



Decision and Reasons for Decision

Application Number: 2006/F0025

Applicant: Nicholas Scott

Respondent: Queensland Corrective Services

Decision Date: 6 November 2007

Catchwords: **FREEDOM OF INFORMATION - sufficiency of search - corrective service officer reports - audio recordings - medical records - whether reasonable grounds to believe documents exist - whether reasonable searches conducted by agency**

FREEDOM OF INFORMATION - section 44(1) of the *Freedom of Information Act 1992 (Qld)* - matter affecting personal affairs - correctional centre video recording - personal affairs - whether blurring faces of other prisoners would allow identification - public interest - allegations of wrongdoing by corrective service officers

FREEDOM OF INFORMATION - section 29B(4)(a)(ii) of the *Freedom of Information Act 1992 (Qld)* - previous application for same documents - whether applicant has reasonable basis for again seeking access to documents

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REASONS FOR DECISION

Background

1. By application dated 10 October 2005, the applicant sought access to the following documents from Queensland Corrective Services (QCS):

Table 1
1. All correspondence, memos, emails, faxes, website, ABN, letters etc from QCS to the Office of the Information Commissioner (OIC) relating to missing video footage of spine and audio intercom recordings of Woodford Correctional Centre (Woodford CC) Detention Unit (DU) on 19 July 2002.
2. All correspondence, memos, emails, faxes, website, ABN, letters etc from OIC to QCS relating to missing video footage of spine and audio intercom recordings of Woodford CC DU on 19 July 2002.
3. All correspondence, memos, emails, faxes, website, ABN, letters etc from QCS to CMC relating to an investigation into incident at Woodford CC DU on 19 July 2002.
4. All correspondence, memos, emails, faxes, website, ABN, letters etc from CMC to QCS relating to an investigation into incident at Woodford CC DU on 19 July 2002.
5. All correspondence, memos, emails, faxes, website, ABN, letters etc from QCS to Department of Custodial Corrections relating to an investigation into incident at Woodford CC DU on 19 July 2002.
6. All correspondence, memos, emails, faxes, website, ABN, letters etc from Department of Custodial Corrections to QCS relating to an investigation into incident at Woodford CC DU on 19 July 2002.
7. All docs to, from and by Mr Daryl Taylor (Manager, Woodford CC) (or from one of his "appointed members") relating to an investigation into incident at Woodford CC DU on 19 July 2002.
8. All docs to, from and by Mr Michael Taylor (Correctional Manager (CM)) (or from one of his "appointed members") relating to an investigation into incident at Woodford CC DU on 19 July 2002.
9. All docs to, from and by Ms Helen Ringrose (Director General, QCS) (or from one of his "appointed members") relating to an investigation into incident at Woodford CC DU on 19 July 2002.
10. All docs to, from and by Mr Chris Watters (Director, Ethical Standards Unit (ESU)) (or from one of his "appointed members") relating to an investigation into incident at Woodford CC DU on 19 July 2002.
11. Main Movement Book located at Secure One Movement Control Room at Woodford CC from 19 July 2002 - 31 August 2002.
12. Evidence logbook from Woodford CC from 19 July 2002 - 19 September 2002.
13. Case file of Intelligence Unit of Woodford CC relating to an investigation into incident at Woodford CC DU on 19 July 2002.
14. Case file from ESU of QCS relating to an investigation into incident at Woodford CC DU on 19 July 2002.
15. Video tape J19 from 19 July 2002 of 16 cells in Woodford CC DU.
16. Video tape from 19 July 2002 of spine of Woodford CC DU (spine video tape).
17. Video tape J19 of two zoom images of cell 12 of Woodford CC DU between the times 16:20-16:29 and 17:42-17:43 on 19 July 2002.
18. All pages of Woodford CC DU logbook from 19 July 2002 - 31 August 2002.

19. Daily report of Woodford CC DU Corrective Service Officers (CSOs) Sullivan and Naylor for 19 July 2002.

20. Daily report of Woodford CC DU Unit Manager for 19 July 2002.

2. Having received no response from QCS within the time specified by the *Freedom of Information Act 1992 (Qld)* (FOI Act), the applicant applied to this Office for external review of QCS' deemed refusal of his initial freedom of information (FOI) application, by letter dated 2 January 2006.
3. By letter dated 10 September 2006, the applicant informed this Office that QCS had since provided him with the video tape sought in Item 17 of his initial application and therefore, that document was no longer in issue in this review.
4. It is relevant to note that all documents sought by the applicant in his FOI application relate to an incident in which he was involved on 19 July 2002 in the Woodford CC Detention Unit (19 July 2002 incident). As a result of a complaint made by the applicant to the Crime and Misconduct Commission (CMC) regarding his treatment by Woodford CC officers during the 19 July 2002 incident, an investigation was carried out by CM Michael Taylor and subsequently, further inquiries were undertaken by the ESU. Based on the investigation conducted by Mr Taylor and the ESU's further inquiries, the ESU found that the applicant's complaint '*...could not be substantiated and that staff involved ... acted appropriately and in accordance with departmental policy and procedure*'. The ESU recommended that no further action be taken in respect of the matter and the investigation file was closed on 31 January 2003.

Decision under review

5. The decision subject to external review is QCS' deemed refusal to grant the applicant access to all documents sought in his initial FOI application dated 10 October 2005.

Steps taken in the external review process

6. By letter dated 20 April 2007, I directed QCS to conduct searches for the documents sought in Items 3-10, 13-14 and 18-20 of the applicant's initial FOI application. In that letter, I also:
 - expressed my preliminary view that the documents created by this Office sought by the applicant in Item 2 were excluded from the application of Part 3 of the FOI Act due to the operation of section 12 of the FOI Act. Accordingly, the applicant was not entitled to access those documents under the FOI Act
 - requested QCS to confirm that it relied upon section 29B(4)(d)(iii) of the FOI Act in refusing to deal with Item 15
 - requested QCS to confirm that it relied upon section 29B(4)(a)(ii) of the FOI Act in refusing to deal with Item 16.
7. By letter dated 2 May 2007, QCS advised that as a result of searches conducted for documents responsive to Items 3-10, 13-14 and 18-20, it had located the following documents:
 - ESU file number 02/099 - 123 folios
 - logbook from 19 July 2002 to 14 August 2002 - 37 folios
 - relevant documents from Central Office File number 40/105/19/306 (Central Office File) - 34 folios.

