



**ANNUAL REPORT 2002-2003**

**Information  
Commissioner**

*QUEENSLAND*

30 October 2003

The Honourable R K Hollis MP  
Speaker of the Legislative Assembly  
Parliament House  
George Street  
BRISBANE Q 4000

Dear Mr Speaker

I am pleased to present to Parliament the eleventh annual report of the Office of the Information Commissioner, which covers the 2002-2003 financial year. This report provides a comprehensive review of our activities and achievements. It reflects our performance against our strategic plan for 2002-2006 and fulfils statutory reporting requirements.

Yours sincerely,



D J Bevan  
Information Commissioner

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Copies of this report are available on our website  
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# our mission

## OUR MISSION

*Fostering openness and accountability of government in Queensland by promoting lawful, fair and reasonable administration of Freedom of Information legislation*

### OUR VALUES

Independence

Integrity

Service to the community

Objectivity

Respect for the law

Respect for the rights of the individual

### OUR GOALS

#### GOAL ONE

To provide an expert forum for review of disputes under FOI legislation

#### GOAL TWO

Informal and flexible resolution of disputes

#### GOAL THREE

Better understanding by agencies and the community of FOI legislation

#### GOAL FOUR

A progressive, client-focused organisation

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## MESSAGE FROM THE INFORMATION COMMISSIONER



*David Bevan, Information Commissioner*

**Since my appointment as Queensland Information Commissioner two years ago, some significant operational and structural changes have taken place within the Office. I consider that those changes have enhanced the quality of our work and the service we deliver to the Queensland public.**

This year we finalised 275 applications for review. We also received 212 new applications, approximately 50 fewer than the previous year. It is possible that the new charging regime introduced by amendments to the FOI Act in November 2001 has contributed to the reduction in new applications. This may also explain the substantial reduction in the number of applications received from journalists, lobby groups and the business community. Those groups ordinarily apply for non-personal affairs type information that attracts a processing charge.

Agencies that receive a high number of applications for access to personal affairs information, such as the Queensland Police Service, Queensland Health and the Department of Corrective Services, remain the agencies with the highest numbers of applications for external review. Accessing this information does not attract a processing charge.

Another significant contributor to the reduction in new applications received was the decline of 'deemed refusal' applications from 54 in 2001-2002 to 26 in 2002-2003, which is the lowest figure recorded for that category for several years. These are matters where the applicant has a right of review because the agency has not made a decision within the prescribed time. This reduction of 28 accounts for more than half of the reduction in new applications received in 2002-2003. It tends to indicate that the new charging regime has given FOI administrators in some agencies the extra time and capacity to ensure that fewer access applications exceed the timeframes for processing by agencies that are prescribed in the FOI Act.

### FOCUSING ON IMPROVING UNDERSTANDING

The strategic management review of the Office conducted in 2000 recommended that greater emphasis be placed on educational and training activities to the extent that resources permitted. The drop in the number of new applications and the reduction in our backlog has meant that, since December 2002, we have been able to allocate some staff resources to developing and implementing information and assistance activities. These are aimed at improving understanding by agencies and the community of rights and obligations under the FOI Act. For example, we have prepared and distributed several educational publications and presented training sessions to agencies.

In the last few months of the reporting period, we trialled and then established a new position (Co-ordinator, Information and Assistance) to develop and co-ordinate these activities. Notable achievements during the reporting period were an expansion in the range of educational and precedent material published on our website, and the publication of a quarterly newsletter – vOICe –

which is distributed by e-mail to all FOI co-ordinators in Queensland government agencies and local authorities, and also posted on our website.

### **INFORMAL AND TIMELY RESOLUTION**

Notwithstanding these new initiatives, we remained firmly focused on our core business – the timely resolution of applications for external review under the FOI Act. Half of the 275 applications dealt with were completed within three months of lodgement, which we attribute to our continuing focus on efforts to resolve cases informally by mediation/negotiation/conciliation with the participants. In fact, about 75 per cent of our reviews were finalised informally this year. To oversee the consistent application of informal resolution techniques, we also trialled and then established a permanent position of Co-ordinator of Informal Resolution.

We also made a special effort to finalise matters more than 12 months old and reduced this body of matters from 48 as at 30 June 2002 to 23 as at 30 June 2003.

### **IMPROVEMENTS TO SYSTEMS AND POLICIES**

We completed the introduction of our new electronic case and records management system – Catalyst. Catalyst allows us to better manage our caseload, monitor the timely progress of individual cases, and analyse trends in issues arising in applications for review by the Information Commissioner.

We continued work on developing our human resource policies and procedures, and we finalised preparation and training for the introduction of an expanded performance planning and review scheme, which came into effect in July 2003.

We also arranged for an external consultant to review the formatting and content of our decisions, and have taken on board the consultant's suggestions for enhancing the readability, for the general public, of our decisions and formal letters.

Today's community expects accountability and transparency by government at all levels. FOI offers the community a real opportunity to ensure these expectations are met and to enhance participation in our democratic process.

I am proud of the achievements of the Office during the reporting period and of the continuing commitment and dedication shown by my officers to the principles underpinning freedom of information. My Office will continue to support the integrity of Queensland's FOI regime and to promote its benefits.



**David Bevan**  
**Information Commissioner**

# about the office

## ABOUT THE OFFICE OF INFORMATION COMMISSIONER



*Research Assistant, Andrew Davidson (standing) is completing a law degree at the University of Queensland. He is pictured here with Jim Forbes, Senior Administrative Review Officer, researching an issue, that arose in a recent review.*

### ROLE OF THE OFFICE

The role of Information Commissioner is a key one in Queensland's freedom of information (FOI) system, which is based on principles that:

- information held by the government should be accessible to the community;
- people have a right to know about and to have access to information held by government about them; and
- public scrutiny of government information leads to greater accountability and efficiency.

Ultimately, a good FOI system enhances the democratic process. The role of the Office of the Information Commissioner is to independently review decisions of agencies under the *Freedom of Information Act 1992* (the FOI Act) taking into account those principles, while applying the exemptions from disclosure recognised in the Act for the protection of other essential public and private interests.

### THE FOI ACT

The FOI Act confers legally enforceable rights to:

- obtain access to documents held by government agencies and Ministers (subject to the limitations specified in the FOI Act); and
- seek correction of information relating to an individual's personal affairs if the information is inaccurate, incomplete, out-of-date, or misleading.

Those entitlements are subject to limitations to protect essential public and private interests.

For example, information about the personal affairs of an identifiable individual will be exempt from disclosure to another person, unless there are public interest considerations favouring disclosure that outweigh the public interest in non-disclosure.

Staff of the Office endeavour to resolve the vast majority of cases informally through mediation, negotiation or conciliation between the parties involved in a dispute. Since the Office was established in 1992, approximately 70–80 per cent of cases have been resolved in that way.

If disputes cannot be resolved informally, participants are given an opportunity to provide evidence and submissions in support of their cases, and the Commissioner or a delegate makes a decision in substitution for the agency decision under review. In those cases, the Commissioner or delegate acts as an independent statutory tribunal in the same way as the Commonwealth Administrative Appeals Tribunal, the Victorian Civil and Administrative Tribunal or the New South Wales Administrative Decisions Tribunal.

## RESPONSIBILITY TO PARLIAMENT

The Information Commissioner, as an officer of Parliament, is independent from Ministerial control, so the community can be confident that FOI external reviews will be carried out fairly and impartially.

Each year, the Commissioner makes an annual report to Parliament. The Legal, Constitutional and Administrative Review Committee of the Parliament (LCARC) may also require a report on a particular aspect of the Office's performance, but it cannot investigate particular conduct or reconsider or review decisions in relation to a particular investigation.

An independent strategic review of the Office is required to be carried out at least every five years and the report of the review referred to LCARC for its consideration. LCARC is presently monitoring the Office's implementation of recommendations from a strategic review conducted in 2000.

The Commissioner meets with LCARC twice each year to discuss the Office's activities and work output, budget, annual report, and any other significant issues.

## POWERS

The essential functions of the Office are to:

- review any decision made by an agency or Minister in relation to an application made under the FOI Act, and decide any matter in relation to the application that could, under the FOI Act, have been decided by the agency or Minister; and
- affirm, vary or set aside the decision under review.

The Commissioner also has power to:

- attempt to effect an informal settlement;

- require production of documents and information from agencies and any other person;
- determine the procedures to be followed in a review and give directions; and
- refuse to review a decision if the application is frivolous, vexatious, misconceived or lacking in substance.

## LIMITS ON POWERS

The Commissioner's powers are limited to reviewing the categories of decision specified in s.71 of the Act.

The Commissioner is not able to make a decision about other forms of access or amendment, or to direct an agency to disclose matter that qualifies for exemption, nor to make decisions about general matters of administration of the FOI Act within agencies.

However, in trying to achieve an informal settlement, staff of the Office are able to raise with agencies possible avenues for resolution outside the FOI Act. If informal settlement cannot be achieved, the Commissioner (or a delegate) must make a decision applying the provisions of the FOI Act.

## WHO CAN LODGE AN FOI APPLICATION?

Any person, whether an individual or a corporate entity, can apply for access to documents under the FOI Act. An individual can also apply for amendment of information that relates to his or her personal affairs. Applications are dealt with in the first instance by the agency that possesses or controls the relevant documents.

Applicants who are unhappy with an agency decision may seek internal review within the agency, unless the agency's principal officer made the initial

decision. A person can only apply for external review by the Commissioner if:

- they have received a notice of an internal review decision by the agency, or
- the initial decision was made by the agency's principal officer, or
- the prescribed time limit for making the agency decision has expired.

## WHAT HAPPENS WHEN AN EXTERNAL REVIEW APPLICATION IS LODGED?

When an external review application is lodged, staff of the Office make preliminary inquiries to establish whether the Information Commissioner has jurisdiction to conduct a review, and to ascertain whether there are any third parties who need to be consulted about the review.

In most cases, our officers contact the applicant and the respondent agency to learn about the background to the case, and explore whether there is any way to informally settle the dispute, or reduce the number of issues in dispute. This may be done by way of a phone call, a letter, or a face-to-face meeting.

In the reporting period, nearly 75 per cent of cases were resolved completely in this way and, in most of the rest, the scope of the documents or issues in dispute was considerably reduced.

If informal methods are not successful in completely resolving the dispute, the participants are given the opportunity to lodge submissions and evidence, usually in writing, about issues that could be decided against them. The Commissioner or a delegate then makes a decision.

## WHO BECOMES INVOLVED IN EXTERNAL REVIEWS?

External review applicants come from every part of society. Applications are made by:

- politicians;
- journalists;
- citizens groups;
- public servants;
- businesses;
- people who have made complaints to a government or regulatory body;
- people who have been the subject of complaint to a government or regulatory body;
- people seeking access to their own or a relative's medical records;
- prisoners;
- people who seek documents for use in legal proceedings;
- people seeking information about a government decision that has affected them.

Some people seek external review, or apply to be a participant in an external review, to object to disclosure of information that an agency has decided to disclose to another person under the FOI Act.

Details of the categories of applicants seeking access to documents in cases finalised during the reporting period are outlined at Appendix 1. (These figures do not include applications made by people seeking to amend information.)

Of note is the decline in the proportion of broad 'public interest applicants' - i.e., politicians, journalists, citizens groups, and persons seeking

information about public health and safety issues – which has fallen to only 8 per cent of applicants, as compared to 17 per cent in the previous reporting period. As noted above, this decline may reflect the impact of the fees and charges regime introduced in November 2001.

One marked area of increase this year has been in applications made by prisoners or former prisoners – 9 per cent of applicants compared to 2 per cent in the previous reporting period. This is a group whose members are seldom affected by the fees and charges regime, because they usually apply for access to personal affairs information.

## **WHAT DECISIONS ARE DISPUTED IN EXTERNAL REVIEWS?**

A disputed decision may have been made by a Minister, a Queensland government department, another Queensland government agency or a local government. A breakdown of the type of decisions disputed in applications received during the reporting period appears at Appendix 2.

In the reporting period, the agencies that had the largest numbers of new external review applications were the Queensland Police Service with 25 cases and Queensland Health and its various Health Service Districts with 24 cases.

Both agencies receive large numbers of FOI access applications, so it is not surprising that they are

involved in a significant number of external reviews. The Department of Corrective Services (17) was next, followed by Education Queensland (13).

It is pleasing to note that the number of "deemed refusal" applications fell to 26 in the reporting period, as compared to 54 in 2001-02 and 119 in 2000-2001. (An applicant is entitled to apply to the Information Commissioner for review of an agency's "deemed refusal" of an access or amendment application, if an agency has failed to give a notice of decision within the timeframes prescribed in the FOI Act.)

The new charging regime, which commenced in November 2001, enables agencies to issue a preliminary notice of assessment of charges for processing non-personal affairs applications, effectively "stopping the clock" (in terms of the time limits prescribed in the FOI Act for processing an access application) until the applicant satisfies the agency's requirements in terms of arrangements for payment of charges. This, together with the inhibitory effect of the new charging regime on applications for non-personal affairs documents, appears to have given some agencies the breathing space to ensure that fewer applications exceed the statutory time limits for processing of applications.

