104  
Brisbane 4001

By email: [convenor@cdbbug.org.au](mailto:convenor@cdbbug.org.au)

Dear Mr French

**Application for Financial Hardship under the *Right to Information Act 2009***

I refer to the Brisbane Central Business District Bicycle User Group's (CBD BUG) application to the Office of the Information Commissioner (OIC) for financial hardship status as a non-profit organisation under the *Right to Information Act 2009* (Qld) (RTI Act).

In accordance with section 67 of the RTI Act, I have decided that CBD BUG is a non-profit organisation with financial hardship status. The reasons for my decision are **attached**.

The effect of my decision is that any processing charge or access charge relating to CBD BUG's RTI applications must be waived.<sup>1</sup>

This decision has effect for one year from today.<sup>2</sup>

I enclose an OIC guideline on financial hardship status for non-profit organisations. You will see at paragraph 4.2.3 of the guideline that if there is a substantial improvement in CBD BUG's financial circumstances within the period that this decision has effect, you must advise OIC in writing.

If you have any questions or require further information, you can contact OIC by writing to the above address, emailing [administration@oic.qld.gov.au](mailto:administration@oic.qld.gov.au) or telephoning 07 3405 1114.

Yours sincerely

Jenny Mead  
**Right to Information Commissioner**

Encl Guideline: Financial hardship status for non-profit organisations

<sup>1</sup> Section 66(2)(b) of the RTI Act.

<sup>2</sup> Section 67(3) of the RTI Act.



## **Decision and Reasons for Decision**

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**Application Number:** 220060

**Applicant:** Brisbane Central Business District Bicycle User Group

**Decision Date:** 25 November 2010

**Catchwords:** ADMINISTRATIVE LAW - RIGHT TO INFORMATION - application for financial hardship status - section 67 of the *Right to Information Act 2009* (Qld) - whether the group is a non-profit organisation in financial hardship

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## REASONS FOR DECISION

### Summary

1. Brisbane Central Business District Bicycle User Group (**CBD BUG**) is a non-profit organisation which is in financial hardship for the purpose of section 67 of the *Right to Information Act 2009* (Qld) (**RTI Act**).
2. The decision that CBD BUG has financial hardship status has effect for one (1) year from the date of this decision.

### Background

3. CBD BUG was established in 2005 and adopted its Constitution in 2008.
4. On 21 October 2010, the Office of the Information Commissioner (**OIC**) received from CBD BUG a written application for financial hardship status under section 67 of the RTI Act (**Application**).

### Steps taken by OIC

5. By letter dated 21 October 2010 OIC wrote to CBD BUG:
  - acknowledging receipt of the Application
  - informing CBD BUG that the Information Commissioner was considering the Application.
6. By email dated 10 November 2010, OIC emailed CBD BUG to request an updated statement of account.
7. In making this decision I have considered:
  - the Application
  - the Central Business District Bicycle User Group Constitution (**Constitution**)
  - CBD BUG's most recent statement of cash at bank together with a transaction list since last statement to 10 November 2010
  - relevant provisions of the RTI Act
  - relevant administrative decisions and case law as identified in this decision.

### Issue in this review

8. The question of whether an organisation is in financial hardship must be determined objectively<sup>1</sup> and will depend upon the particular circumstances of the case.<sup>2</sup>
9. Section 67(1) of the RTI Act provides that:

**67 Financial hardship status for non-profit organisation**

*(1) The information commissioner may, on written application by a non-profit organisation, decide whether a non-profit organisation has financial hardship status by considering the nature and size of the organisation's funding base and the amount of the organisation's liquid funds.*

<sup>1</sup> *Van De Wiel and Civil Aviation Safety Authority* [2006] AATA 207 at para 17.

<sup>2</sup> *FG O'Brien Pty Ltd v Elliott* [1965] NSW 1473 at 1475.

10. Therefore in deciding the Application, I must consider:

- a) whether CBD BUG is a non-profit organisation; and
- b) whether CBD BUG is in financial hardship, by reference to the nature and size of its funding base and the amount of CBD BUG's liquid funds.

### **Applicant's submissions**

11. In the Application, Mr Paul French, Co-convenor of CBD BUG, states by way of background that:

*The CBD BUG is a non-profit organisation of city cyclists, formed to represent and articulate the interests of the very large number of Brisbane residents who commute or ride bicycles to, from and within Brisbane's city centre. The group has almost 600 members, and potentially advocates on behalf of several thousand people who regularly cycle to, through and in Brisbane's CBD each day.*

*The CBD BUG was established in early 2005 to:*

- *monitor and identify CBD cycling facilities (and deficiencies)*
- *act as a resource for CBD commuter cyclists*
- *lobby for improvements, and*
- *act as a network of cycle commuters and other bike users in the CBD.*

*Members meet monthly in the free-of-charge community meeting room in the Brisbane City Council's Brisbane Square Library to discuss policy issues, formulate strategies to achieve the organisation's objectives and listen to invited guest speakers.*

*After initially operating under a very informal governance arrangement it was decided in late 2008 to adopt a constitution to formalise some of its operating arrangements. A copy of the CBD BUG's current constitution is attached.*

12. The Constitution provides rules relating to CBD BUG's:

- objectives
- non-profit structure
- membership
- meetings
- officers
- annual general meetings
- dissolution.