8. In that letter, QCS also advised that it:
 - claimed exemption over a small amount of matter in certain folios in the ESU file and logbook pursuant to section 44(1) of the FOI Act
 - did not claim any exemption over the documents contained on the Central Office File and therefore, those 34 folios could be released to the applicant in full
 - relied on section 29B(4)(d)(iii) of the FOI Act in refusing to deal with Item 15
 - relied on section 29B(4)(a)(ii) of the FOI Act in refusing to deal with Item 16
 - submitted that an application fee was payable in order to process Item 18
 - was unable to locate a document which constituted a 'daily report' of Corrective Service Officers (CSO) and the Unit Manager as sought in Items 19 and 20 of the applicant's FOI application because the logbook entries were the only record of activities for officers rostered on those dates.
9. On 24 July 2007, a staff member of this Office conveyed my preliminary view to QCS that it was not open for it to rely on section 29B(4)(d)(iii) in refusing to deal with Item 15 of the applicant's FOI application. QCS accepted this view and in light of it, submitted that the remaining footage on the J19 video tape qualified for exemption under section 44(1) of the FOI Act.
10. By email dated 24 July 2007, I informed QCS of my preliminary view that it was not open for it to request payment of an application fee in respect of Item 18. Accordingly, I requested QCS to provide this Office with copies of the documents sought by the applicant in Item 18 and indicate whether it claimed exemption over any parts of those documents under the FOI Act.
11. By letter dated 25 July 2007, QCS provided this Office with copies of the documents sought in Item 18 and submitted that certain matter in those folios qualified for exemption under section 44(1) of the FOI Act.
12. By letter dated 1 August 2007, I informed the applicant of my preliminary view that:
 - with respect to the documents located by QCS in response to Item 2, those folios were excluded from the application of Part 3 of the FOI Act by the operation of section 12 of the FOI Act
 - with respect to the documents located in response to Items 3-10 and 13-14, the names of other Woodford CC prisoners, the personal details of the applicant's visitors and the personal details of a Woodford CC staff member contained in the ESU file documents qualified for exemption under section 44(1) of the FOI Act
 - the remaining footage on the J19 video tape sought in Item 15 qualified for exemption under section 44(1) of the FOI Act
 - QCS was entitled to rely upon section 29B(4)(d)(iii) of the FOI Act in refusing to deal with Item 16
 - with respect to Item 18, the names of other prisoners in the logbook folios from 19 July 2002 to 19 August 2002 qualified for exemption under section 44(1) of the FOI Act
 - Items 19-20 were resolved by the logbook folios provided to the applicant by QCS.
13. By letter dated 24 August 2007, the applicant provided submissions in response to my preliminary view in which he:
 - accepted my preliminary view with respect to Items 1-6 and 17-20
 - contested my preliminary view with respect to Items 15

- raised issue with the sufficiency of QCS' searches in respect of Items 7-10, 13 and 14
 - advised that certain folios from the ESU file provided to him by QCS had been photocopied 'crooked' with text omitted, and requested fresh copies of those folios.
14. By letter dated 3 September 2007, I requested the applicant to:
- provide further submissions to support his sufficiency of search arguments in respect of Item 9
 - confirm that he accepted my preliminary view in respect of Item 16 in light of his submissions on Item 15.
15. In that letter, I also expressed my preliminary view that, in respect of the documents located by QCS in response to Items 11 and 12, parts of those documents qualified for exemption under section 44(1) of the FOI Act.
16. By letter dated 3 September 2007, I requested QCS to:
- undertake further searches for certain CSO reports relating to the 19 July 2002 incident
 - provide the applicant with fresh copies of certain folios that had been photocopied poorly.
17. By letter dated 9 September 2007, the applicant:
- provided further submissions in relation to Items 9, 15 and 16
 - accepted my preliminary view in respect of Items 11 and 12
18. By letter dated 13 September 2007, QCS advised this Office that:
- reports of CSOs Steley, Clem, Sullivan and Bullock and Nurse Hann relating to the 19 July 2002 incident had already been provided to the applicant as part of the ESU file
 - extensive searches had been conducted for reports of CSOs Naylor and Doran and the General Manager relating to the 19 July 2002 incident but these reports could not be located
 - fresh copies of the folios that had been poorly photocopied had been provided to the applicant.
19. By letter dated 18 September 2007, I requested QCS to conduct searches for and provide submissions with respect to the existence of:
- audio recordings of interviews on the ESU file regarding the 19 July 2002 incident
 - additional documents relevant to the 19 July 2002 incident held on the Central Office File
 - medical reports additional to the progress notes already provided to the applicant in relation to the 19 July 2002 incident
20. By letter dated 27 September 2007 QCS submitted as follows:
- searches had been conducted of the ESU tape registry for cassette tapes containing audio recordings of interviews relating to the 19 July 2002 incident but no tapes could be located

- only certain documents on the Central Office File were relevant to the 19 July 2002 incident
- medical records relating to a hand injury suffered by the applicant had been located but these were not included in the investigation into the 19 July 2002 incident nor were they within the scope of the applicant's initial FOI application
- QCS was prepared to release the additional medical records to the applicant on an administrative basis.

21. By letter dated 2 October 2007, I advised the applicant of my preliminary view that:

- with respect to Item 16, he had not raised reasonable grounds for again seeking access to the spine video tape and accordingly, QCS was entitled to rely upon section 29B of the FOI Act in refusing to deal with that part of his application
- with respect to sufficiency of search, there were no reasonable grounds to believe that QCS had in its possession or under its control:
 - additional CSO reports relating to the 19 July 2002 incident
 - audio recordings of ESU interviews
 - further documents on the Central Office File relevant to the 19 July 2002 incident.
- medical records relating to his hand injury did not fall within the scope of his initial FOI application.

22. In that letter, I also advised the applicant:

- that QCS was prepared to release, on an administrative basis, the additional medical records it had located regarding his hand injury
- of the contact details for the QCS FOI and Privacy Unit with which to lodge an administrative request for those documents.

23. By letter dated 16 October 2007, the applicant:

- advised that he had not yet received copies of the documents containing logbook entries from 15 August 2002 to 19 August 2002 from QCS
- advised that the fresh photocopy of folio 55 provided by QCS was still missing some text
- advised that he did not accept my preliminary view with respect to Item 15, Item 16 and sufficiency of search
- made submissions as to why further documents should exist and provided documents in support of his sufficiency of search contentions
- submitted that medical records relating to his hand injury fell within the terms of his initial FOI application.