A breakdown of the agencies that were respondents to external review applications received in the reporting period appears at Appendix 3.

### **DISPUTED DECISIONS**

Nearly 60% of applications for external review are from applicants who have been refused access to documents or parts of documents by an agency.

Significant numbers of applications are also made by:

- applicants for access to documents who have not received an agency decision within the time frames specified in the FOI Act (deemed refusal); and
- third parties who object to disclosure of documents which an agency has decided to disclose.

A smaller number of applications relate to decisions imposing fees and charges, and decisions refusing to amend information.

# strategic plan

## STRATEGIC PLAN

*The strategic management review of the Office conducted in 2000 recommended that greater emphasis be placed on educational and training activities to the extent that resources permitted.*

A strategic review of the Office is required at least once every five years. A report dated June 2000 of an independent review of the Office recommended that the goals and strategies be reviewed to ensure there was sufficient emphasis on timely and responsive resolution of external reviews without compromising the quality of decisions.

The Office of the Information Commissioner Strategic Plan 2002-2006 states the Office's mission and focuses on four strategic goals. The Strategic Plan:

- stresses the Office's independence and objectivity;
- notes that accountability and transparency are recognised as features underpinning all five policy priorities of the Queensland Government; and
- notes that access to information through FOI is recognised as a key strategy in achieving the Government's priorities.

Strategies were developed to help achieve each of the four goals as well as relevant performance measures. The following pages briefly outline those strategies and discuss the Office's achievements against performance measures during the reporting period.

# goal 1

## PROVIDE AN EXPERT FORUM FOR REVIEW OF DISPUTES UNDER FOI LEGISLATION

*'Investigating and reviewing decisions under FOI legislation in a timely and expert manner.'*

The primary object of the FOI Act is to enhance the accountability of government agencies.

For practical purposes, it is necessary for the agencies themselves to make the initial decision as to what information should or should not be disclosed in response to an access application for agency information under the Act.

However, when an agency and an applicant are in dispute over the agency's decision on an application, it is essential that a body independent of the executive government carry out the review of the disputed decision.

The decision-maker must be in a position to make decisions that analyse the relevant facts, the relevant provisions of the Act, other legal requirements, and prior authorities from Queensland and other jurisdictions, to arrive at the correct decision required by law in any given case.

The parties to any dispute are also entitled to a written decision that explains the reasoning adopted in reaching the decision on external review. Decisions by the Information Commissioner or a delegate have to be legally sound because they are subject to judicial review.

The Office of the Information Commissioner meets all of these criteria. Providing an effective, independent and expert forum for FOI review is its core business.

Decisions by the Information Commissioner or a delegate also provide precedents for decision-makers in agencies when interpreting and applying the Act in future cases. Hundreds of agencies in Queensland are called on to make decisions under the Act from time to time, and some deal with a large quantity of applications each year. Our decisions provide an authoritative reference point for decision-makers.

Reviews that proceed to the stage of a formal decision often involve complex issues that require submissions and exchange of evidence. Reviews of this type naturally tend to take longer to resolve than those settled informally, but it is in the interests of the participants and the community generally that decisions are made as soon as possible.

### QUALITY OF DECISIONS

No decision made during the reporting period was the subject of an application to the Supreme Court for judicial review.

#### PERFORMANCE TARGET: QUALITY

Proportion of decisions overturned by the Supreme Court in judicial review proceedings.

Target	2000-01	2001-02	2002-03
<3%	0	0	0

#### Comment:

Each decision of the Commissioner must clearly state the reasoning underlying the decision in case it is challenged by judicial review. The decision must speak for itself, because a tribunal is not ordinarily permitted to play an adversarial role in defending a decision in the course of judicial review.

# goal 1

Strategies adopted or continued in the reporting period to further this goal include:

- providing information to applicants, agencies and third parties to assist them to meet their obligations, understand the material issues, and follow correct procedures in external review applications under the FOI Act;
- providing effective training and mentoring for our staff in key areas, such as legal research and writing, and specific knowledge areas;
- monitoring relevant legislative change, judicial decisions and decisions of other comparable tribunals;
- utilising our new electronic case management system to assist in the analysis of issues arising in applications for external review, and to monitor the timely progress of cases; and
- improving timeliness of less complex decisions by delegating the decision-making power to the Deputy Commissioner and Assistant Commissioners.

## NUMBER OF DECISIONS

In the reporting period, 70 reviews were finalised by a decision on one or more issues that remained in dispute between the participants. The decisions are summarised at Appendices 4 and 5.

Figure 1 sets out the various outcomes for reviews resolved in this period and the previous two periods, including a breakdown of decision types (1–6).

**FIGURE 1: REVIEW OUTCOMES**

Outcome of review	2000–01	2001–02	2002–03
Decision affirmed	27	30	19
Decision varied	20	20	36
Decision set aside	6	14	8
Not reviewed because application frivolous, vexatious, misconceived or lacking in substance	1	1	3
Decision that Commissioner has no jurisdiction (where issue of jurisdiction disputed by parties)	2	2	1
Decision to grant agency further time to deal with application	0	0	3
Case settled informally	289	217	174
No jurisdiction	48	32	31
Total	393	316	275

***The primary object of the FOI Act is to enhance the accountability of government agencies.***

## INFORMAL AND FLEXIBLE RESOLUTION OF DISPUTES

*'Fostering timely, informal and inexpensive resolution of FOI applications by promoting flexible approaches to resolution by agencies and members of the community'*

The Office's primary focus is to attempt an informal dispute resolution that avoids the need to proceed to a formal decision-making process. Experience has shown that such an approach often leads to a speedier and less expensive resolution and provides a greater benefit to the participants than a drawn-out argument over legal issues.

### PERFORMANCE TARGET: QUALITY

Proportion of cases received that were resolved informally

Target	2000-01	2001-02	2002-03
70%	86%	79%	74.5%

#### Comment:

This result exceeds the target. In fact, negotiation or mediation was attempted in approximately 95% of cases received in the reporting period.

Staff of the Office try to establish the real issues in dispute between the participants. These may or may not be issues under the FOI Act. Staff then attempt to identify options, whether inside or outside the framework of the Act, for reaching agreement between the participants.

If a case cannot be resolved informally, staff will attempt to ensure that the participants agree on the issues in dispute under the FOI Act so that they can focus their attention on presenting relevant evidence and arguments on any issues on which a formal decision is required.

Through involvement of agency staff in these informal resolution processes, agencies are encouraged to adopt a similar approach at the initial decision-making stage.

### PERFORMANCE TARGET: QUANTITY

Cases finalised in reporting year

2000-01	2001-02	2002-03
393 (target: 360)	316 (target: 360)	275 (target: 270)

#### Comment:

The target was revised downward during the year, having regard to the decline in new applications received. The Office still managed to finalise 63 more cases than it received during the reporting period, thereby achieving a substantial (approximately 50%) reduction in cases on hand at 30 June 2003 (61) compared to 30 June 2002 (124).

Strategies adopted or continued in the reporting period to further this goal include:

- continuing to emphasise the use of informal resolution strategies at every stage of the process, including adoption of problem-solving approaches to identify the real issues in dispute and possible alternative avenues for resolution;
- trialling a new position, Co-ordinator of Informal Resolution, to oversee the consistent implementation of informal resolution strategies;
- providing effective training and mentoring for staff in key areas, such as mediation, negotiation and conflict resolution;
- tailoring external review procedures whenever possible so as to encourage participants to take part in the process without feeling it necessary to engage legal representation, and to otherwise minimise the expense of the process for the participants; and

- continuing the Liaison Officer program with agencies involved in significant numbers of external reviews, to streamline handling of external reviews with agencies and promote discussion of general issues relating to resolving FOI applications.

Figure 2 gives an overall picture of the applications received and finalised by the Office since the first application was received. In total, 2748 applications have been received, with 212 applications this reporting period.

The number of applications pending as at 30 June 2003 is the lowest in the Office's history. This will allow the Office to focus on a number of priorities identified for the coming year.

## TIMELINESS

During the reporting period, the average time to finalise completed cases was 34 weeks, with 62 per cent of cases finalised within six months.

A major focus of this year's work has been to finalise older, more complex cases. Many of the older cases related to two particular applicants. These applications were not dealt with on a first-come, first-served basis, as that would have been unfair to other applicants who have not placed as great a demand on the Office's resources.

Priority will continue to be given over the next reporting period to finalising applications more than 12 months old.

**FIGURE 2: APPLICATIONS DEALT WITH**

Reporting period	Applications received	Applications completed	Applications pending at the end of reporting period
18/1/1993 – 30/6/1993	120	27	93
1993/94	274	125	242
1994/95	223	179	286
1995/96	209	203	292
1996/97	231	246	277
1997/98	210	270	217
1998/99	291	301	207
1999/00	327	352	182
2000/01	376	393	165
2001/02	275	316	124
2002/03	212	275	61
<b>Total</b>	<b>2748</b>	<b>2687</b>	

***The number of applications pending as at 30 June 2003 is the lowest in the Office's history.***

## PERFORMANCE TARGET: TIMELINESS

Proportion of cases finalised in reporting year that were finalised within 3, 6 and 12 months

Target	2000-01	2001-02	2002-03
55% in 3 months	55%	50%	49%
70% in 6 months	71%	66%	62%
90% in 12 months	86%	80%	80%

### Comment:

The finalisation within three months of nearly half of the applications resolved is a sound outcome. A large number of older cases was resolved during the reporting period. Due to the decline in new applications received, the older cases represented a higher proportion of total cases resolved than had been anticipated.

Proportion of open cases at the end of reporting year that are over 12 months old.

Target	2000-01	2001-02	2002-03
20%	31%	39%	37%
(Number)	51	48	23

### Comment:

Eleven of the 23 applications related to two applicants who have made multiple applications. (With those two applicants excluded, the relevant percentage would be 24%.) The actual percentage of old matters exceeds the target because the number of open cases at the end of the reporting year fell to an all time low.

## OUTCOMES OF REVIEWS SETTLED INFORMALLY

Of the 205 cases resolved informally during the reporting period:

- 13 involved a dispute over fees or charges with the applicant obtaining a better outcome in five cases;
- 11 involved applications for amendment of information with the applicant obtaining an amendment or notation previously refused by the agency in seven cases;
- 158 involved challenges to an agency's refusal

of access to documents, with 83 (or 53 per cent) resulting in the applicant obtaining access to some documents or information previously withheld;

- 23 cases involved 'reverse-FOI' applications, seeking to overturn decisions by agencies to disclose documents to an applicant for access under the FOI Act; 18 of these cases were resolved in a manner that allowed the access applicant to obtain access to the information in issue, in whole or in part.



*Margaret Newbery, Assistant Information Commissioner and Co-ordinator of Informal Resolution. This is a new position, responsible for supervising the earlier, informal resolution stages of external review applications. Margaret is also part of the inter office team responsible for implementing and training staff on Catalyst, the Office's new file and case management system.*

## BETTER UNDERSTANDING BY AGENCIES AND THE COMMUNITY OF FOI LEGISLATION

### *'Promoting better understanding by agencies and citizens of rights and requirements under FOI legislation'*

Participation in the democratic process is one of the underlying rationales of freedom of information. Therefore, achieving a better understanding by agencies, and by the community generally, of the rights of citizens under the FOI Act is a worthy goal.

Better understanding should also lead to a reduction in applications to the Office involving issues that are clearly dealt with in the FOI Act, or that have previously been considered by the Commissioner. This allows the Office to concentrate its resources on timely resolution of disputes involving new or complex issues that require determination.

If applicants have access to basic information about their rights under the Act, and the processes involved in administering the legislation, they will be more likely to accept properly-based agency decisions. Similarly, if agencies have greater access to information about the Act, their decisions are more likely to be soundly based and will be less likely to be challenged.

Strategies adopted or continued in the reporting period to further this goal include:

- publishing high quality formal decisions that interpret and explain FOI legislation and illustrate the application of relevant principles in particular cases: these are published on our website (ordinarily within seven days), through the Australian Legal Information Institute (Austlii) website<sup>1</sup> and in the Queensland Administrative Reports;
- publishing on our website selected, edited 'letter decisions' to illustrate principles established in prior formal decisions (see Appendix 5);
- trialling and establishing a new position, Co-ordinator of Information and Assistance activities, to develop and oversee the implementation of the Office's education and information activities;
- publishing Information Sheets explaining the Office's approach to resolving the most commonly encountered kinds of disputes under the Act;



News from the Office of the Information Commissioner

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<sup>1</sup> <http://www.austlii.edu.au/au/cases/qld/QICmr/>

# goal 3

- publishing Practitioner Guidelines providing detailed guidance on the correct interpretation and application of key provisions of the Act;
- publishing a quarterly newsletter (vOICe) that highlights recent developments in FOI and issues of significance identified by the Office or by agencies;
- providing information to agencies and members of the public about FOI legislation, procedural issues and past decisions (during the reporting period, the Office responded to 267 requests for information or assistance); and
- maintaining and developing the website to provide free public access to the Office's decisions and publications and other information about FOI.