### **Findings**

#### ***Non-profit organisation***

##### **The relevant law**

13. Schedule 6 of the RTI Act defines 'non-profit organisation' as an organisation that is not carried on for the profit or gain of its members.

14. The word 'organisation' is not further defined in the RTI Act, nor is it defined in the *Acts Interpretation Act 1954* (Qld). The Macquarie Dictionary defines 'organisation' to mean a 'body of persons organised for some end or work'.<sup>3</sup>

<sup>3</sup> *Macquarie Dictionary Online* (Fourth Edition) [www.macquariedictionary.com.au](http://www.macquariedictionary.com.au).

### Is CBD BUG an organisation?

15. Yes. I am satisfied that CBD BUG is an organisation for the following reasons.
16. The Application states that CBD BUG members meet regularly to formulate strategies to achieve stated objectives. Evidence of the group's coordinated advocacy activity and other work is listed on its website:

*CBD BUG meets monthly, discussing issues and happenings of concern and interest to CBD cyclists, and to date has*

- *regularly met with, lobbied and written to a range of State and Brisbane City Council politicians on issues of major concern to commuter cyclists (improved commuter routes, reduced vehicle speeds, improved EOT facilities, the need for the commercial bicycle centre, improved bicycle provisions in City Plan etc etc);*
- *undertaken an extensive survey of city cyclists regarding cycling issues*
- *developed a comprehensive data-base of parking and end-of-trip (EOT) facilities in CBD buildings*
- *organised tours of CBD 'best practice' facilities*
- *established a 'bike buddy' scheme for new/inexperienced cyclists, to encourage higher rates of commuting by bike*
- *drafted a number of comprehensive submissions, lodged after extensive discussion amongst BUG members, giving cyclists a direct voice in government planning and policy development.*

17. I am satisfied that CBD BUG is an organisation, on the basis that its several hundred members are working towards a common goal, as advertised on its website<sup>4</sup>—campaigning for better facilities, safer roads and easier access for all cyclists who travel to, from, or through Brisbane's Central Business District.

### Is the organisation non-profit?

18. The Constitution states that CBD BUG is a non-profit organisation. Specifically:

#### **Non-profit organisation**

*The assets and income of the organisation shall be applied solely in furtherance of its abovementioned objectives and no portion shall be distributed directly or indirectly to members except as bona fide compensation for services rendered or expenses incurred on behalf of the CBD BUG.*

19. This clause provides that any funds and assets must not be distributed to its members and are limited to CBD BUG's objectives, as set out in the Constitution:

#### **Objectives**

*To improve conditions for cyclists living in or cycling to, within, and from the Brisbane CBD. To this end BUG will—*

- *Advocate and promote better cycle routes to, within, and from the CBD.*
- *Advocate and promote better end-of-trip facilities in the CBD for cyclists.*
- *Pursue this objective with the relevant instrumentalities of the Brisbane City Council and Queensland Government, as well as any other organisations or individuals who have*

<sup>4</sup> <http://sites.google.com/site/cbdbug/>.

*relevant responsibilities impacting on cycling to, within, and from the CBD, including building owners, managers and tenants.*

20. I accept that CBD BUG's objectives and activities as set out in the Constitution and stated in its Application:
- do not include the generation of profit for its members
  - are carried on to promote bicycle transport rather than to achieve individual gain for its members.
21. I accept Mr French's submissions, supported by express rules in the Constitution, that CBD BUG is not carried on for the personal profit or gain of its members. I consider that, for the purposes of the Application, CBD BUG is a non-profit organisation and is therefore entitled to apply under section 67 of the RTI Act for financial hardship status.

### **Financial hardship**

#### **The relevant law**

22. The RTI Act provides that I may determine whether a non-profit organisation has financial hardship status by considering the:
- nature and size of CBD BUG's funding base
  - amount of liquid funds.

#### **What is the nature and size of CBD BUG's funding base?**

23. CBD BUG's approach to revenue-raising is explained in its Application:

*The CBD BUG's finances are strictly limited because it does not:*

- collect fees or subscriptions from members
- sell /trade /promote any products or services
- raise funds from external private sources, or
- seek any form of government funding.

*The decision to eschew revenue raising has been a deliberate strategy to ensure CBD BUG members are not distracted from this organisation's primary mission of advocating for improved conditions for cyclists.*

*Accordingly, CBD BUG's assets are limited to:*

- a bank account – opened to hold a \$100 donation from one member (copies of two most recent bank statements attached), and
- a website, Twitter account and blog.