24. On 18 October 2007, this Office contacted QCS regarding the logbook entries from 15 August 2002 to 19 August 2002 which had not been received by the applicant. QCS advised that those documents were sent to the applicant by letter dated 30 August 2007 and that the General Manager of Arthur Gorrie Correctional Centre (AGCC) had confirmed the receipt of that correspondence on 1 September 2007.

25. On 18 October 2007, I also raised with QCS, the issue of missing text in folio 55 due to poor photocopying. QCS advised that:

- the original version of folio 55 was not held by the FOI Unit
- the photocopying had been done thoroughly
- there was no text missing in the version of folio 55 provided to the applicant.

26. In making this decision, I have taken into account the following:

- the applicant's initial FOI application dated 10 October 2005
- the applicant's application for external review dated 2 January 2006
- file note of telephone conversations held between staff members of this Office and QCS during the course of this review
- written correspondence exchanged between this Office and the applicant and QCS during the course of this review
- the applicant's submissions dated 24 August 2007, 9 September 2007 and 9 October 2007 and supporting documentation
- QCS' submissions dated 2 May 2007, 13 September 2007 and 27 September 2007
- QCS procedural documents
- Queensland State Archives Disposal Authority QDAN 483
- this Office's decision in external review no. 746/04 dated 7 September 2005
- relevant legislation and case law.

Matter in issue

27. As a result of the applicant withdrawing his external review application in respect of Items 1-6, 11-12 and 17-20, the matter remaining in issue in this review is that which is set out in the table below:

Table 2	
Item No.	Documents in issue
7	All docs to, from and by Mr Daryl Taylor (Manager, Woodford CC) (or his "appointed member") relating to an investigation into incident at Woodford CC DU on 19 July 2002.
8	All docs to, from and by CM Michael Taylor (or his "appointed member") relating to an investigation into incident at Woodford CC DU on 19 July 2002.
9	All docs to, from and by Ms Helen Ringrose (Director General, QCS) (or his "appointed member") relating to an investigation into incident at Woodford CC DU on 19 July 2002.
10	All docs to, from and by Mr Chris Watters (Director, ESU) (or his "appointed member") relating to an investigation into incident at Woodford CC DU on 19 July 2002.
13	Case file of Intelligence Unit of Woodford CC relating to an investigation into incident at Woodford CC DU on 19 July 2002.
14	Case file from ESU of QCS relating to an investigation into incident at Woodford CC DU on 19 July 2002.
15	Video tape J19 from 19 July 2002 of 16 cells in Woodford CC DU.
16	Video tape from 19 July 2002 of spine of Woodford CC DU.

28. In respect of Items 7-10 and 13-14, the applicant raised issue with the sufficiency of the searches undertaken by QCS for the documents sought in those Items. The applicant did not contest the application of the FOI Act exemption provisions that were claimed by QCS over documents that were located in response to those Items.

29. In respect of Item 15, the applicant has contested the application of section 44(1) of the FOI Act to the footage which was deleted from the J19 video tape, prior to its release to him in external review no. 746/04.
30. In respect of Item 16, the applicant has submitted that he has a reasonable basis for again seeking access to the spine video tape to which he sought access in one of his previous FOI applications which was the subject of external review no. 746/04.

Findings

Items 7-10 and 13-14

31. During the course of this review, the applicant has been provided with the following documents in response to his requests in Items 7-10:
 - 123 folios from ESU file number 02/099
 - 34 folios from Central Office file number 40/150/19/306.
32. In her letter dated 2 May 2007 to this Office, Ms Verna Young, QCS, submitted as follows in relation to Items 7-10 and 13-14:

The requested documents relate to [the applicant's] treatment in the detention unit of Woodford Correctional Centre on 19 July 2002. An investigation was carried out by the Ethical Standards Unit ("ESU") and ESU File number 02/099 contains documentation gathered by or produced by the Ethical Standards Branch in relation to the incident of 19 July 2002 and subsequently. Documents relevant to items 3-10 and 13-14 are all located within this file. I also found documents relevant to these items in Central Office file number 40/150/19/36 - mostly copies of documents on the ESU file.

Sufficiency of search

33. In his submissions dated 24 August 2007, the applicant contended that additional documents should exist in relation to items 7-10 and 13-14, specifically:
 - documents relating to the further inquiries undertaken by ESU
 - witness evidence
 - medical records
 - cassette tapes of ESU interviews
 - further reports of CSOs and other Woodford CC staff members.
34. In his submissions dated 9 September 2007, the applicant also contended that further documents relevant to investigation into the 19 July 2002 incident should exist on the Central Office File.
35. The applicant's submissions in relation to Items 7-10 and 13-14 raise issue with the sufficiency of the searches conducted by QCS. Accordingly, the questions which I must answer are:
 - whether there are reasonable grounds to believe that the additional documents falling within Items 7-10 and 13-14 are in the possession or under the control of QCS
 - whether the search efforts made by QCS to locate additional documents have been reasonable in all the circumstances of the particular case (see *Shepherd and Department of Housing, Local Government and Planning* (1994) 1 QAR 464, at paragraphs 18-19).

36. In paragraphs 37-73 of this decision, I have examined the sufficiency of search issues raised by the applicant in the context of each category of document for which he contends additional documents should exist.

Documents relating to ESU further inquiries

37. In respect of Items 10 and 14, the applicant has contended that additional documents relating to the further inquiries undertaken by the ESU into the 19 July 2002 incident should be in the possession or under the control of QCS. Specifically, the applicant submitted that he has not been provided with documents:

- regarding the '*reasons or guidelines*' for the further inquiries
- setting out the nature of the further inquiries conducted.

38. In support of his contentions that these additional documents exist, the applicant referred to the following documents that were provided to him by QCS during the course of this review:

- investigation report of Correctional Manager (CM) Michael Taylor dated 8 August 2002
- memorandum from Mr Anthony Trubai, Acting Senior Advisor, ESU, to Director Watters dated 21 January 2003
- decision and statement of reasons of Director Watters dated 23 January 2003.