Some of these initiatives are described in greater detail under Significant Issues on page 22.

To improve understanding of the FOI Act and establish better mechanisms for informal resolution of disputes, our staff are appointed as Liaison Officers for approximately 20 agencies that are involved in a substantial number of external review applications. These officers provide a single point of contact for general queries by the agency FOI co-ordinator, and can also respond to agency concerns about timeframes we have imposed on the agency in the conduct of external reviews.

Each Liaison Officer meets regularly with relevant agency staff. At these meetings, a range of issues is explored and discussions held about ways to improve performance, both of this Office and of the agency concerned.

***Achieving a better understanding by agencies, and by the community generally, of the rights of citizens under the FOI Act, is a worthy goal.***



*Information Commissioner, David Bevan with Sue Barker, Assistant Information Commissioner and Co-ordinator of Information and Assistance Activities, discussing the new issue of 'vOICe', the Office's quarterly newsletter.*

# goal 4

## A PROGRESSIVE, CLIENT-FOCUSED ORGANISATION

*'Ensuring the Office exhibits best practice in the performance of its functions and is a progressive and responsive organisation.'*



*Staff meetings provide a useful platform for staff to brainstorm difficult or unusual cases with each other. Several officers who have different areas of expertise may be involved in developing creative solutions for more complex cases.*

The Office is committed to providing services with high levels of effectiveness, efficiency and accountability. Much of the work in this area over the past 12 months has focused on ensuring staff are equipped to deliver the best possible service.

To gauge the impact of our approaches and to determine areas for improvement, this year we again surveyed applicants whose matters were finalised during the reporting period. The results show that applicants were generally positive, although the delays experienced in some older

files that were finalised during the reporting period are reflected in a lower satisfaction rate for timeliness of resolution.

Figure 3 below shows results from a representative sample of 17 questions put to applicants.

It sets out the percentage of respondents who gave a rating of 1 or 2 (i.e., very

good or good) on a five-point scale in relation to the Office's performance. Responses were received from 93 applicants for external review.

In addition to the survey of applicant satisfaction, we also conducted a survey in December 2002/January 2003 of all agencies involved in cases finalised in the 2001-02 period.

The results show that agencies were mostly positive in their appraisal of the Office's performance.

**FIGURE 3: APPLICANT SATISFACTION SURVEY**

<b>Satisfaction with:</b>	<b>Number of respondents</b>	<b>%</b>
The way the review was handled overall	93	72
How well the applicant's questions were answered	90	70
Telephone service overall	87	91
How easy letters were to understand	91	64
How easy Information Sheets were to understand (if an Information Sheet was provided)	37	70
How easy decisions were to understand (if a decision was issued)	28	75
Time taken to finalise review	9	52

Figure 4 below shows results from 12 questions put to agencies. As with Figure 3, it sets out the percentage of respondents who gave a rating of 1 or 2 (i.e., very good or good) on a five-point

scale in relation to the Office's performance. Responses were received from 65 agencies involved in external reviews.

**FIGURE 4: AGENCY SATISFACTION SURVEY**

<b>Satisfaction with:</b>	<b>Number of respondents</b>	<b>%</b>
Telephone service overall	64	94
How helpful face to face meetings were	35	91
How easy preliminary view letters were to understand	55	89
How useful preliminary view letters were	56	95
How easy decisions were to understand	63	79
How useful decisions were	64	95
Effectiveness of informal resolution strategies	50	82
Effectiveness of the procedural approach to dispute resolution in minimising costs	51	82
Effectiveness of the following resources in assisting agency functions under the FOI Act:		
• Website	59	85
• Information sheets	57	93
• Practitioner guidelines	56	88
Effectiveness of Liaison Officer program	15	80

The Queensland Ombudsman's Corporate Services unit delivers corporate service functions to the Office of the Information Commissioner. The Offices address many issues relevant to the achievement of this goal jointly and a more detailed discussion appears in the Ombudsman's Annual Report.

Strategies adopted or continued in the reporting period to further this goal include:

- utilising and monitoring the new case and records management system;
- preparing for the implementation of an expanded Performance Planning and Review scheme;
- continuing to conduct surveys seeking feedback from applicants and agencies on various aspects of performance;
- identifying training requirements of the Offices by a joint committee - training programs were undertaken in information technology and mediation skills;
- continuing to develop formal policies and practices for human resource management; and
- maintaining a commitment to continuous improvements in policies, systems and practices.

## PEOPLE AND FINANCE

### PEOPLE

The approved establishment at 30 June 2003 was:

- 1 Deputy Commissioner
  - 2 Assistant Commissioners (at level AO8)
  - 2 Senior Administrative Review Officers (AO7)
  - 4 Administrative Review Officers (AO6)
  - 1 Research Officer/Librarian (AO5)
  - 1 Executive Officer (AO4)
  - 2 Administrative Assistants (AO2).
- Temporary staff were also appointed to replace staff who were absent on maternity leave.

Staff of the Office come from a variety of backgrounds, with experience in the Queensland, New South Wales and Commonwealth public sectors, private legal practice and elsewhere in the private sector. Most are legally qualified and most also have formal qualifications, or have undertaken training, in alternative dispute resolution methods. At present, approximately 75 per cent of staff are female.

**FIGURE 5: DISTRIBUTION OF STAFF BY GENDER AND CLASSIFICATION**

Gender distribution against role classification (effective workforce) as at 30 June 2003

Classification	Male	Female
SES2	1	
AO8		2.6
AO7	1	0.6
AO6		3.4
AO4		1
AO3	0.6	
AO2		1
<b>TOTAL</b>	<b>2.6</b>	<b>8.6</b>
% of whole	23.2%	76.8%

A Code of Conduct for staff is in place under the *Public Sector Ethics Act 1994*. The Code is available in electronic and hard copy forms and most staff have attended a group training session on the Code's application.

New staff are provided a copy of the Code and training about it during their induction.

### Farewell to Peter

After close to nine years of outstanding service, we sadly say farewell to Assistant Information Commissioner Peter Shoyer who has been appointed as the first Information Commissioner for the Northern Territory.

Peter has a strong commitment to the principles of open government and we are sure that his skills, both as a lawyer and leader, will lead to his continued success. We would like to record our sincere appreciation for Peter's contribution and wish him congratulations on his appointment.

### FINANCIAL STRUCTURE AND CORPORATE SUPPORT

The Office's financial reporting is combined with reporting for the Queensland Ombudsman, as the two Offices operate under the same output: *Independent review of complaints and appeals about government administration*. This output supports all five whole-of-government priorities established by the Queensland Government through the Corporate Governance framework.

The Queensland Ombudsman's Corporate Services Division provides corporate services, including financial, personnel and information technology. Reporting requirements falling within those functions, including financial statements, are included in the Ombudsman's Annual Report.

In brief terms, expenditure in the reporting period on staff salaries and related expenditure for the Office of the Information Commissioner was \$909,627. Other expenses attributed to this Office, including an apportionment of the costs of the Corporate Services unit, and the executive office of the Ombudsman and Information Commissioner, amounted to \$489,484.

## THE FUTURE – OUTLOOK 2003–2004

*My office will continue to support the integrity of Queensland's FOI regime and to promote its benefits.*

The reduction in the number of applications pending at 30 June 2003 to its lowest level in the Office's history has freed resources to allow the Office to focus on a number of priorities in the coming year, including:

- the further development of information and assistance activities, including publishing further Information Sheets and Practitioner Guidelines about the Act and providing information, training and assistance to members of the public and FOI practitioners;
- enhancing the Office's website to improve public access to information about FOI and decisions of the Commissioner;
- reducing the number of cases over 12 months old;
- emphasising problem solving and informal resolution approaches;
- improving timeliness of case resolution;
- refining and enhancing the new case and records management system;
- implementing an expanded performance planning and review scheme;
- continuing to implement a strategic training plan for staff, with emphasis on strategic leadership, management and information technology; and
- finalising the review of terms and conditions of employment for staff and formalising key human resource management policies.

## SIGNIFICANT ISSUES

### **INFORMATION AND ASSISTANCE ACTIVITIES**

As noted in the 2001-02 Annual Report, LCARC's report on Freedom of Information (No.32, December 2001) recommended the establishment of an independent FOI monitor. The FOI monitor's functions would include promoting awareness of the FOI regime and providing advice and assistance to agencies and members of the community about Freedom of Information. In its response, tabled in August 2002, the Government did not support the recommendation. However, it agreed in principle that there is a range of functions in relation to FOI that require better co-ordination.

The LCARC Report had also made it clear that there were numerous activities that could be undertaken to improve both the community's understanding of FOI processes and agencies' performance in administering the FOI Act. Our Office had already undertaken some limited activities designed to meet these needs, but since December 2002 further staff resources have been allocated to undertake an expanded range of information and assistance activities.

In February 2003, Mrs Susan Barker was appointed to act as Assistant Information Commissioner – Co-ordinator of Information and Assistance Activities. She is able to call on the assistance of any of the staff of the Office to help prepare written educational materials, prepare and present training sessions, and deal with written or telephone requests from agencies or members of the public for information or assistance in dealing with the FOI Act.

(The Office responded to 267 such requests for information and assistance during the reporting period.) Increased activity in this area will allow

the Office to meet its goal (Goal 3) of improving understanding by agencies and the community of FOI legislation and the FOI process. The Office's Strategic and Operational Plans have been revised to reflect this increased emphasis on the information and assistance role.

Care has been taken that our information and assistance activities are compatible with the Office's principal role as the independent review tribunal for agency FOI decisions. The program will build on the success of earlier initiatives, including the development of Information Sheets and the Liaison Officer program. Activities carried out or developed under the program during the reporting period can be divided into three main categories.

### **INFORMATION AND ASSISTANCE TO AGENCIES AND MEMBERS OF THE PUBLIC**

Our officers have always provided responses to telephone, e-mail and written requests, from members of the public and agencies, about the FOI Act and the handling of FOI access applications. They will continue to do so. Responses to these types of requests focus on procedural issues that may arise during the processing of an application, and staff are able to refer agencies and applicants to relevant FOI decisions or relevant publications (Information Sheets or Practitioner Guidelines). It is always made clear, however, that staff cannot advise on how specific issues should be decided by an agency, since the agency has statutory responsibility to make those decisions and their decisions may come before the Information Commissioner for review under Part 5 of the FOI Act. Records of the inquiries received are monitored to identify any trends or recurring issues that might need to be taken up with individual agencies.

We also continued our Liaison Officer program as indicated at p.18. Liaison Officers meet informally and regularly with representatives of their assigned agencies to discuss issues of specific concern, and to provide updates on the work of the Office.

## PUBLICATIONS AND RESOURCE MATERIALS

We will continue to produce Information Sheets and Practitioner Guidelines. The Information Sheets outline the Office's approach to the resolution of the issues that most frequently recur in FOI disputes. They are written primarily for the benefit of members of the public with little knowledge of the legal aspects of FOI disputes, and are generally no more than 2-3 pages long. However, we have become aware that many agencies are also using the Information Sheets, either to give to applicants or as basic training for new officers. Information Sheets are published on the Office's website and made available on request.

On the other hand, Practitioner Guidelines are written primarily for the benefit of FOI administrators, to provide a more detailed guide to the application of particular provisions in the FOI Act or the FOI Regulation. They are also available on the website or on request.

The existing range of publications will be regularly updated and expanded. We are also developing and producing additional resources to assist agencies and applicants:

- a quarterly newsletter – vOICE - which includes a discussion forum, articles on topics of interest, and relevant case summaries of decisions for FOI administrators (both decisions of the Information Commissioner and decisions from other jurisdictions). The first two issues were

published in February and May 2003. Matters considered so far have included the informal resolution of applications at first instance and on review, and procedural issues which appear to be common to various agencies. At the request of several agencies, an article on administrative release of documents (i.e., outside the FOI Act) was prepared for publication in the September issue.

- an FOI kit will be developed, containing information about the role of the Office and other materials, to be distributed to new FOI Co-ordinators and decision-makers. New materials to assist external review applicants, and third party participants, to understand and contribute to the review process will also be developed.

The Office website has a new domain name – **[www.infocomm.qld.gov.au](http://www.infocomm.qld.gov.au)** - which will be easier to remember as it is similar to our e-mail address (**[infocomm@infocomm.qld.gov.au](mailto:infocomm@infocomm.qld.gov.au)**). Additional materials are now available on the website, including the edited text of previously unpublished decisions which, although they do not establish any new precedents or points of law, may be useful to agencies dealing with applications based on similar facts or categories of documents. The website will continue to provide access to decisions of the Information Commissioner and delegates and other useful information on the operation of FOI in Queensland. The Office will be investigating a suitable search engine to facilitate easier use of the published decisions.

## EDUCATION AND TRAINING

The Information and Assistance program includes cooperation with the Department of Justice and Attorney-General to provide training for agencies,

including the FOI staff of local authorities, and representative community and professional bodies. An FOI training seminar for new FOI staff of agencies was developed and held in July. Assistant Commissioner Barker was one of the presenters alongside officers from Crown Law and the FOI Unit of the Department.

