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Your Ref:
Our Ref: 220064

13 December 2011

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

By email: convenor@cdbbug.org.au

Dear Mr French

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

I refer to the application by the Brisbane Central Business District Bicycle User Group (CBD BUG) 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.¹

This decision has effect for one year from today.²

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 or telephoning 07 3405 1114.

Yours sincerely



Anna Rickard
Acting Assistant Information Commissioner

Encl Guideline: Financial hardship status for non-profit organisations

¹ Section 66(2)(b) of the RTI Act.

² Section 67(3) of the RTI Act.



Decision and Reasons for Decision

Application Number: 220064

Applicant: Brisbane Central Business District Bicycle User Group

Decision Date: 13 December 2011

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

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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 year from the date of this decision.

Background

3. On 25 November 2010, the Office of the Information Commissioner (**OIC**) decided that the CBD BUG was a non-profit organisation, in financial hardship for the purpose of section 67 of the RTI Act. This decision expired on 25 November 2011.
4. By letter dated 24 November 2011 and received on 30 November 2011, CBD BUG made a further written application to OIC for renewal of the financial hardship status under section 67 of the RTI Act (**Application**).
5. By letter dated 30 November 2011, OIC wrote to Mr Paul French, Co-convenor of CBD BUG:
 - acknowledging receipt of the Application; and
 - informing CBD BUG that the Information Commissioner was considering the Application.
6. In making this decision I have considered:
 - the Application
 - the Central Business District Bicycle User Group Constitution (**Constitution**)
 - CBD BUG's bank statement for period 22 November 2010 to 21 March 2011 together with its most recent interim statement of cash at bank covering the period 1 July 2011 to 11 November 2011
 - relevant provisions of the RTI Act; and
 - relevant administrative decisions and case law as identified in this decision.

The relevant law

7. The question of whether an organisation is in financial hardship must be determined objectively¹ and will depend upon the particular circumstances of the case.²
8. 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.*

¹ *Van De Wiel and Civil Aviation Safety Authority* [2006] AATA 207 at paragraph 17.

² *FG O'Brien Pty Ltd v Elliott* [1965] NSWLR 1473 at 1475.

Example—

The fact an organisation receives significant government funding may indicate its finances are strictly limited.

9. 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

10. In the Application, the Co-convenor of CBD BUG, states by way of background that:³

CDB BUG background information

The CBD BUG is a non-profit organisation of city cyclists, representing and articulating 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 now has over 600 members, and potentially advocates on behalf of several thousand regular people who cycle to the CBD each day.

...

The CBD BUG's constitution remains unchanged from the version provided in support of its original application for RTI hardship status ...

Financial situation of CBD BUG

The CBD BUG's finances are as limited as they were at the time of the initial application for financial hardship lodged in October 2010.

Other than a few cents of interest earned on the CBD BUG's only bank account, no other revenue has been earned during the previous 12 months.

The CBD BUG continues to have no physical assets and in limiting its activities purely to advocacy, does not require public liability or other insurance. No membership fees are charged.

The CBD BUG remains unincorporated, and does not have a Tax File Number or Australian Business Number. Accordingly, the organisation has not been required to prepare financial statements, tax returns or Business Activity Statements.

The CBD BUG's assets are limited to:

- 1. one Credit Union Australian (CUA) account – current balance \$275.09 ...*
- 2. a website (www.cbdbug.org.au), and*
- 3. Twitter account (<http://.com/#!/cbdbug>).*

Members from the executive committee continue to meet the CBD BUG's operating costs, such as postage, printing and website hosting, from their personal resources.

This information clearly demonstrates the continuing non-profit nature of the Brisbane CBD BUG and its strictly limited finances.

³ Only relevant parts of the Application have been set out.

Findings

Is CBD BUG a non-profit organisation?

11. 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.
12. I accept the Co-governor’s submissions that CBD BUG is an organisation that is not carried on for the personal profit or gain of its members, and its Constitution has not changed since OIC’s decision dated 25 November 2010. On this basis, I am satisfied that CBD BUG is a non-profit organisation on the same grounds that OIC decided this question on 25 November 2010.

Financial hardship

13. To determine whether a non-profit organisation has financial hardship status, I must consider the:
 - nature and size of the organisation’s funding base; and
 - amount of liquid funds.

Nature and size of CBD BUG’s funding base

14. I accept the Co-convenor’s submission that:
 - CBD BUG currently holds approximately \$275.09 cash at bank
 - members of the executive committee of CBD BUG meet operating costs; and
 - no revenue has been earned during the previous 12 months.⁴
15. 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.
16. 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 CBD BUG’s funding base in the next twelve months may affect this decision and must be reported to OIC as soon as practicable.⁵

What are CBD BUG’s liquid funds?

17. There are a variety of financial analysis tools that can be used to determine the financial condition of an organisation, the most common of which is liquidity analysis. The objective of liquidity analysis is to measure an organisation’s ability to pay its short-term obligations and meet unexpected demands on its cash resources. My task under section 67 of the RTI Act is to determine, quite simply, what are the organisation in question’s liquid funds.⁶
18. On the information presently available to me, there are no liabilities to measure and the answer is therefore \$275.09. This is a very meagre amount, given the broad-ranging objectives of CBD BUG to advocate on behalf of over 600 members as well as other bicycle users before government and other stakeholders.

⁴ Aside from interest amounting to less than \$1.00.

⁵ Section 67(4) of the RTI Act.

⁶ *Kalinga Wooloowin Residents Association* (Unreported, Queensland Office of the Information Commissioner, 31 August 2010) (*Kalinga Decision*)

19. Accordingly, I consider that CBD BUG has strictly limited liquid funds with which to obtain access to information under the RTI Act.

Is CBD BUG in financial hardship?

20. The term “hardship” implies a level of severe toil, trial, oppression or need⁷ and ‘severe circumstances would need to be demonstrated before it became applicable’.⁸
21. CBD BUG has \$275.09 in liquid funds and further funding is entirely dependent upon the goodwill of its members.
22. 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.
23. 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

24. I have decided that CBD BUG is a non-profit organisation with financial hardship status under section 67 of the RTI Act.
25. The effect of my decision is that any processing charge or access charge relating to the Association’s RTI applications must be waived.⁹
26. This decision has effect for one year from today.¹⁰
27. I have made this decision as a delegate of the Information Commissioner under section 145 of the RTI Act.



Anna Rickard
Acting Assistant Information Commissioner

Date: 13 December 2011

⁷ Delbridge A, et al. (eds), *The Macquarie Dictionary* (3rd ed, 1991) 803.

⁸ *Re Hounslow* (1985) 7 ALR 362 at 367.

⁹ Section 66(2)(b) of the RTI Act.

¹⁰ Section 67(3) of the RTI Act.