39. I have examined the documents referred to by the applicant in his submissions. I accept that the memorandum prepared by Mr Trubai and the decision of Director Watters indicate that further inquiries were conducted into the 19 July 2002 incident following the internal investigation by CM Taylor. However, those documents do not, in my opinion, suggest that additional documents setting out the nature of the inquiries or the reasons for them were created are thus, in the possession or under the control of QCS.

40. Accordingly, I am satisfied that the documents provided by the applicant do not establish reasonable grounds to believe that additional documents relating to the further inquiries into the 19 July 2002 incident are in the possession or control of QCS.

Witness evidence and medical reports

41. The applicant also contended, in his submissions dated 24 August 2007, that additional documents containing witness evidence and medical reports should exist in relation to the investigation into the 19 July 2002 incident.

42. To support that submission, the applicant referred to a memorandum sent by Mr Daryl Taylor, General Manager, Woodford CC to Director Watters dated 8 August 2002 (Folio 55). Specifically, the applicant referred to the handwritten notes on Folio 55 which, he contended, were made by Director Watters. Those notes state as follows:

Director,

1. *The evidence of the witnesses needs to be assessed against what is on the tape.*
2. *I note there is no "medical" evidence from Nurse Hann or the other medical staff who examined the prisoner. This needs to be closed up.*
3. *We need to get the video enhanced.*
4. *After this, we can assess whether further [follow up] is required*

5. This is not the way to conduct an investigation. The GM [Woodford] should know better.

Witness evidence

43. The applicant has contended that he has not been provided with the evidence of witnesses referred to in point 1 of the handwritten notes.
44. Firstly, I consider it unlikely that the handwritten notes were made by Director Watters, given that the numbered list is preceded by the word '*Director*'. Rather, I consider those notes were made by another person **for the attention of** Director Watters. However, from the information available to me, I am unable to identify the person who made those notes. In any event, the identity of the author is immaterial to the question of whether the reference in the handwritten notes to 'evidence of witnesses' is indicative of the existence of witness statements other than those already provided to the applicant.
45. The evidence before me shows that during the course of this review, the applicant has been provided with evidence of witnesses concerning the 19 July 2002 incident in the form of reports of the following CSOs:
- M J Bodman
 - T Jarvis – two reports
 - Des Voss
 - Len Grice
 - Craig Steley
 - Jeffrey Clem
 - Jeff Sullivan
 - Derek Bullock.
46. Those CSO reports were provided as part of the ESU investigation file. I am not satisfied that point 1 of the handwritten notes establishes reasonable grounds to believe that additional documents that could be described as witness evidence exist, other than the CSO reports listed above which have already been provided to the applicant.

Medical evidence and reports

47. In relation to point 2 of the handwritten notes, the applicant contended that he has only been provided with half the documents, ie. progress notes. The applicant has also contended, in his submissions dated 24 August 2007, that the following medical records should exist:
- documents showing the medication received by the applicant on 22 July 2002 and report of the treating doctor
 - medical reports from Dr Kevin Calder-Potts (psychiatrist) relating to applicant's attendance on 23 July 2002, 30 July 2002, 1 August 2002 and 6 August 2002
 - medical reports from Dr David Preller relating to administration of vitamin B12 injections on 1 August 2002
 - medical reports from Dr David Preller relating to prescription of anti-inflammatories on unknown date after 1 August 2002.
48. With respect to the applicant's submission regarding point 2, I am satisfied that the progress notes provided to the applicant by QCS constitute all medical evidence

relating to the investigation into the 19 July 2002 incident because those documents formed part of the ESU investigation file concerning the 19 July 2002 incident. I am not persuaded by the applicant's submission that point 2 of the handwritten notes establishes reasonable grounds to believe that further medical evidence exists in relation to the 19 July 2002 incident.

49. By letter dated 18 September 2007, I asked QCS to conduct searches for further medical records relating to the 19 July 2002 incident as listed in paragraph 47 of this decision. By letter dated 27 September 2007, Ms Susan Barker, Manager, FOI and Privacy, QCS, submitted as follows:

There are some brief records on the applicant's medical file in relation to his hand injury. These reports were not however included in the investigation into the events of 19 July 2002, or attached to any relevant correspondence in relation to this matter, and therefore do not fall within the terms of the applicant's initial request dated 10 October 2005. ... The progress notes are however within scope as they were used in the investigation ...

50. In his submissions dated 9 October 2007, the applicant contended that the additional medical reports were within the scope of his initial FOI application and referred to Item 7 of his application to support that contention. I have set out below the terms of Item 7 as it appeared in the applicant's FOI application dated 10 October 2005:

7. A copy of all documents to, and from, and by, Mr Daryl Taylor, Manager of Woodford Correctional Centre, or from one of Mr Taylor's appointed members, relating to a investigation of a incident that acurd on the 19.7.02, in the detention unit of the Woodford Correctional Centre.

51. The applicant stated that the term appointed members is a reference to any employee of the Woodford CC who has created any documentation in relation to the 19 July 2002 incident. For example, the applicant contended that if a nurse made inquiries into subject matter concerning his treatment on 19 July 2002, that nurse was *investigating* the 19 July 2002 incident and therefore, any documents created as a result of those inquiries would fall within the scope of his FOI application.
52. In his submissions dated 9 October 2007, the applicant maintained his contention that the documents listed in paragraph 47 of this decision should exist. In those submissions, the applicant contended that documents from Dr Calder-Potts, Dr Preller and any other treating doctor created between 19 July 2002 to 25 October 2002 fall within the scope of his application because all treatment, medications and examinations which occurred during that period related to the 19 July 2002 incident.
53. I note that QCS has indicated in the course of this review that the applicant may access the additional medical records held by QCS under an administrative access arrangement.
54. I do not intend to make a finding in this decision as to whether or not the additional medical records located by QCS are within the scope of Item 7 of the applicant's initial FOI application (scope issue). My reason for this is: even if I found that the additional medical records were within the scope of Item 7 of the applicant's application, I am of the opinion that section 22(a) of the FOI Act would apply.
55. Section 22(a) of the FOI Act provides as follows:

22 Documents to which access may be refused

An agency or Minister may refuse access under this Act to—

- (a) *a document the applicant can reasonably get access to under another enactment, or under arrangements made by an agency, whether or not the access is subject to a fee or charge ...*

56. Accordingly, in light of the access afforded to the applicant to the additional medical records by the administrative access arrangement, even if the records were within the scope of the applicant's FOI application, QCS would be entitled to refuse access under section 22(a) of the FOI Act. It is open to the applicant to make a request for access to the documents under QCS' administrative access scheme.
57. For the reasons set out in paragraphs 54-56 of this decision, it is therefore, unnecessary for me to express a finding on the scope issue.