Six sessions specifically targeted at FOI administrators in local governments have been organised for presentation in Brisbane, and in five regional centres, during August/September 2003.

There are indications from agencies that they would like us to provide tailored training sessions on issues of specific concern, or on procedural or access issues which frequently arise in the applications they receive. One such program has already been held for a small agency with a number of new FOI decision-making and support staff, and was well-received by the agency.

It is anticipated that further tailored programs and discussion groups will be developed in consultation with agencies in the next 12 months. We will also be investigating the provision of training and/or information and materials through professional and community bodies and universities.

## **CHARGES REGIME AND PROPOSED AMENDMENTS TO THE FOI ACT**

One of the terms of reference for LCARC in reviewing issues concerning Freedom of Information in Queensland was the appropriateness of the then existing regime of fees and charges for access to documents. Shortly before the tabling of the LCARC report, the Government introduced a new charging regime for the FOI Act. It imposed significant charges for time spent processing applications for

access to documents that do not concern the personal affairs of the applicant. LCARC suggested in its report that it should review the new charges regime after one year to assess whether the regime was operating fairly and efficiently.

However, the review of the regime which was to take place during the reporting period was overtaken by the drafting (by the Department of Justice and Attorney-General) of significant amendments to the FOI Act. Those amendments have not yet been introduced into Parliament, although it is expected that that will occur during the next reporting period. We will assist FOI decision-makers and applicants by interpreting the amendments in the course of specific external reviews, by updating Information Sheets and Practitioner Guidelines where necessary, and by providing training seminars and workshops for FOI co-ordinators.

Agencies continue to experience difficulties with the application of the charging regime that was introduced in November 2001. A significant proportion of requests for information and assistance are in relation to fees and charges – particularly whether they are applicable (i.e., whether the documents to which access is sought concern the applicant's personal affairs, or whether the fees should be waived or reduced because of the nature of some or all of the documents involved).

The Office published the first decision on fees and charges – Re "JSD" and *Medical Board of Queensland* - in March 2003. That decision (which is summarised at p.30) dealt with two issues: whether all the requested documents concerned the personal affairs of the access applicant, thereby avoiding the requirement to pay an application fee and processing charges;

and how charges should be apportioned once it was determined that only some of the documents in issue concerned the personal affairs of the access applicant. In the absence of any guidance in the FOI Act itself, the Deputy Information Commissioner decided that the appropriate method of apportioning charges was on a pro rata basis.

## TENDER DOCUMENTS

The question of whether tender documents, and other similar documents which government agencies receive from the business community, qualify for exemption from disclosure on the grounds of "commercial confidentiality" is a fertile source of FOI disputes. The phrase "commercial confidentiality" is a vague one, but can be related to the exemptions in the FOI Act which deal with prejudice to commercial affairs (s.45) and with matter communicated in confidence (s.46).

Tender documents were dealt with at length in *Re Wanless Wastecorp Pty Ltd and Caboolture Shire Council; JJ Richards Pty Ltd (Third Party)*, in June 2003 (summarised at p.33), where the Deputy Information Commissioner held that a considerable amount of matter in the particular tender documents in issue did not qualify for exemption on either ground. The Deputy Information Commissioner observed that government agencies and local government authorities are accountable to the public regarding the decisions they make to award contracts for the performance of services to be undertaken for the benefit of the public (or a particular segment of the public) and which are to be paid for from funds raised by imposts on the public. Private sector businesses who wish to contract with government to perform services for the public

have to accept an appropriate level of scrutiny of their dealings with government, and of their performance in terms of service delivery to the public, as something which goes with the territory.

A government agency should be accountable to the public on request by making information available as to the type of services it has decided should be delivered by a private-sector service provider under contractual arrangements, the choice of the service provider, and how well the chosen service provider has performed. The kinds of information that should be available to an interested member of the public include the price payable by the public, the basis for changes in the price payable by the public, details on significant guarantees and undertakings as to service delivery, details of the transfer of assets and the result of cost-benefit analyses. The kinds of information that a private-sector service provider should usually be entitled to withhold include the service provider's internal cost structure or profit margins, matters having an intellectual property characteristic, and other matters where disclosure would pose a commercial disadvantage to the private-sector service provider.

# appendix 1

## APPENDIX 1

### PROFILE OF ACCESS APPLICANTS — FINALISED EXTERNAL REVIEWS 2002–2003

TYPE OF APPLICANT	NO.	TYPE OF APPLICANT	NO.
Politicians or political staffers	5	Individuals seeking access to their own medical records or records of a dependent child	7
Journalists	2	Individuals seeking access to the medical records of a deceased relative	11
Citizens' groups/lobby groups	12	Individuals seeking information relating to their treatment under the Mental Health Act, or by mental health authorities (e.g., Patient Review Tribunal)	3
Individuals seeking information about public health and safety issues	6	Individuals seeking information related to persons involved with an adopted child	1
Public servants (or former public servants) seeking information about workplace disputes (e.g., grievance, disciplinary proceeding, termination of employment)		Individuals seeking access to information concerning treatment by relevant agencies (e.g., local council or Department of Families, Youth and Community Care) of a neighbourhood dispute or a family dispute.	
Sub-categories:		Includes individuals seeking the identity of a complainant against them (2)	28
• Professional employee (e.g. salaried medical practitioner) (2)		Individuals seeking information about how a proposed government decision or policy will affect them, or about a government decision or policy which has affected them	
• Teacher (9)		Sub-category:	
• Police officer or ex-police officer (1)		• Planning and development decisions (6)	36
• University academic (13)	43	Individuals or business organisations seeking access to information for use in pending or proposed legal proceedings	11
Business people or business organisations seeking information for purposes related to their business	20	Individuals seeking information about an individual public servant who has had dealings with them	9
Professionals seeking information about their dealings with a professional regulatory body	4	Agency seeking review of another agency's decision	1
Individuals seeking information about the treatment of their complaints to a professional regulatory body	8	<b>TOTAL</b>	<b>275</b>
Individuals seeking information relating to their treatment (or the treatment of a relative) by the QPS, the Crime and Misconduct Commission (CMC) or the courts (i.e. where the access applicant, or a relative, was the subject of investigation)	15		
Individuals seeking information about how their complaint to the QPS or CMC was dealt with	28		
Prisoners or former prisoners (or relatives thereof) seeking information relating to the prisoner's treatment by prison authorities	25		

# appendix 2

## APPENDIX 2

### NEW APPLICATIONS FOR EXTERNAL REVIEW RECEIVED IN 2002–2003, BY CATEGORY (AS PER S.71 OF THE FOI ACT)

#### STATEMENT OF AFFAIRS (PART 2)

Refusal to publish, or to ensure compliance with Part 2	0
Deemed refusal	0

#### ACCESS TO DOCUMENTS (PART 3)

Refusal to grant access	93
Deletion of exempt matter	26
Deemed refusal to grant access	26
Deferred access	0
Charges	13
Third party consulted; objects to disclosure	13
Third party not consulted; objects to disclosure	5

#### AMENDMENT OF RECORDS (PART 4)

Refusal to amend	7
Deemed refusal to amend	0

#### ISSUANCE OF CONCLUSIVE CERTIFICATE

Cabinet matter	0
Executive Council matter	0
Law enforcement/Public safety matter	0

#### MISCELLANEOUS

No jurisdiction or misconceived application	29
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<b>TOTAL</b>	<b>212</b>
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# appendix 3

## APPENDIX 3

### APPLICATIONS FOR EXTERNAL REVIEW RECEIVED IN 2002–2003, BY RESPONDENT AGENCY OR MINISTER

<b>Ministers</b>	<b>No.</b>	<b>Health agencies</b>	<b>No.</b>
Premier	1	Queensland Health	5
<b>DEPARTMENTS</b>		Health Service Districts:	
Police	25	• Redcliffe/Caboolture	8
Corrective Services	17	• Princess Alexandra Hospital	3
Education	13	• Toowoomba	3
Justice & Attorney-General	9	• West Moreton	3
Natural Resources & Mines	7	• Bundaberg	2
Treasury	6	• Cairns	2
Transport/Main Roads	6	• Gold Coast	1
Employment & Training	5	• Prince Charles Hospital	1
Housing	5	• Rockhampton	1
Families	4	• Royal Children's Hospital	1
State Development	3	• Sunshine Coast	1
Innovation & Information Economy, Sport & Recreation	2	Health Rights Commission	5
Primary Industries	2	Medical Board of Queensland	3
Public Works	2	<b>OTHER AGENCIES</b>	
Emergency Services	1	University of Queensland	7
Industrial Relations	1	Griffith University	6
Local Government and Planning	1	Queensland University of Technology	4
Premier & Cabinet	1	Building Services Authority	3
Tourism, Racing and Fair Trading	1	Crime & Misconduct Commission	2
Disability Services	1	Public Trustee	2
Environmental Protection Agency	1	South Bank Corporation	2
<b>COUNCILS</b>		Energex	1
Brisbane	7	Ergon Energy	1
Rockhampton	5	Legal Aid Queensland	1
Hervey Bay	5	Queensland Law Society	1
Gold Coast	3	Queensland Ombudsman	1
Gatton	2	Queensland Rail	1
Mount Isa	2	Surveyor's Board of Queensland	1
Burnett	1	The Registrar of Cooperative Housing Societies	1
Caloundra	1	WorkCover Queensland	1
Cambooya	1		
Ipswich	1		
Livingstone	1		
Maroochy	1		
Redland	1		

## APPENDIX 4

### SUMMARIES OF FORMAL DECISIONS

#### "JSD" and Medical Board of Queensland

(Decision No. 01/2003, 4 March 2003)

The applicant was a medical practitioner accused of sexual misconduct in the course of treating patients. He sought access to information concerning the investigation into those allegations conducted by the Medical Board of Queensland (the MBQ).

The applicant claimed that the documents related to his personal affairs. The MBQ argued that they related to his professional affairs, as the alleged incidents occurred during professional consultations with patients. The documents fell into two categories:

- documents that referred to allegations of sexual misconduct or of misconduct generally (which the Deputy Information Commissioner found took colour from those around them), or the police investigation into the allegations; and
- medical records of the complainants.

Because allegations of sexual misconduct have such a strong element of the personal about them, documents which contain information concerning such matters should be characterised as documents concerning the applicant's personal affairs, and no access charges are payable: *Re "NHL" and the University of Queensland* (1997) 3 QAR 436.

Only six folios in the medical records of the complainants contained any reference to the allegations of sexual misconduct. The balance of the medical records merely recorded health concerns raised by the patients and the doctor's assessment of those concerns, and therefore could not be characterised as documents concerning the applicant's personal affairs.

There were 198 folios that did not concern the applicant's personal affairs, and the Deputy Information Commissioner was satisfied that the time spent by the MBQ processing those 198 folios exceeded 2 hours. The total processing time was 22 hours, but the MBQ had not recorded the time spent processing individual documents. The Deputy Information Commissioner was satisfied that an officer of the MBQ had spent approximately one hour assessing an audiotape of an interview with one of the complainants, and that, because it contained information concerning the applicant's personal affairs, no processing charges were payable in respect of the audiotape. It appeared that the time spent processing the remaining documents was relatively evenly distributed.

The Deputy Information Commissioner therefore assessed the processing charges payable by the applicant by apportioning the total time spent by the MBQ in processing the "personal affairs" and non-"personal affairs" documents (22 hours), less 1 hour spent processing the audiotape (21 hours), by reference to the number of non-"personal affairs" documents (198 folios) as a fraction of the total number of folios (313), multiplied by the hourly charge set out in item 1 of the Schedule to the FOI Regulation, i.e.:

$$198/313 \times 21 \text{ hours} \times \$20/\text{hour} = \$265.69$$

The Deputy Information Commissioner also held that the MBQ should refund to the applicant the amount by which the charges he had paid exceeded \$265.69, and refund any charges paid in respect of items 2 or 3 in the Schedule for the provision of access to documents identified as documents concerning the applicant's personal affairs.

**Orth and Medical Board of Queensland;  
Dr Robert J Cooke (Third Party)**

(Decision No. 02/2003, 20 June 2003)

The matter in issue in this review consisted of a report which the third party had provided to the Medical Board of Queensland (MBQ) in response to a complaint which the applicant had made to the MBQ about medical treatment she received from the third party.

The third party provided his report to the MBQ in response to requisitions issued by the MBQ under s.37C(1) of the *Medical Act 1939 Qld* (now repealed). Hence, the report was compulsorily acquired by the MBQ through the exercise of its coercive powers.

The MBQ later constituted a Complaints Investigation Committee (CIC), under s.37(3) of the *Medical Act*, to investigate various complaints made against the third party by the applicant and three other patients.

Both the MBQ and the third party claimed that the third party's report was exempt from disclosure to the applicant under s.46(1) and s.50(b) of the FOI Act.