*Other than the abovementioned \$100 donation, since its inception the only other revenue of any note derived by the CBD BUG has been an amount of \$250 received from Bicycle Victoria in May 2010 for the participation of five CBD BUG members in the 2010 Super Tuesday cyclist counting exercise.*

*The expenses of CBD BUG are primarily comprised of postage, printing and the previously mentioned web presence. These expenses are met from the personal resources of the CBD BUG's executive committee (three Co-convenors) and general members, all of whom are volunteers.*

*The CBD BUG is not incorporated, nor does it have a Tax File Number or Australian Business Number. With its very limited financial activities the organisation does not compile financial statements, engage the service of an auditor or file a tax return or Business Activity Statements.*

24. I accept Mr French's submissions and supporting evidence, insofar as I find that CBD BUG:
- has \$351.07 cash at bank
  - does not undertake regular revenue-raising activities
  - relies on Co-convenors and members to fund administrative expenses in their private capacity
  - is not structured to raise revenue to finance RTI applications.
25. As CBD BUG's funding is entirely dependent upon the good will of its members, I accept that the nature of the funding base is restricted and highly unpredictable.
26. I have also considered the current cash position and accept that the size of CBD BUG's funding base is negligible at present.
27. I note, however, that the nature and size of CBD BUG's funding base could change rapidly through donations or payment for advocacy activities. Importantly, any change to the nature and size of the CBD BUG's funding base in the next twelve months may affect this decision and must be reported to OIC as soon as practicable.<sup>5</sup>

***What are CBD BUG's liquid funds?***

28. There are a variety of financial analysis tools that can be used to determine the financial condition of a non-profit organisation,<sup>6</sup> but where liabilities are uncertain, the common ratios are of little assistance. CBD BUG's current liabilities have, to date, been settled by the Co-convenors and members, rather than out of the cash at bank. This means that OIC cannot make an accurate assessment of the group's liabilities and therefore cannot effectively assess its liquidity using the common ratios.
29. The objective of the liquidity tests are to measure an organisation's ability to pay its short-term obligations and meet unexpected demands on its cash resources. The Information Commissioner has previously decided<sup>7</sup> that my task under section 67 of the RTI Act is to determine, quite simply, what are the organisation in question's liquid funds. On the information presently available to me, the answer in this case is \$351.07. This is a very meagre amount, given the broad-ranging objectives of CBD BUG to advocate on behalf of 600 members as well as other bicycle users before government and other stakeholders.
30. I consider that CBD BUG has strictly limited liquid funds with which to obtain access to information under the RTI Act.

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<sup>5</sup> Section 67(4)(a) of the RTI Act.

<sup>6</sup> Current Ratio, Quick Ratio and Working Capital (**Common Ratios**). For more information on Common Ratios, see OIC Guideline *Financial hardship status for non-profit organisations*.

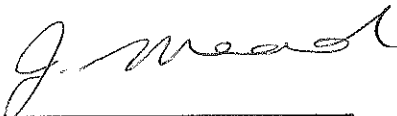
<sup>7</sup> *Kalinga Woolloowin Residents Association* (Unreported, Queensland Office of the Information Commissioner, 31 August 2010) (**Kalinga Decision**)

### Is CBD BUG in financial hardship?

31. The Information Commissioner concluded in the Kalinga Decision<sup>8</sup> that the term 'hardship' implies a level of severe toil, trial, oppression or need<sup>9</sup> and 'severe circumstances would need to be demonstrated before it became applicable.'<sup>10</sup>
32. CBD BUG has only \$351.07 in liquid funds. As CBD BUG does not practice revenue-raising, additional funding is entirely dependent upon the goodwill of its members.
33. Access to information under the RTI Act may assist CBD BUG in carrying out its objectives, however the limited funds available to CBD BUG to meet the costs of RTI Act applications and processing may be exhausted before the organisation obtains access to information under the RTI Act. Without a stable funding base to refresh depleted assets, processing and access charges accrued to CBD BUG may become debts which the organisation cannot pay.
34. I am satisfied that CBD BUG's circumstances are indicative of a level of hardship in carrying out its activities.
35. Unless and until CBD BUG develops its funding base, it is unlikely to be in a fit financial position to utilise the RTI Act access scheme in order to meet its stated objectives. However if there is improvement in its financial situation, CBD BUG is to notify OIC as soon as practicable.<sup>11</sup>
36. Taking into account the nature and size of CBD BUG's funding base and the small amount of liquid funds, I am satisfied that CBD BUG has strictly limited finances to support its activities and is in financial hardship.

### DECISION

37. CBD BUG is a non-profit organisation with financial hardship status under section 67 of the RTI Act.
38. The effect of my decision is that any processing charge or access charge relating to CBD BUG's RTI Act applications must be waived by an agency to which CBD BUG applies.<sup>12</sup>
39. This decision has effect for one year from today.<sup>13</sup>
40. I have made this decision as a delegate of the Information Commissioner under section 145 of the RTI Act.



**Jenny Mead**  
Right to Information Commissioner

**Date: 25 November 2010**

<sup>8</sup> At paragraph [33].

<sup>9</sup> *Macquarie Dictionary Online* (Fourth Edition) [www.macquariedictionary.com.au](http://www.macquariedictionary.com.au).

<sup>10</sup> *Re Hounslow* (1985) 7 ALR 362 at 367.

<sup>11</sup> Section 67(4)(a) of the RTI Act.

<sup>12</sup> Section 66(2)(b) of the RTI Act.

<sup>13</sup> Section 67(3) of the RTI Act.