Cassette tapes of ESU interviews

58. In his submissions dated 24 August 2007, the applicant contended that cassette tapes of interviews conducted by the ESU should exist. To support that submission, the applicant referred to a letter from QCS to this Office dated 20 June 2005, released to him in a previous FOI application, which stated:

However, audio recordings of interviews made by ESU are recorded in a registry and stored separately, so they can be located more easily.

59. By letter dated 18 September 2007, I requested QCS to conduct searches of the registry for any audio recordings of ESU interviews relating to the 19 July 2002 incident. By letter dated 27 September 2007, QCS submitted in response to that request as follows:

... Mr Anthony Trubai, Principal Advisor with the Ethical Standards Branch (ESB), as the ESU is now known, undertook a review of ESB file 02/099. Mr Trubai could not locate any document or reference on the file to indicate that audio-recorded interviews were conducted.

Mr Trubai also searched the ESB's tape registry, but was not able to locate any audio-recorded interviews relevant to the investigation which is the subject of this review. He then spoke with Mr Michael Taylor, who undertook the local level investigation into the applicant's complaint. Mr Taylor ... did not recall whether any audio-recorded interviews were conducted.

During his review of ESB file 02/099, Mr Trubai located an e-mail sent in November 2002 by Mr Chris Watters (who was then the Director of the ESU to Mr Peter Camden (General Manager of the Woodford Correctional Centre at the time). From the e-mail, it appears that Mr Watters was attempting to make arrangements to conduct an interview with Nurse Warren Hann. There is, however, nothing on the file to confirm whether this interview took place.

Inquiries were made of Mr Hann as to whether he had any recollection of having participated in an audio-recorded interview in relation to the investigation. Mr Hann has indicated that he has no such recollection.

If Mr Watters had conducted an audio-recorded interview with any person in relation to the matter, the appropriate procedure would have been to log any resulting tape/s in the ESB's tape registry. As mentioned previously, however, the ESB's tape registry has no relevant entries.

60. Based on the searches and inquiries conducted by QCS and the responses provided by Woodford CC staff members, I am satisfied that there are no reasonable grounds to

believe that QCS has in its possession or under its control, audio recordings of ESU interviews relating to the 19 July 2002 incident. I am also satisfied that the searches conducted by QCS have been reasonable in the circumstances of this review.

Reports of CSOs and other Woodford CC staff members

61. The applicant has submitted that additional reports of CSOs should exist in relation to the 19 July 2002 incident, namely, CSOs Steley, Clem, Sullivan, Naylor, Bullock and Doran. The applicant has also contended that reports of Nurse Hann and the General Manager should exist. By letter dated 3 September 2007, I requested QCS to undertake further searches for additional reports from the following officers:
- CSOs Steley, Clem, Sullivan, Naylor, Bullock and Doran
 - Nurse Hann
 - General Manager.
62. By letter dated 13 September 2007, QCS submitted that the reports of CSOs Steley, Clem, Sullivan and Bullock had already been provided to the applicant as part of the ESU file. I have examined the documents provided by QCS to the applicant and am satisfied that the reports of CSOs Steley, Clem, Sullivan and Bullock were provided to him as part of the ESU file and that there is no evidence in those reports as to the existence of any other reports by those CSOs.
63. With respect to the reports of CSOs Naylor and Doran, QCS submitted that those reports could not be located. In conducting searches for these documents, QCS consulted CSOs Naylor and Doran in relation to their reports. CSO Naylor advised QCS that he could not recall the incident and assumed that he played a minor part. CSO Doran informed QCS that he played a minor part in the incident and therefore had not prepared a report.
64. With respect to the report of Nurse Hann, QCS submitted that the progress notes constitute the 'report' of Nurse Hann in relation to the 19 July 2002 incident and that no other reports were prepared.
65. With respect to the General Manager, QCS was unable to locate a report but has submitted that a memorandum from the General Manager to Director Watters, enclosing a report prepared by CM Taylor in relation to the 19 July 2002 incident may constitute the General Manager's 'report'. A copy of that document was provided to the applicant on 10 July 2007 as part of the ESU file.
66. To support his submission with respect to additional CSO reports, the applicant referred to the QCS Safety and Security Procedure titled *Use of Force* (version 00) (Use of Force Procedure). Specifically, the applicant referred to paragraph 3.9 of that procedure which provides:

3.9 Reporting the Use of Force

Reasonable Force

When a corrective services officer has considered it reasonable to apply physical or chemical force to a prisoner or other persons in compliance with the [Corrective Services Act 2000 (Qld)], the officer must, as soon as practicable notify the person in charge of the facility and before proceeding off duty provide a written report to the person in charge detailing the nature of the force used and the reasons for the use of such force.

The person in charge of the facility or General Manager, Operational Support Service Unit must report the event in accordance with the procedure, Incident Reporting.

67. The applicant contended that the CSOs identified in paragraph 61 above used force on him during the 19 July 2002 incident but have not provided a report as required under paragraph 3.9 of the Use of Force Procedure.
68. In my decision in external review no. 674/05, I found that while the Use of Force Procedure establishes a requirement to report the use of force, it does not require every officer involved in an event in which force is used to prepare a written report. In that decision, I concluded that for each event involving the use of force, the Use of Force Procedure requires at least one, but not every CSO involved, to prepare a written report.
69. As stated in paragraph 62 of this decision, reports of CSOs Steley, Clem, Sullivan and Bullock relating to the 19 July 2002 incident were provided to the applicant by QCS as part of the ESU file. I am satisfied that the preparation of those reports accords with the requirements of the Use of Force Procedure.
70. Based on the searches conducted by QCS, the documents provided to the applicant to date, the responses of the officers in question and the terms of the Use of Force Procedure, I am satisfied that there are no reasonable grounds to believe that reports of CSOs Doran and Naylor, Nurse Hann or the General Manager relating to the 19 July 2002 incident are in the possession or under the control of QCS. I am also satisfied that the searches conducted by QCS have been reasonable in the circumstances of this review.