**Section 46(1)(a) of the FOI Act**

The third party argued that his report was subject to an equitable obligation binding the MBQ not to disclose the report to the applicant. Applying the same reasoning explained in *Re Chand and Medical Board of Queensland; Dr Adam Cannon (Third Party)* (2001) 6 QAR 159, the Deputy Information Commissioner decided that equity would not impose on the MBQ an obligation of confidence, as against the applicant, in respect of any information in the report which was relevant and responsive to the applicant's complaint (to which the third party had been asked to respond).

In dismissing the third party's arguments under s.46(1)(a), the Deputy Information Commissioner made findings that, while the third party might reasonably have expected that the MBQ would treat his report in confidence as against the world at large, his expectation that a report responding to particular issues of complaint against him be treated in confidence, as against the complainant, was not a reasonable expectation, having regard to the functions of the MBQ and the uses it might properly wish to make of the information in the report in discharging its responsibility to deal fairly and properly with the complaint. Both the third party and the MBQ ought reasonably to have expected that, in properly dealing with the complaint, the MBQ might want or need to put the third party's response, or parts of it, to the applicant as part of the investigation process, or in explaining the outcome of the complaint.

The MBQ mounted a different argument under s.46(1)(a) of the FOI Act. It argued that, because the third party's report was compulsorily acquired under s.37C(1) of the *Medical Act*, the MBQ was under a statutory duty to use and disclose the report only for purposes expressly or implicitly authorised by the *Medical Act*, and that disclosure of the report to the applicant would found an action for breach of a "statutory duty of confidence". The MBQ relied on the decisions of *Johns v Australian Securities Commission* (1993) 178 CLR 408 and *Bray v Workers Rehabilitation and Compensation Corporation and Anor* [1994] 62 SASR 218. After a careful analysis of those authorities, the Deputy Information Commissioner decided that:

- the scope of s.46(1)(a) of the FOI Act is confined to actions for breach of confidence under the general law, and does not extend to an action to enforce an implied statutory duty binding a

government agency or official not to use or disclose information, acquired by the use of coercive statutory powers, for a purpose not authorised by the statute;

- in any event, disclosure of the third party's report to the applicant would not be alien to the purposes for which the MBQ was conferred with the statutory power which enabled it to compulsorily acquire a response from the third party to the applicant's complaint.

#### **Section 46(1)(b) of the FOI Act**

The Deputy Information Commissioner decided that the fact that the third party's report was obtained through the exercise of coercive statutory powers supported a finding that the MBQ and the third party had an implicit mutual understanding that the report would not be used or disclosed for a purpose not expressly or implicitly authorised by the *Medical Act*, and, to that extent, that it was "communicated in confidence" under s.46(1)(b) of the FOI Act. However, disclosure of the report to the applicant was an implicitly authorised exception to the MBQ's duty to treat the report in confidence, and the report was therefore not communicated in confidence as against the applicant.

The Deputy Information Commissioner also decided that the third requirement for exemption under s.46(1)(b) was not satisfied, because, given the MBQ's coercive powers, there was no reasonable basis for expecting that disclosure to the applicant of the third party's report could reasonably be expected to prejudice the future supply of like information to the MBQ.

#### **Section 50(b) of the FOI Act**

Both the MBQ and the third party argued that disclosure of the report to the applicant would be in breach of a non-publication order made by the

CIC. The *Medical Act* conferred on the CIC the powers of a Commission of Inquiry under the *Commissions of Inquiry Act 1950* Qld. The Deputy Information Commissioner decided that the non-publication order made by the CIC had to be read down to the extent necessary to ensure that it remained within the bounds of the relevant source of power available to the CIC under s.16(1) of the *Commissions of Inquiry Act*, i.e., it must be read as if it were an order in the following terms:

*This meeting of the Committee shall be conducted in camera and the Committee orders that any evidence given before it, or the contents of any book, document or writing produced at the Committee's inquiry, shall not be published except to the Board, the Medical Assessment Tribunal, or to the persons the Committee is required to consult to complete its investigations.*

The Deputy Information Commissioner decided that the third party's report was not covered by the terms of the non-publication order because it had not been "produced" at the CIC's inquiry, but had merely been made available to the members of the CIC as part of a file to be reviewed in advance of the CIC's evidentiary hearing.

The Deputy Information Commissioner also observed that the terms of the CIC's non-publication order could not be construed as directed to, or binding upon, the MBQ.

The Deputy Information Commissioner decided that disclosure by the MBQ to the applicant of the third party's report would not be contrary to an order or direction given by a body mentioned in s.50(b), and that the third party's report did not qualify for exemption under s.50(b) of the FOI Act.

## **Section 44(1) of the FOI Act**

The Deputy Information Commissioner decided that there were a number of references on page 5 of the report to the names of patients or former patients of the third party (other than the applicant) which comprised exempt matter under s.44(1) of the FOI Act. Those references comprised information concerning the personal affairs of those other patients. The Deputy Information Commissioner was unable to identify any public interest considerations weighing in favour of disclosure of those names which had sufficient strength to outweigh the public interest in protecting the privacy of medical information about identifiable individuals. He was satisfied that the applicant did not need to obtain access to the names in order to understand the third party's response to her complaint.

## **Wanless Wastecorp Pty Ltd and Caboolture Shire Council; JJ Richards Pty Ltd (Third Party)** (Decision No. 03/2003, 30 June 2003)

The Council invited tenders for the provision of waste collection services in November 2000. In response, the applicant (the incumbent service provider), the third party and two other firms lodged tender submissions. The third party was selected as the successful tenderer.

The matter in issue in this review consisted of:

- parts of the successful tender submission and other documents lodged by or relating to the third party; and
- various documents (or parts of documents) created by the Council in assessing the tender submissions of the two other (i.e., aside from the applicant) unsuccessful tenderers.

The Council claimed that the bulk of the matter in issue was exempt from disclosure under s.45(1)(b) of the FOI Act, and that some matter was exempt under s.45(1)(c). The third party claimed that the matter in issue relating to it or lodged by it with the Council, including parts of its tender submission, was exempt under various of sections 44(1), 45(1)(a), 45(1)(b), 45(1)(c), 46(1)(a) and/or 46(1)(b).

## **Section 44(1) of the FOI Act**

The third party argued that résumés of members of its staff appearing in a section of its successful tender submission related to the personal affairs of those staff members, and therefore qualified for exemption from disclosure to the applicant under s.44(1) of the FOI Act. Relying upon the reasoning expressed by the Information Commissioner in *Re Pope and Queensland Health* (1994) 1 QAR 616 at p.660, the Deputy Information Commissioner rejected this argument. The Deputy Information Commissioner found that the résumés were properly to be characterised as information concerning the employment affairs, rather than the personal affairs, of the relevant staff members, and that they did not qualify for exemption under s.44(1) of the FOI Act.

## **Section 45(1)(a) of the FOI Act**

The third party argued that two sections of its tender submission – an "Environmental Plan" and a "Workplace Health and Safety Plan" - both comprised 'trade secrets', and attracted exemption from disclosure to the applicant under s.45(1)(a) of the FOI Act. The Deputy Information Commissioner rejected the third party's argument. The Deputy Information Commissioner noted that the third party had made no effort to bring to the attention of the Council the supposed 'secrecy' of these documents, and did not consider that either plan possessed the characteristics of a trade secret. He decided that the plans did not qualify for exemption under s.45(1)(a) of the FOI Act.

## **Section 45(1)(b) of the FOI Act**

Both the Council and the third party argued that the bulk of the matter in issue possessed a commercial value to the third party, and qualified for exemption under s.45(1)(b) of the FOI Act. The Deputy Information Commissioner did not accept these arguments because he was unable to identify an inherent commercial value in any of the relevant information. The information comprised matter such as straightforward technical drawings, unaudited financial accounts publicly accessible through the Australian Securities and Investments Commission (ASIC) registry, an industrial relations policy, a contents listing of a register of internal quality assurance documents, a draft advertising campaign, and a Multimedia Package in the nature of an electronic promotional brochure.

The Deputy Information Commissioner found that it had not been established that there was a market for the sale of any of the information. He recognised that the third party must have invested substantial time and money in creating certain documents, such as the Multimedia Package; however, in finding they did not qualify for exemption under s.45(1)(b), he observed that the investment of time and money was not, of itself, a sufficient indicator of the fact that information has a current commercial value.

One document, in the nature of a customer list, was found not to have commercial value, because the identities of the holders of major contracts for waste management with local government authorities were effectively common knowledge in the industry.

## **Section 45(1)(c) of the FOI Act**

The third party argued that any of the material in issue which related to or was lodged by it with the Council, and which was not found exempt

under sections 45(1)(a) or (b), ought to be considered for exemption under s.45(1)(c) of the FOI Act. The Council claimed that parts of the Contractor Report qualified for exemption under this section.

The Deputy Information Commissioner accepted that all matter in issue which was subject to a claim for exemption under s.45(1)(c) of the FOI Act concerned the business, commercial or financial affairs of the third party or unsuccessful tenderers (apart from the applicant). The Deputy Information Commissioner did not accept, however, that disclosure of most of those documents could reasonably be expected to have an adverse effect of the kind required under s.45(1)(c)(ii).

The third party was required, by operation of the *Corporations Act 2001* Cth, to lodge annual returns with ASIC, copies of which were then publicly available from the ASIC registry on payment of the requisite fee. A series of unaudited financial statements appearing in the third party's tender submissions and the Contractor Report were found to be materially identical to such publicly-accessible information, and the Deputy Information Commissioner found that there was no basis therefore upon which it could be argued that disclosure of this matter under the FOI Act could reasonably be expected to have an adverse effect of the kind required under s.45(1)(c)(ii) of the FOI Act.

Additionally, the Deputy Information Commissioner did not consider that other matter supplied by or relating to the third party qualified for exemption under s.45(1)(c), given much of that information's general and/or promotional nature.

The Deputy Information Commissioner did, however, decide that some parts of the third

party's tender submission, and information contained in other documents relating to the third party qualified for exemption under s.45(1)(c) of the FOI Act. That matter comprised information such as pricing information in respect of recyclable waste; credit information; detailed business systems and service standards, and a detailed education program, which the third party was capable of offering; and the third party's collection route mapping system. The Deputy Information Commissioner was satisfied that disclosure of that matter could reasonably be expected to afford a competitor of the third party (such as the applicant) a competitive advantage, and impose upon the third party a corresponding competitive disadvantage, so as to adversely impact on the third party's business, commercial or financial affairs, within the meaning of the first limb of s.45(1)(c)(ii) of the FOI Act.

Additionally, the Deputy Information Commissioner found that all matter relating to other unsuccessful tenderers qualified for exemption under s.45(1)(c) of the FOI Act. The Deputy Information Commissioner was satisfied that disclosure of this information, which included matter relating to alternative tender pricing and structure (matter which, unlike conforming tender prices, was not publicly disclosed during the tender process), levels of customer satisfaction, and general information relating to each unsuccessful company's tender strategies, could reasonably be expected to have an adverse effect upon the business, commercial or financial affairs of those unsuccessful tenderers, within the meaning of the first limb s.45(1)(c)(ii) of the FOI Act.

In relation to the second prejudicial effect contemplated by s.45(1)(c)(ii), being that of prejudice to the future supply of information to government, the Deputy Information

Commissioner noted the competitive nature of the waste management industry, and the reliance upon government contracts in that industry, in rejecting submissions by the Council and third party to the effect that waste management companies generally could reasonably be expected to refrain from supplying information which would otherwise advance their prospects of successfully tendering for government contracts.

The Deputy Information Commissioner acknowledged general public interest considerations such as ensuring accountability of local government agencies for their decisions to award contracts pursuant to public tender processes. However, he considered that disclosure of the matter found by him to qualify *prima facie* for exemption under s.45(1)(c) would not enhance the Council's accountability for its decision to award the contract to the third party (especially having regard to the extent of the matter already disclosed, or to be disclosed, under the FOI Act), to an extent that warranted a finding that disclosure would, on balance, be in the public interest.

### **Section 46(1)(a) of the FOI Act**

The third party argued that certain parts of its tender submission - such as details of staff turnover, an industrial relations policy, the 'customer list' detailing previous experience, details of its maintenance regime and the Multimedia Package - were communicated in confidence and thus qualified for exemption under one of sections 46(1)(a) or 46(1)(b).

In relation to s.46(1)(a), the Deputy Information Commissioner was not satisfied that all of the matter claimed to be exempt possessed the 'necessary quality of confidence' as required by this provision. In any case, the Deputy Information Commissioner was satisfied that none

of that matter was communicated in circumstances which imported an obligation on the part of the Council to keep the matter confidential. In making this finding, the Deputy Information Commissioner took into account the fact that, despite an explicit request in the Conditions of Tender circulated by the Council, the third party, a large and sophisticated commercial entity, had failed to endorse any of the relevant matter as comprising matter communicated in confidence.

The Deputy Information Commissioner was not satisfied that any of the matter claimed to be confidential was of such commercial sensitivity that its very nature should have required the Council to treat it in confidence. The Deputy Information Commissioner noted that any information which had that level of commercial sensitivity was adequately protected by his findings under s.45(1)(c) of the FOI Act, and the remainder would not have attracted an equitable obligation binding the Council to treat it in confidence.

### **Section 46(1)(b) of the FOI Act**

The Deputy Information Commissioner did not accept that matter relating to the third party qualified for exemption under this provision. Referring largely to his findings in relation to s.46(1)(a), the Deputy Information Commissioner noted that much of the relevant matter was not confidential. As mentioned above, the Conditions of Tender had expressly sought indications from tenderers of what was claimed to be confidential matter, and had cautioned against any absolute assurance that matter would be treated confidentially. However, no part of the third party's tender submission had been endorsed as matter communicated in confidence. Therefore, there was no basis for a finding that the Council understood and accepted that the third party had

sought confidential treatment in respect of the relevant information.

The Deputy Information Commissioner noted, in respect of the third requirement for exemption under s.46(1)(b), that he did not consider that waste management companies generally would withhold information that would advantage their tenders, and increase their prospects of winning government contracts, if the matter in issue were disclosed under the FOI Act.

## APPENDIX 5

### SUMMARIES OF LETTER DECISIONS

#### **Price and Gatton Shire Council**

(L 18/01 & L 19/01, 7 August 2002)

The applicant sought access to documents relating to a visit to his property by officers of the respondent and police, following a complaint that cattle were straying onto the road. The respondent located a diary entry and a tape in response to the applicant's FOI access application. The applicant argued that further relevant documents ought to exist in the Council's possession or under its control.

Applying the principles established in *Re Shepherd and Department of Housing, Local Government & Planning* (1994) 1 QAR 464, and taking into account the statutory declarations provided by the respondent, Assistant Commissioner (AC) Barker decided that there were no reasonable grounds for believing that any additional documents, which fell within the terms of the applicant's FOI access application, existed in the possession or control of the respondent, and that the searches and inquiries conducted by the respondent in an effort to locate any additional responsive documents had been reasonable in all the circumstances of the case.

#### **'KLL' and Queensland Health**

(S 103/00, 16 September 2002)

The applicant, a former employee of the respondent, had been the subject of disciplinary action. She had obtained access to a large number of documents relating to the disciplinary action, but contended that additional relevant documents ought to exist in the respondent's possession or under its control. Applying the principles established in *Re Shepherd and Department of Housing, Local Government &*

*Planning* (1994) 1 QAR 464, AC Shoyer decided that there were no reasonable grounds for believing that additional responsive documents existed in the possession or under the control of the respondent, and that the searches and inquiries conducted by the respondent in an effort to locate any such documents had been reasonable in all the circumstances of the case.

The applicant had also sought access to all records of disciplinary penalties imposed on officers of the respondent in the past 10 years. AC Shoyer was satisfied on the evidence submitted by the respondent that the searches that would have to be undertaken to locate all documents containing the information sought by the applicant would substantially and unreasonably divert the resources of the respondent from their use by the respondent in the performance of its functions. Therefore, the respondent's reliance upon s.28(2) of the FOI Act in refusing to process that part of the FOI access application was justified.

AC Shoyer also affirmed the respondent's decision that segments of information which recorded the opinions of senior staff about what penalty should be imposed on the applicant, including discussion of the likely effect on the operations of the respondent, were exempt from disclosure under s.41(1) of the FOI Act.

#### **Neill and Queensland University of Technology**

(S 83/02, 23 September 2002)

The Deputy Information Commissioner decided that documents which recorded communications between the respondent and its solicitors concerning the way in which the respondent should respond to complaints and a grievance lodged by the applicant, qualified for exemption

under s.43(1) of the FOI Act. He decided that disclosure by the respondent of other non-privileged information did not constitute waiver of privilege in the matter in issue. He also decided that the applicant had not demonstrated a *prima facie* case that the relevant communications were made in furtherance of an illegal or improper purpose.

### **Gresham and Queensland Thoroughbred Racing Board**

(S 159/01, 25 September 2002)

The applicant sought access to documents obtained or created in the course of an investigation into a complaint made by him concerning expenditure by a Turf Club. AC Shoyer decided that most of the matter in issue could not qualify for exemption under s.41(1) of the FOI Act because it consisted either of merely factual matter or expert analysis: see s.41(2)(b) and s.41(2)(c). He recognised a public interest in enhancing the accountability of the respondent for the performance of its functions in overseeing the activities of the Turf Club, and the accountability of the Turf Club for compliance with the requirements of the *Racing and Betting Act 1980* Qld. Given the nature of the matter in issue, AC Shoyer decided that its disclosure would not, on balance, be contrary to the public interest. He also decided that the matter in issue did not qualify for exemption from disclosure under s.40(a) or s.40(b) of the FOI Act.

### **Paussa and Hervey Bay City Council**

(L 25/02, 25 September 2002)

This case came before the Information Commissioner by way of a deemed refusal of access by the respondent. The document in issue was a report commissioned by the respondent regarding the way in which officers of the

respondent had dealt with the discovery of 'inappropriate' material on the respondent's computers. Neither the respondent, nor a third party who was consulted during the course of the review, raised the application of any particular exemption provision to the matter in issue.

AC Shoyer considered and rejected the application of s.41(1) of the FOI Act to the matter in issue. As to the application of s.44(1), some personal affairs matter had already been deleted from the report with the agreement of the applicant. AC Shoyer decided that disclosure of the remaining personal affairs matter would, on balance, be in the public interest (and hence it was not exempt from disclosure under s.44(1) of the FOI Act) because its disclosure was needed to allow an understanding of the report.

### **McMahon and Department of Justice & Attorney-General**

(S 246/01, 25 September 2002)

The applicant contended that the respondent ought to have more documents in its possession or under its control which related to its document retention and destruction processes, thus raising a 'sufficiency of search' issue. AC Moss noted that her experience of past records management practices of Queensland government agencies had shown that basic procedures for records management were not necessarily documented. She was satisfied by the respondent's evidence that the relevant destruction schedules and guidelines to which the applicant had been given access were the only records management documentation relied on by staff of the respondent at the relevant time, and that there were therefore no reasonable grounds for believing that additional responsive documents existed in the respondent's possession or under its control.

## **'JNK' and Queensland Police Service**

(S 214/01, 30 September 2002)

## **'JNK' and Royal Brisbane Hospital Health Service District**

(S 99/01, 30 September 2002)

The applicant sought access to documents of the respondents relating to his detention by police under the *Mental Health Act 1974* Qld, and his subsequent admission to the Royal Brisbane Hospital. AC Moss decided that the matter in issue, which mainly comprised information about the applicant's state of mental health supplied by third parties, was exempt from disclosure under s.44(1) and/or s.46(1) of the FOI Act.

## **McMahon and Crime and Misconduct Commission**

(S 100/01, 11 October 2002)

The applicant sought access to documents relating to the referral to the respondent of complaints which the applicant had made to the former Office of the Public Service. After reviewing and analysing the evidentiary material submitted by the applicant and the respondent, the Deputy Information Commissioner was satisfied that there were no reasonable grounds for believing that the respondent held any additional documents which were responsive to the terms of the applicant's FOI access application and, in particular, that there were no reasonable grounds for believing that the respondent held codeworded files that related to the applicant.

As regards the application of s.50(c)(i) of the FOI Act, the Deputy Information Commissioner found that correspondence between the Parliamentary Criminal Justice Committee and the respondent comprised "proceedings in the Assembly" as defined by s.9 of the *Parliament of Queensland Act 2001*, and was exempt matter under s.50(c)(i) of the FOI Act.

As regards the application of s.43(1) of the FOI Act, the Deputy Information Commissioner decided that the document in question (a copy of a legal advice provided by Crown Law to the Office of the Public Service and subsequently provided to the respondent to assist in its investigation of a referral of suspected official misconduct) was exempt matter under s.43(1). The Deputy Information Commissioner held that the document satisfied the basic test to attract legal professional privilege, and that privilege in the document had not been waived by its limited disclosure to the respondent, in confidence, for a specific purpose; and nor had the legal advice in question been provided in furtherance of any illegal or improper purpose.

## **Price and Queensland Police Service**

(S 32/97, 28 October 2002)

The applicant sought access to all documents of the respondent relating to himself or his property, including documents created in relation to his prior FOI access applications. The principles established in *Re Shepherd and Department of Housing, Local Government & Planning* (1994) 1 QAR 464 were applied in dealing with the 'sufficiency of search' issues raised by the applicant. Applying s.77(1) of the FOI Act, AC Shoyer refused to deal further with documents clearly excluded from the application of Part 3 of the FOI Act by s.12 of the FOI Act, or with documents that had been dealt with in previous decisions of the Information Commissioner or his delegates.

AC Shoyer applied the principles established in *Re Godwin and Queensland Police Service* (1997) 4 QAR 70 in finding that the applicant should be given access to sufficient information to enable him to understand why the respondent had decided to take no action against alleged offenders in matters in which the applicant was

the complainant, but that other information, including identifying information in respect of witnesses, was exempt matter under s.44(1), s.42(1)(b) or s.46(1)(b) of the FOI Act.

### **Price and Queensland Police Service**

(S 174/97, 29 October 2002)

The applicant sought access to various categories of documents of the respondent which related to himself and others, including documents created in connection with his prior FOI access applications. Part of the application was found by AC Shoyer to be invalid as it did not comply with s.25(2)(b) of the FOI Act. Applying s.77(1) of the FOI Act, AC Shoyer refused to deal further with documents clearly excluded from the application of Part 3 of the FOI Act by s.12 of the FOI Act, or with documents that had been dealt with in previous decisions of the Information Commissioner or his delegates.

AC Shoyer applied *Re Ainsworth; Ainsworth Nominees Pty Ltd and Criminal Justice Commission; Others* (1999) 5 QAR 284 in deciding that information which identified persons alleged to have committed some wrongdoing, or who were willing to provide information to police, was information concerning those persons' personal affairs. AC Shoyer was not satisfied that the balance of the public interest favoured disclosure of that information, and he therefore decided that it was exempt from disclosure under s.44(1) of the FOI Act.

AC Shoyer also upheld a claim for exemption by the respondent under s.41(1) of the FOI Act in respect of part of a written submission lodged with the Information Commissioner by the respondent in a previous case, which part had been accorded confidential treatment because of its extensive references to the content of the

matter in issue in that previous case (which matter had been found to be exempt by the Information Commissioner).

### **Price and Queensland Police Service**

(S 50/99 & S 193/99, 30 October 2002)

### **Price and Queensland Police Service**

(S 260/99, 31 October 2002)

These cases raised substantially similar issues in respect of similar categories of documents. Applying s.77(1) of the FOI Act, AC Shoyer refused to deal further with documents clearly excluded from the application of Part 3 of the FOI Act by s.12 of the FOI Act, or with documents that had been dealt with in previous decisions of the Information Commissioner or his delegates. Information which would identify alleged offenders, or persons who had provided information to the respondent, was found to be exempt under s.44(1) of the FOI Act.

### **'TQN' and Royal Brisbane Hospital Health Service District**

(S 89/02, 31 October 2002)

The applicant sought review of the respondent's decision to refuse her access to parts of her medical records relating to her detention under the *Mental Health Act 1974* Qld. The application for external review was lodged over five months beyond the time limit prescribed in the FOI Act, and the applicant sought a favourable exercise of the Information Commissioner's discretion, under s.73(1)(d) of the FOI Act, to extend the time for lodging her application for external review.

AC Shoyer found that the application did not disclose a reasonably arguable case with reasonable prospects of success, because he was satisfied that the matter in issue would qualify for

exemption under s.42(1)(b), s.42(1)(h), s.44(1) and/or s.46(1)(a) of the FOI Act, applying the principles established in *Re McEniery and Medical Board of Queensland* (1994) 1 QAR 349, *Re "ROSK" and Brisbane North Regional Health Authority* (1996) 3 QAR 393, *Re "P" and Brisbane South Regional Health Authority* (1994) 2 QAR 159, and *Re "M" and Brisbane South Regional Health Authority* (1994) 2 QAR 256. Accordingly, AC Shoyer declined to exercise the discretion contained in s.73(1)(d) of the FOI Act to grant the applicant an extension of time within which to lodge her application for external review.

#### **'WLS' and Queensland Rail**

(S 203/01, 31 October 2002)

The applicant's conduct as a driver with the respondent was the subject of complaints from several fellow employees, including allegations of improper use of drugs. The respondent suspended the applicant and investigated the allegations, but found them to be unsubstantiated. The applicant sought access to all documents concerning the allegations and their investigation by the respondent. Following concessions made by the respondent during the course of the review, the only matter remaining in issue comprised names and other information which would identify the complainants, and a small amount of matter which solely concerned the personal affairs of third parties.

The Deputy Information Commissioner decided that the matter in issue that concerned the third parties' personal affairs was exempt under s.44(1) of the FOI Act. He was satisfied that its disclosure would not, on balance, be in the public interest because it would not add anything to the applicant's understanding of the complaints made against him, or of the respondent's investigation of those complaints.