Central Office File

71. In his submission dated 9 September 2007, the applicant contended that further documents relevant to the 19 July 2002 incident should be held on the Central Office File. To support this submission, he provided this Office with a copy of QCS' letter dated 10 July 2007 which states that only 'relevant' documents from the Central Office file had been provided to him in response to Items 7-10 and 13-14 of his application.
72. By letter dated 18 September 2007, I requested QCS to provide submissions as to:
 - the purpose of, and type of documents held on the Central Office File
 - the reason why searches were conducted of the Central Office File in the first place
 - the reason why only certain documents on the Central Office File, and not the entire file, were relevant to the 19 July 2002 incident.
73. In response to that request, QCS submitted, by letter dated 27 September 2007, that:
 - Central Office files in relation to inmates contain correspondence generated from the QCS Central Office in State Law Building, as opposed to prison files held at each Correctional Centre which contain documents relevant to the management of each individual offender (eg. Professional Management Files)
 - the types of documents held on a QCS Central Office file relating to an inmate include original letters from inmates to the Minister, Office of the Director-General and Offender Assessment Unit and copies of responses to inmates from those persons/units.

74. QCS submitted that the reason why searches were conducted of the Central Office File in response to the applicant's FOI application was because a search of Reqfind (the records management database for QCS files) revealed that he has two Central Office inmate files. One of those files contains documents created prior to the investigation into the 19 July 2002 incident. The other contains the following documents:
- documents relevant to the investigation into the 19 July 2002 incident which have already been released to the applicant
 - documents relating to a remission decision
 - documents relating to an incident which occurred in 2003.
75. Based on the submissions of QCS dated 27 September 2007, the searches and inquiries undertaken by QCS and the documents released to the applicant to date from the Central Office File, I am satisfied that there are no reasonable grounds to believe that the Central Office File contains any further documents relevant to the investigation into the 19 July 2002 incident. I am also satisfied that the searches conducted by QCS have been reasonable in the circumstances of this review.

Summary

76. Based on the submissions of the applicant and QCS, the documents already provided to the applicant by QCS and the terms of relevant QCS procedures, I am satisfied that there are no reasonable grounds to believe that further documents falling within the scope of Items 7-10 and 13-14 of the applicant's FOI application are in the possession or under the control of QCS, specifically:
- documents relating to the further inquiries undertaken by ESU
 - witness evidence
 - cassette tapes of ESU interviews
 - further reports of CSOs and other Woodford CC staff members.
77. I am also satisfied that the searches conducted by QCS for additional documents have been reasonable in the circumstances of this review.
78. With respect to additional medical records, I make no finding as to the scope issue as QCS would be entitled to refuse access to those documents under section 22(a) of the FOI Act.

Item 15

79. In Item 15 the applicant sought access to a copy of a video tape of the 16 cells in the detention unit of Woodford CC on 19 July 2002 (known as the 'J19 video tape'). Part of the J19 video tape was released to the applicant by QCS in a previous FOI application, while access to the remainder was refused on the basis of section 44(1) of the FOI Act. In this review, the applicant seeks access to the footage on the J19 video tape to which access was refused in his earlier application.
80. In this review, QCS claimed that the remaining footage on the J19 video tape qualified for exemption under section 44(1) of the FOI Act because it related to the personal affairs of other prisoners held in the Woodford CC detention unit on 19 July 2002.

Section 44(1) of the FOI Act

81. This section provides:

44 Matter affecting personal affairs

(1) *Matter is exempt matter if its disclosure would disclose information concerning the personal affairs of a person, whether living or dead, unless its disclosure would, on balance, be in the public interest.*

82. In applying section 44(1) of the FOI Act, the first question to ask is whether disclosure of the matter in issue would disclose information concerning the personal affairs of a person other than the applicant for access. If that is the case a public interest consideration favouring non-disclosure is established, and the matter in issue will be exempt, unless there are public interest considerations favouring disclosure which outweigh all public interest considerations favouring non-disclosure.
83. The Information Commissioner discussed in detail the meaning of the phrase 'personal affairs of a person' (and relevant variations) as it appears in the FOI Act in *Stewart and Department of Transport (1993) 1 QAR 227 (Stewart)* (see pp.256-257, paragraphs 79-114). In particular, the Information Commissioner said that information concerns the 'personal affairs of a person' if it concerns the private aspects of a person's life and that, while there may be a substantial grey area within the ambit of the phrase 'personal affairs', that phrase has a well accepted core meaning which includes:
- family and marital relationships
 - health or ill health
 - relationships and emotional ties with other people
 - domestic responsibilities or financial obligations
84. In *Stewart*, the Information Commissioner also confirmed the approach taken in *Re Lapidos and Office of Corrections (No.2)* (unreported, Victorian Administrative Appeals Tribunal, Jones J, 19 February 1990) (*Re Lapidos*) that information concerning what happens to a prisoner while in prison concerns the 'personal affairs' of a prisoner.
85. Whether or not matter contained in a document comprises information concerning an individual's personal affairs is a question of fact, to be determined according to the proper characterisation of the information in question.

Application of section 44(1) of the FOI Act

86. In his application for external review dated 2 January 2006, the applicant submitted that if the faces of other prisoners could be 'blurred', the remaining footage would no longer disclose their personal affairs and would therefore, not be exempt under the FOI Act.
87. In *Scott and Department of Corrective Services* (external review no. 746/04, 7 September 2005), a delegate of the Information Commissioner considered the approach of blurring or obscuring the faces of other prisoners on the J19 video tape. Those considerations were however, in the context of determining an extension of time application and not in making a finding as to the application of section 44(1) of the FOI Act to the matter in issue in this review.
88. The majority of the footage on the J19 video tape contains split-screen images of various cells (not including the applicant's cell as he already has been provided with this footage), several of which were holding other prisoners at the relevant time.
89. As stated above, what happens to a prisoner while he or she is in prison is information concerning the prisoner's personal affairs *Re Lapidos*. I am satisfied that the

disclosure of footage of other prisoners would disclose information concerning the personal affairs of prisoners other than the applicant.