The Deputy Information Commissioner also decided that information which would identify the complainants was exempt under s.40(c) of the FOI Act, as its disclosure would be likely to discourage employees of the respondent from reporting similar concerns in the future. The applicant had already been provided with a significant amount of information concerning the substance of the complaints, the subsequent investigation, and its outcome. The Deputy Information Commissioner found that the public interest in the ability of the respondent to receive and investigate complaints of allegedly hazardous workplace behaviour outweighed the public interest in providing the applicant with further information.

#### **Heffernan and Queensland Rail**

(S 218/01, 31 October 2002)

The applicant was the driver of a vehicle belonging to the respondent which was allegedly involved in a minor accident with another car on the Gateway Bridge. The driver of the other car lodged a complaint with the respondent, which agreed to pay for repairs to that car. A record of the incident was placed on the applicant's file, but no other action was taken. The applicant maintained that he had not struck the complainant's car and lodged several complaints about the investigation of the matter by the respondent. He applied, under the FOI Act, for access to all documents relating to the complaints and their investigation.

After concessions made by the respondent during the course of the review, the matter remaining in issue comprised the identities of the complainant, and of a passenger in the complainant's car who had provided a brief statement in support of the complaint, plus a small amount of information about three officers of the respondent who were involved in the investigation of the complaint, and

who were subsequently advised that certain aspects of their conduct during the investigation had been inappropriate.

The Deputy Information Commissioner found that matter which would identify the complainant and the witness was information which concerned their personal affairs, and was exempt matter under s.44(1) of the FOI Act. The Deputy Information Commissioner also upheld the respondent's claim under s.40(c) of the FOI Act in respect of a small amount of information about the officers who had undertaken the initial investigation of the relevant complaint, on the basis that he was satisfied that the task of constructively addressing shortcomings in staff performance had greater prospects of success if the process remained confidential to the relevant managers and affected staff members.

### **Vonhoff and Queensland Police Service**

(S 90/97, 12 November 2002)

The applicant's FOI access application was wide ranging and sought access to many categories of documents in order to assist court proceedings involving another FOI access applicant, Mr Price. To the extent that the documents to which access was sought overlapped with documents dealt with in decisions concerning various of Mr Price's FOI access applications (see cases referred to above), AC Shoyer made identical rulings. He applied s.25(2), s.28(2) and s.77(1) of the FOI Act in refusing to deal with the balance of the applicant's FOI access application.

### **Gill and Education Queensland**

(S 56/02, 13 November 2002)

The applicant sought access to documents of the respondent which related to two issues - a school's decision not to offer one of his sons a place in Year 8 in 2001 and the respondent's review of that decision; and the respondent's decision not to pay the dental expenses of his other son who sustained injury to his teeth during an altercation with another student at the school. Following concessions made by the respondent, the only documents remaining in issue consisted of communications between the respondent and its in-house legal officers. AC Moss decided that the documents in issue qualified for exemption under s.43(1) of the FOI Act, on the basis that they comprised confidential communications between lawyer and client made for the dominant purpose of seeking or giving legal advice or professional legal assistance regarding the claims made by the applicant.

### **Price and Queensland Police Service**

(S 74/01 & S 75/01, 13 November 2002)

AC Shoyer was satisfied that there were no reasonable grounds for believing that documents relating to a 1987 incident involving the applicant still existed in the possession or under the control of the respondent. AC Shoyer was satisfied that the searches and inquiries conducted by the respondent in an effort to locate any responsive documents had been reasonable in all the circumstances of the case.

**Price and Crime and Misconduct Commission**  
(S 149/97, 14 November 2002)

The applicant sought access to all documents of the respondent relating to himself which had not already been produced to him. AC Shoyer decided that identifying information in respect of certain individuals who had assisted various investigations conducted by the respondent was exempt matter under s.44(1) or s.46(1) of the FOI Act, and that those exemption provisions also applied to information that those individuals had supplied to the respondent when they had been consulted under s.51 of the FOI Act in respect of prior FOI access applications by the applicant.

**Price and Crime and Misconduct Commission**  
(S 78/99, 20 November 2002)

Applying *Re "T" and Queensland Health* (1994) 1 QAR 386, AC Shoyer upheld an exemption claim under s.42(1)(e) of the FOI Act in respect of information that would disclose certain procedures of the respondent. AC Shoyer was satisfied that such procedures were lawful, dealt with possible contraventions of the law, were not widely known in the community, and would self-evidently be prejudiced by their disclosure. AC Shoyer found that other segments of information relating to individuals other than the applicant were exempt matter under s.44(1) of the FOI Act.

**Price and Crime and Misconduct Commission**  
(S 125/00, 21 November 2002)

AC Shoyer decided that the respondent was justified, in light of the applicant's failure to pay an application fee, in treating the scope of the applicant's FOI access application as being confined to documents which concerned the

applicant's personal affairs. The documents in issue included legal advice obtained by Gatton Shire Council from its solicitors, which the Council had forwarded to the respondent to assist in an investigation. AC Shoyer was satisfied that the legal advice attracted legal professional privilege, and that it was given to the respondent in confidence, in circumstances that did not involve any waiver of privilege. AC Shoyer also found that the legal advice was not given in furtherance of any illegal or improper purpose. It therefore was exempt matter under s.43(1) of the FOI Act.

**Price and Crime and Misconduct Commission**  
(S 73/01, 22 November 2002)

The applicant contended that certain relevant documents had not been identified and dealt with by the respondent in response to his FOI access application. However, AC Shoyer held that any such documents would fall outside the terms of the relevant FOI access application in any event, according to the wording used by the applicant. AC Shoyer also decided that the respondent was entitled, under s.28(2) of the FOI Act, to refuse to deal with the applicant's FOI access application, because to do so would substantially and unreasonably divert the respondent's resources from their use by the respondent in the performance of its functions.

**Price and Crime and Misconduct Commission**  
(S 85/01 & S 86/01, 25 November 2002)

In the first application, the only matter remaining in issue (the signature and residential address of another individual) was found by AC Shoyer to be exempt from disclosure to the applicant under s.44(1) of the FOI Act. In the second application, all responsive documents were encompassed

within two prior FOI access applications made by the applicant which had been the subject of a decision by the Deputy Information Commissioner. AC Shoyer therefore refused to deal further with the application for review, invoking s.77(1) of the FOI Act.

**Price and Crime and Misconduct Commission**  
(S 266/01 & S 8/02, 26 November 2002)

In the first application, AC Shoyer decided that the only documents in issue were documents excluded from the application of Part 3 of the FOI Act by s.12 of the FOI Act. In the second application, AC Shoyer found that references to other individuals in Crime Reports and related documents were exempt from disclosure to the applicant under s.44(1) of the FOI Act.

**Citizens Rally Against Superquarries Haulage Association Inc and Department of State Development**

(S 166/02, 26 November 2002)

Having regard to the large volume of documents covered by the terms of the relevant FOI access application, the consequent difficulties in undertaking third party consultation mandated by s.51 of the FOI Act, and staffing difficulties within the respondent's FOI unit, the Deputy Information Commissioner decided that it was appropriate to grant the respondent's application, under s.79(2) of the FOI Act, for further time to deal with the FOI access application.

**McMahon and Queensland Ombudsman**  
(S 258/01, 5 December 2002)

The applicant sought access to documents relating to a job selection process conducted by the respondent some two and a half years earlier, in

which the applicant had been an unsuccessful candidate. Most of the responsive documents had been destroyed in accordance with the respondent's authorised disposal schedule. The applicant was given access to surviving documents, subject to the deletion of identifying information in respect of other unsuccessful job applicants.

The Deputy Information Commissioner affirmed the respondent's decision that such identifying matter qualified for exemption under s.44(1) of the FOI Act, applying the principles established in *Re Baldwin and Department of Education* (1996) 3 QAR 251. The Deputy Information Commissioner was also satisfied, from the comprehensive searches undertaken during the course of the review, that no additional responsive documents existed in the possession or under the control of the respondent.

**Offord and Rockhampton City Council**  
(L 17/02, 18 December 2002)

The applicant contended that certain documents concerning drainage in her local area should be in the possession or under the control of the respondent. Applying the principles established in *Re Shepherd and Department of Housing, Local Government & Planning* (1994) 1 QAR 464, AC Moss decided that there were no reasonable grounds for believing that additional documents falling within the terms of the applicant's FOI access application existed in the possession, or under the control, of the respondent. AC Moss was also satisfied that the searches and inquiries undertaken by the respondent to locate all responsive documents had been reasonable in all the circumstances of the case.

## **McColl and Public Trustee of Queensland**

(S 139/02, 7 January 2003)

The applicant sought access to the will of her late aunt in order to discover the identity of the beneficiary of her aunt's estate. AC Moss applied the principles stated in *Re Stewart and Department of Transport* (1993) 1 QAR 227 in finding that the will concerned the personal affairs of the testatrix. Following a concession made by the respondent, it was possible to inform the applicant that the beneficiary was a charity and not a natural person. However, the applicant submitted that she needed to know the precise identity of the beneficiary under the will in order to ascertain whether or not she had a legal entitlement to part of the estate.

AC Moss recognised that, in an appropriate case, there may be a public interest in an individual being permitted to gain access to information which would assist the person to pursue a legal remedy: see *Re Willsford and Brisbane City Council* (1996) 3 QAR 368. However, the applicant was unable to point to any basis for challenging the will, and AC Moss decided that the will was exempt from disclosure under s.44(1) of the FOI Act, there being no basis for a finding that disclosure of the will to the applicant would, on balance, be in the public interest.

## **'MPH' and Queensland Nursing Council**

(S 232/01, 9 January 2003)

The respondent had temporarily suspended the applicant's nursing registration due to her ill health. The applicant sought access under the FOI Act to two paragraphs of a letter from the respondent to the applicant's supervisor. The paragraphs contained observations concerning the supervisor's management of the applicant's

diminished performance, and proposals for future management of similar personnel issues.

In deciding that the matter in issue was not exempt under s.44(1) of the FOI Act, AC Moss applied the principles stated in *Re Pope and Queensland Health* (1994) 1 QAR 616 at paragraph 116. She found that the matter in issue concerned the supervisor's employment affairs rather than her personal affairs. While it was unnecessary to make findings in respect of the public interest balancing test, AC Moss noted the applicant's strong "need to know", given that the paragraphs in issue related to the applicant and the way in which concerns about her diminished performance were managed. AC Moss also recognised a general public interest in the accountability of the respondent and Queensland Health in respect of the handling of performance issues involving their registrants/employees, which would be enhanced by disclosure of the matter in issue.

In addition, AC Moss decided that the paragraphs in issue were not exempt matter under s.40(c) of the FOI Act, as she was not satisfied that their disclosure could reasonably be expected to have a substantial adverse effect on the performance by the supervisor of her managerial duties, or to undermine her relationship with her staff members, given the mild nature of the observations in question.

## **Price and Queensland Police Service**

(S 262/99, 6 February 2003)

The applicant had sought access under the FOI Act to the respondent's electronic audit logs of persons accessing his files. He failed to respond to the respondent's requests, made under s.28(2) of the FOI Act, to narrow the scope of his access application, but instead sought an external review of the

respondent's deemed refusal of access. Details of the steps required to conduct the necessary searches were obtained from the respondent and the applicant was consulted regarding the possibility of narrowing the scope of his application to cover specific months. The applicant declined to narrow the scope of his application.

AC Shoyer decided that to deal with the applicant's access application would substantially and unreasonably divert the resources of the respondent from their use by the respondent in the performance of its functions, and held that the respondent therefore was entitled, under s.28(2) of the FOI Act, to refuse to deal with the access application.

#### **Price and Crime and Misconduct Commission** (S 98/98, 21 February 2003)

The applicant sought review of a deemed refusal of access to documents he had requested from the respondent. His FOI access application had covered a wide range of documents. During the course of the review, the applicant substantially reduced the scope of his access application. The respondent then requested an extension of time under s.79(2) to process the amended application. After consideration of the reasons for the delays in the matter, any potential prejudice to the applicant, and the most expedient process for the applicant, the Deputy Information Commissioner decided to exercise his discretion, under s.79(2) of the FOI Act, so as to allow the respondent a further four weeks to process the applicant's amended access application.

#### **Price and Nominal Defendant** (S 99/02, 24 February 2003)

The applicant sought access to all documents of the respondent which related to himself. AC

Moss upheld an exemption claim by the respondent under s.43(1) of the FOI Act in respect of the documents remaining in issue, which comprised internal file notes of the respondent's solicitors, parts of the solicitors' memoranda of fees, and correspondence passing between the respondent and its solicitors. AC Moss was satisfied that the matter in issue satisfied the test for attracting legal professional privilege.

#### **Weber and Queensland Police Service** (S 128/02, 20 March 2003)

The applicant contended that certain documents concerning complaints made by him should be in the possession or under the control of the respondent. Applying the principles established in *Re Shepherd and Department of Housing, Local Government & Planning* (1994) 1 QAR 464, AC Moss decided that there were no reasonable grounds for believing that documents falling within the terms of the applicant's FOI access application existed in the possession or under the control of the respondent. AC Moss was also satisfied that the searches and inquiries undertaken by the respondent in an effort to locate all responsive documents had been reasonable in all the circumstances of the case.