90. The applicant has contended that he only knows the first names of two prisoners that were in the detention unit with him on 19 July 2002 and if the footage was released with their faces blurred, he would not be able to identify those prisoners. The applicant also contends that if the cell numbers of each prisoner were also blurred this would prevent him from identifying the other prisoners.
91. I am of the view that the faces of the prisoners are not their only identifying feature. Things such as tattoos, stance, hair colour, body shape, skin tone and the way a person moves are all capable of identifying an individual. Thus, I consider that the images of the other prisoners, even if their faces were blurred, would identify the prisoners and in identifying the prisoners, disclose their personal affairs. Accordingly, I find that disclosure of the remaining footage on the J19 video tape would disclose the personal affairs of the other prisoners and that it is *prima facie* exempt under section 44(1) of the FOI Act.

Public interest

92. Once the initial test for exemption under section 44(1) of the FOI Act is satisfied, a public interest consideration, accepted by Parliament as weighing against disclosure of the relevant information, is established. Specifically, it is the public interest in protecting the privacy of information concerning the personal affairs of identifiable individuals (see *Williamson and Queensland Police Service and Anor* (2005) 7 QAR 51 (*Williamson*)).
93. As I have found that the remaining footage on the J19 video tape falls within the exemption provided for in section 44(1) of the FOI Act, I must now determine whether there are sufficient public interest considerations favouring disclosure of the matter in issue to justify a finding that disclosure would, on balance, be in the public interest. A significant consideration in this balancing exercise is that disclosure of matter under the FOI Act is considered to be disclosure to the 'world at large'.
94. The term 'public interest' refers to considerations affecting the good order and functioning of community and governmental affairs, for the well-being of citizens. In general, a public interest consideration is one that is common to all members of the community (or a substantial segment of them), and for their benefit.
95. The public interest is usually treated as distinct from matters of purely private or personal interest. However, some recognised public interest considerations may apply for the benefit of individuals in particular cases, including for example, the public interest in individuals receiving fair treatment in accordance with the law in their dealings with government.
96. In his submissions dated 24 August 2007 and 9 October 2007, the applicant contended that the following arguments support the view that disclosure of the remaining footage on the J19 video tape (with the faces of the other prisoners blurred) is in the public interest:
 - the force used by CSOs on the applicant during the 19 July 2002 incident was excessive
 - the strip search conducted by CSOs on the applicant during the 19 July 2002 incident did not comply with section 27 of the *Corrective Services Act 2000* (Qld)

- the direction given by CSOs to the applicant during the 19 July 2002 incident to 'squat and cough' was not authorised by the *Corrective Services Act* or relevant QCS procedures
 - the placing of restraints on the applicant during the 19 July 2002 incident constituted torture.
97. The applicant has contended that by releasing the remaining footage on the J19 video tape to him, with the faces of other prisoners blurred, it will assist him in establishing that the CSOs' treatment of him during the 19 July 2002 incident was not in compliance with the terms of the *Corrective Services Act* or QCS procedures. He has contended that by disclosing the footage containing the other prisoners, it will show the other prisoners abusing the CSOs about their treatment of the applicant and covering up the cameras during the incident. The applicant contends that the latter act was done in an effort to attract the attention of other CSOs to the incident.
98. Essentially, the applicant's argument is that the public interest favours disclosure of the remaining footage on the J19 video tape because its disclosure would assist him in establishing the wrongdoing he alleges on the part of CSOs involved in the 19 July 2002 incident. The applicant contends that the reaction of the other prisoners to the 19 July 2002 incident is significant in establishing his allegations against the CSOs.
99. I am not persuaded that disclosure of the J19 video footage showing the reaction of other prisoners to the 19 July 2002 incident would establish mistreatment and/or wrongdoing which the applicant alleges on the part of the CSOs. The reactions of other prisoners could be the result of a variety of factors, eg. their individual treatment by CSOs. I note that the reactions of other prisoners is matter concerning their personal affairs (*Re Lapidos*).
100. I am satisfied that disclosure of the J19 video tape footage containing images of the other prisoners would not assist the applicant in establishing matters listed in paragraph 96 of this decision, particularly in light of the following:
- the ESU investigated the 19 July 2002 incident and found that the CSOs acted appropriately and in accordance with procedures
 - protecting the privacy of the other prisoners' personal affairs is a significant public interest consideration in favour of non-disclosure of the footage.
101. On the information before me in this review, I do not consider that the applicant has established that there is a public interest in favour of disclosure of the J19 video tape which, on balance, outweighs the strong public interest in protecting the privacy of the other prisoners.
102. Accordingly, because the public interest in favour of disclosure has not been made out, the interest in maintaining the privacy of other prisoners prevails and I therefore, find that the remaining footage on the J19 video tape qualifies for exemption under section 44(1) of the FOI Act.

Item 16

103. The document to which the applicant sought access in Item 16 of his FOI application is a copy of the spine video tape.

104. In this review, QCS has relied upon section 29B(4)(a)(ii) of the FOI Act in refusing to deal with the applicant's request for access to the spine video tape. That section provides:

29B Refusal to deal with application—previous application for same documents

- (1) *This section applies if an applicant applies to an agency or Minister (the **later application**) for access to documents that have been the subject of an earlier application made by the same applicant to the same agency or Minister (the **earlier application**).*
- (2) *However, this section does not apply if the applicant withdrew the earlier application or the application was taken to be withdrawn under section 25A(5), 29A(5) or schedule 4, section 2.*
- (3) *The agency or Minister may, to the extent the later application relates to documents sought under the earlier application, refuse to deal with the later application on a ground mentioned in subsection (4) if—*
 - (a) *the agency or Minister is satisfied the documents sought under the later application are the documents sought under the earlier application; and*
 - (b) *the later application has not disclosed any reasonable basis for again seeking access to the documents.*
- (4) *The grounds are as follows—*
 - (a) *the agency's or Minister's decision on the earlier application—*
 - ...
 - (ii) *has been the subject of a completed review under part 5;*
 - ...

Application of section 29B(4)(a)(ii) of the FOI Act

105. In *Scott and Department of Corrective Services* (external review no. 746/04), this Office dealt with a request from the applicant for access to the spine video tape. That request formed part of his FOI application dated 4 November 2003 (the earlier application) and subsequently came on external review to this Office. In respect of the spine video tape, this Office decided as follows (see paragraph 7.3):

In relation to the second FOI access application, dated 4 November 2003, I set aside the decision under review (being the deemed affirmation of the decision dated 5 April 2005 by Ms Jody Drummond on behalf of the Department). In substitution for it I find that:

- (a) *there are no reasonable grounds for believing that there exists, in the possession or under the control of the Department, 'video in relation to the "spine" of the Detention Unit', nor any further documents which fall within the terms of the applicant's FOI access application dated 4 November 2003; and*
- (b) *the searches and inquiries conducted by the Department in an effort to locate any further responsive documents have been reasonable in all the circumstances of this case.*

106. In order for QCS to rely on section 29B(4)(a)(ii) in refusing to deal with the applicant's request dated 10 October 2005 for the spine video tape (the later application), the following three criteria must be satisfied:

- the documents sought under the later application to QCS are the same as those sought in the earlier application to QCS
- the later application has not disclosed any reasonable basis for again seeking access to those documents
- QCS's decision on the earlier application has been the subject of a completed review under part 5 of the FOI Act.

107. In his submissions to this Office dated 24 August 2007, the applicant provided a copy of a file note dated 7 August 2002 which he had obtained from the CMC through a FOI application in support of his argument for again seeking access to the spine video tape. The CMC file note relevantly stated:

I have spoken to Anthony from ESU (Dept Corrective Services) who confirmed that the video from the hallway and room 12 has been retained.

108. I acknowledge that the CMC file note indicates that the spine video tape was retained by QCS.

109. As stated in paragraph 105 of this decision, a request from the applicant for access to the spine video tape was dealt with in external review no. 746/04. In that external review, this Office found that the documents the applicant provided to this Office in support of his submissions:

- indicated an **intention** to seize the spine video tape
- did not establish reasonable grounds to believe that the spine video tape was in the possession or under the control of QCS.

110. Accordingly, the question for my determination is whether the CMC file note provided by the applicant in this review raises reasonable grounds for him to again seek access to the spine video tape. In answering that question, the findings of this Office in external review no. 746/04 and QCS' submissions in that review as to the spine video tape are relevant considerations.

111. The position of QCS with respect to the spine video tape, as set out in paragraph 5.4-5.9 in the decision in external review no. 746/04 was as follows:

- the spine video tape was never seized by Mr Michael Taylor, the ESU or any other person at QCS
- the only video tape seized in relation to the 19 July 2002 incident was the J19 video tape
- the spine video tape would now have been recorded over in accordance with the rotational recording policy set out in the Disposal Authority.

112. In that decision, the Information Commissioner's delegate reasoned that:

- CM Michael Taylor was instructed to take note of *relevant* camera footage and in executing those instructions and carrying out his investigation, he determined the only *relevant* footage was that of the interior of Cell 12, not the spine footage
- the '*security video*' to which CCO Michael Taylor referred in his memorandum to Daryl Taylor dated 5 August 2005 was the original Cell 12 surveillance video
- the events which gave rise to the applicant's complaint all appear to have taken place solely within the confines of Cell 12 and the video tape of those events (J19 video tape) was retained by QCS
- there was no evidence to suggest that anything took place outside Cell 12 (eg. in the spine of the Detention Unit) and therefore, no other video footage than that on the J19 video tape was required to be preserved
- it was likely that the spine video tape was recorded over in accordance with the monthly rotational recording policy set out in the Disposal Authority.

113. On the basis of those conclusions, the Information Commissioner's delegate went on to make the following findings as to the spine video tape (see paragraph 5.15):

- QCS held no footage of the 'spine' of the Detention Unit dated 19 July 2002
- there were no reasonable grounds to believe that the Department had the spine video tape in its possession or under its control
- the searches and inquiries conducted by QCS to locate the spine video tape have been reasonable in all the circumstances of this case.

114. I recognise that, on its face, the CMC file note does appear to raise reasonable grounds to believe that the spine video tape was retained by QCS and on that basis, the applicant would have reasonable grounds for again seeking access to the spine video tape. However, in reality, the CMC file note does not displace the position taken by QCS or the findings of the Information Commissioner's delegate with respect to the existence of the spine video tape in external review no. 746/04 and thus does not provide a reasonable basis for again seeking access to the spine video tape.

115. In light of the findings of the Information Commissioner's delegate with respect to the spine video tape in external review no. 746/04 (set out in paragraphs 112-113 of this decision) and the submissions made by QCS in that review, I do not consider that the applicant has reasonable grounds for again seeking access to the spine video tape.

116. Having examined the content of the earlier and later applications and this Office's decision in external review no. 746/04, I am satisfied that:

- in both the earlier and later applications, the applicant sought access to the same document, ie. the spine video tape
- QCS's decision on the earlier application has been the subject of a completed review in that external review no. 746/04 was finalised by this Office's decision dated 7 September 2005
- the later application does not disclose any reasonable basis for again seeking access to the spine video tape
- QCS was entitled to rely upon section 29B(4)(a)(ii) of the FOI Act in refusing to deal with the applicant's later application for access to the spine video tape.

Conclusion

117. Based on the information before me in this review, I am satisfied that:

- there are no reasonable grounds to believe that QCS has in its possession or under its control, additional documents falling within Items 7-10 and 13-14 of the applicant's FOI application
- the searches conducted by QCS for additional documents falling within Items 7-10 and 13-14 of the applicant's FOI application have been reasonable in the circumstances of this review
- the footage on the J19 video tape which contains images of other prisoners in the Woodford CC Detention Unit on 19 July 2002 qualifies for exemption under section 44(1) of the FOI Act
- QCS was entitled to refuse to deal with Item 16 of the applicant's FOI application on the basis of section 29B(4)(a)(ii) of the FOI Act because he did not disclose a reasonable basis for again seeking access to the spine video tape.

DECISION

118. I vary the decision under review, being QCS' deemed refusal of access, by finding as follows:

- there are no reasonable grounds to believe that QCS has in its possession or under its control, additional documents falling within Items 7-10 and 13-14 of the applicant's FOI application
- the searches conducted by QCS for additional documents falling within Items 7-10 and 13-14 of the applicant's FOI application have been reasonable in the circumstances of this review
- the footage on the J19 video tape which contains images of other prisoners in the Woodford CC Detention Unit on 19 July 2002 qualifies for exemption under section 44(1) of the FOI Act
- QCS was entitled to refuse to deal with Item 16 of the applicant's FOI application on the basis of section 29B(4)(a)(ii) of the FOI Act because the applicant did not disclose a reasonable basis for again seeking access to the spine video tape.

119. I have made this decision as a delegate of the Information Commissioner, under section 90 of the *Freedom of Information Act 1992* (Qld).

V Corby
Assistant Commissioner

Date: 6 November 2007