#### **Salter and Department of Justice and Attorney-General** (S 153/02, 28 March 2003)

The applicant lodged an application for external review outside the prescribed 60 day time limit, and sought an extension of time under s.73(1)(d) of the FOI Act. The relevant FOI access application sought access to a document held by the respondent which concerned a complaint made by a third party about the conduct of a Justice of the Peace in dealing with certain subpoenas which the applicant had sought to have issued in

Magistrates Court proceedings. References to the applicant in the complaint were merely incidental. The Deputy Information Commissioner decided that it would be futile to grant the applicant an extension of time within which to lodge his application for external review, as the document to which he sought access qualified for exemption under s.46(1) of the FOI Act.

### **'CDY' and Queensland Police Service**

(S 177/02, 31 March 2003)

The applicant applied to the respondent for access to 'a risk assessment of me'. A document responsive to this description was identified by the respondent, but access was refused under s.42(1)(e), s.42(1)(f) and s.42(1)(h) of the FOI Act. The Deputy Information Commissioner decided that the creation of risk assessments by the respondent answered the description in s.42(1)(h) of a 'system or procedure for the protection of persons [or] property ...'. He decided that disclosure of the matter in issue could reasonably be expected to prejudice that system or procedure, and therefore found that the matter in issue was exempt matter under s.42(1)(h) of the FOI Act. The applicant sought to rely on the exception contained in s.42(2), but the Deputy Information Commissioner decided that nothing in the matter in issue revealed that the scope of a law enforcement investigation had exceeded the limits imposed by law.

### **'MCL' and Health Rights Commission**

(S 63/02, 17 April 2003)

The applicant sought access to information concerning professional complaints made about her husband, a medical practitioner. The Deputy Information Commissioner was satisfied that the respondent was conducting an investigation of a possible contravention of the law, or that it had

referred relevant matters to other agencies for investigation. He was also satisfied that, given the nature of the investigations and the applicant's conduct in contacting a complainant in a previous investigation, there was a reasonable basis for expecting that disclosure of the matter in issue could prejudice the investigation of a possible contravention of the law, either through contact by the applicant with the complainant or other potential witnesses, or by allowing the responses of witnesses to be tailored to, or coloured by, the information made available through any such disclosure. Accordingly, the Deputy Information Commissioner decided that the matter in issue was exempt from disclosure under s.42(1)(a) of the FOI Act.

### **Koala Blue Tours and Environmental Protection Agency**

(S 47/01, 29 April 2003)

The applicant sought access to documents concerning the fees paid by permit holders, and the numbers of tourists taken by those permit holders into Springbrook National Park. Applying the principles established in *Re Cannon and Australian Quality Egg Farms Limited* (1994) 1 QAR 491, AC Moss found that the matter in issue concerned the business, commercial or financial affairs of the permit holders, but she was not satisfied that its disclosure could reasonably be expected to have an adverse effect on those business, commercial or financial affairs, nor that disclosure could reasonably be expected to prejudice the future supply of such information to government.

AC Moss recognised a strong public interest in giving the community the opportunity to scrutinise the matter in issue so as to ensure that the terms of agreements entered into by the respondent on behalf of the community were being complied with, and that the Park was being

properly managed on behalf of the community. Accordingly, AC Moss decided that the matter in issue did not qualify for exemption under s.45(1)(c) of the FOI Act.

**'HSY' and West Moreton Health Service District**  
(S 191/02, 1 May 2003)

The applicant sought access to information concerning medical treatment given to his late brother, who had been a patient at Wolston Park Hospital at the time of his suicide in June 1992. AC Moss found that the matter in issue concerned the personal affairs of the applicant's late brother. AC Moss applied *Re Summers and Cairns District Health Service* (1997) 3 QAR 479 in finding that the applicant's reasons for seeking access to the matter in issue - in order to come to terms with his brother's death and to assist in his rehabilitation from drug addiction - could not properly be characterised as public interest considerations, but rather, were personal interests of the applicant. Consequently, she decided that the matter in issue was exempt from disclosure under s.44(1) of the FOI Act.

**Price and Department of Justice and Attorney-General**  
(S 41/02, 8 May 2003)

The applicant applied for access to all documents relating to himself which had been created between the date of the respondent's decision in a preceding FOI access application and the date of the applicant's current FOI access application. The respondent identified 36 documents as falling within the terms of the applicant's access application. The applicant contended that there were 'missing and destroyed documents'; however, the applicant provided no specific information in support of his contention in that regard.

AC Moss found that there were no reasonable grounds for believing that additional documents, which fell within the terms of the applicant's FOI access application, existed in the possession, or under the control, of the respondent. She also decided that correspondence between the Crown Solicitor and the Attorney-General and Minister for Justice was exempt matter under s.43(1) of the FOI Act because it attracted legal professional privilege, and that information contained in one document which referred to the specific hourly rates charged by Crown Law officers was exempt matter under s.45(1)(c) of the FOI Act.

**Coroneos and Medical Board of Queensland**  
(S 227/03, 9 May 2003)

This was a 'reverse FOI' application in which the applicant objected to disclosure to a former patient of conditions relating to the applicant's registration as a specialist medical practitioner. AC Moss was satisfied that the conditions comprised information concerning the applicant's professional affairs, but she was not satisfied that disclosure of the conditions could reasonably be expected to have an adverse effect on his professional affairs, or to prejudice the future supply of similar information to government.

AC Moss recognised a strong public interest in giving the public the opportunity to scrutinise conditions attaching to the registration of medical practitioners, and in the accountability of the respondent and the Medical Assessment Tribunal regarding the way in which they review and manage the registration of medical practitioners and conditions placed upon such registrations. Accordingly, AC Moss found that the conditions did not qualify for exemption from disclosure under s.45(1)(c) of the FOI Act.

## **Department of Primary Industries and WorkCover, 'P' (Third Party)**

(S 4/02, 12 May 2003)

This was a 'reverse FOI' application by the Department of Primary Industries (DPI) for review of a decision by the respondent to give the third party access to certain documents. The third party had lodged a claim with the respondent against his employer, DPI. The respondent engaged a psychologist to prepare a report to assist in considering that claim. Three DPI employees were interviewed during the preparation of that report. The matter in issue comprised the statements provided by the three employees, references in the body of the report to the information they provided, and a letter that one of the third parties had provided to the psychologist.

The DPI employees argued that the matter in issue concerned their personal affairs. AC Moss identified small amounts of personal affairs matter and decided that, on balance, the public interest did not favour disclosure of that matter, and therefore it was exempt matter under s.44(1) of the FOI Act. However, AC Moss held that the bulk of the matter in issue did not relate to private aspects of the employees' lives, but rather, related to or arose from their employment by DPI, and therefore did not qualify for exemption under s.44(1).

AC Moss rejected DPI's claim that the matter in issue qualified for exemption under s.40(c) of the FOI Act. She was not satisfied that disclosure of the matter in issue could reasonably be expected to have a substantial adverse effect on the management or assessment by DPI of its personnel, given that the third party no longer worked for DPI. AC Moss also rejected DPI's claims for exemption under s.42(1)(b) and s.46(1)(b) of the FOI Act. She held that the DPI

employees could not reasonably have expected that their identities would remain confidential, given the nature of the information they were providing and the real possibility that the information would be relied upon in making a decision adverse to the interests of the third party.

Although it appeared that an express undertaking as to confidentiality was provided to at least one of the DPI employees at the time he was interviewed, AC Moss decided that the requirements of procedural fairness meant that neither he nor the respondent could reasonably have expected that the information would be kept confidential while taking appropriate action in respect of it. It must have been an implicitly authorised exception to any understanding of confidentiality that it would be necessary for the respondent to provide an account of its investigation, and the reasons for its decision (including the material on which it based that decision), to the third party.

## **Bartz and Department of Corrective Services**

(S 290/03, 15 May 2003)

Having regard to staffing and administrative difficulties in the respondent's FOI unit, and the lack of any objection from the applicant, the Deputy Information Commissioner decided that it was appropriate to grant the respondent's application, under s.79(2) of the FOI Act, for further time to deal with the applicant's application to amend information under s.53 of the FOI Act.

## **'JTN' and Queensland Police Service**

(S 85/02, 26 May 2003)

The applicant sought access to documents of the respondent concerning certain allegations made against him. The allegations had either been

found by the respondent to be unsubstantiated, or had been withdrawn by the informant. AC Moss was satisfied that to disclose the substance of the allegations, in this instance, would disclose the identity of the complainant. She found that the matter in issue concerned the personal affairs of the complainant, and that it was inextricably interwoven with information concerning the personal affairs of the applicant, such that it was *prima facie* exempt from disclosure under s.44(1) of the FOI Act, subject to the application of the public interest balancing test.

AC Moss recognised the public interest in people having access to information concerning them that is held by government agencies, particularly where it relates to sensitive matters of personal concern. However, balanced against that is the strong public interest in protecting the privacy of other persons, and in ensuring the continued supply of information to law enforcement agencies. After balancing the competing public interest considerations, AC Moss concluded that disclosure of the matter in issue would not, on balance, be in the public interest, and that it therefore was exempt matter under s.44(1) of the FOI Act.

### **Price and Gatton Shire Council**

(L 33/02, 28 May 2003)

The applicant had sought access to all records of the respondent relating to defamation proceedings brought by the respondent's Chief Executive Officer against a number of third parties. The applicant failed to respond to a request, made by the respondent under s.28(2) of the FOI Act, that he narrow the scope of his access application, but then applied for external review of the respondent's deemed refusal of access.

Details of the work required to identify, locate and collate the relevant documents were obtained from the respondent. AC Moss decided that, on the basis of the respondent's submissions, the Council was entitled, under s.28(2) of the FOI Act, to refuse to deal with the applicant's FOI access application, because to do so would substantially and unreasonably divert the resources of the respondent from the performance of its functions. In making this decision, AC Moss took into account the number and volume of the requested documents, and the difficulty that would exist in identifying, locating and collating those documents within the respondent's filing system.

### **De Marchi and Public Trustee of Queensland**

(S 190/02, 5 June 2003)

The applicant contended that the respondent had failed to disclose an unsigned copy of his deceased father's will, which the applicant alleged he had viewed at the respondent's offices some years earlier. The respondent conducted searches of its files relating to the applicant's father and mother, and of its will appointment book, and searched electronically for variations of the applicant's father's surname, and address, but did not locate an unsigned copy of the will.

Applying the principles established in *Re Shepherd and Department of Housing, Local Government & Planning* (1994) 1 QAR 464, AC Moss was satisfied that searches and inquiries conducted by the respondent had been reasonable in all the circumstances of the case, and that there were no reasonable grounds for believing that an unsigned copy of the applicant's father's will existed in the possession, or under the control, of the respondent.

## **Tinworth and Department of Employment and Training**

(S 30/02, 5 June 2003)

The applicant sought access to all documents relating to complaints he had made, through a member of Federal Parliament, in connection with his employment by TAFE. The applicant contended that there should be further responsive documents in the possession or under the control of the respondent, in view of the nature of his complaints. The respondent agreed that notes had been taken by an officer who interviewed the applicant, but advised that they had not been retained as they were of no further use. The Deputy Information Commissioner decided that there were no reasonable grounds for believing that the respondent retained, in its possession or control, any relevant documents which had not already been disclosed to the applicant, and that the searches and inquiries conducted by the respondent for any such documents had been reasonable in all the circumstances of the case.

## **Price and Department of Justice and Attorney-General**

(S 8/01, 19 June 2003)

The applicant sought access to documents relating to his involvement in proceedings in the Magistrates Court and to the involvement of a particular Magistrate in those proceedings, and to all other documents relating to the applicant which had not been dealt with in his earlier FOI access applications. AC Moss decided, in respect of the first part of the applicant's FOI access application, that the documents to which the applicant sought access were excluded from the FOI Act by the operation of s.11(1)(e) and/or s.11(1)(f) of the FOI Act. In respect of the second part of the access application, AC Moss decided

that an application fee of \$31 was payable by the applicant because at least one of the documents to which he sought access did not contain any information which could properly be characterised as information concerning his personal affairs.

## **Hunt and Education Queensland**

(S 24/02, 19 June 2003)

The applicants argued that certain documents, falling within the terms of their FOI access application, should exist in the possession or under the control of the respondent. The respondent undertook extensive searches of its records and located some additional relevant documents, copies of which were provided to the applicants. In relation to the outstanding documents requested by the applicants, the Deputy Information Commissioner was not satisfied, on the material before him, that there were reasonable grounds for believing that the requested documents existed, or, if they had at one time existed, that they had been retained in the possession or under the control of the respondent. In any event, he was satisfied that the searches and inquiries that had been made by the respondent in an effort to locate any additional responsive documents had been reasonable in all the circumstances of the case.

## **Price and Crime and Misconduct Commission**

(S 72/01, 20 June 2003)

The matter in issue comprised extracts from diary entries of a former officer of the Criminal Justice Commission (now the Crime and Misconduct Commission). As a result of concessions made during the course of the review, most of the diary extracts were disclosed to the applicant. The matter remaining in issue comprised part of one diary entry, which identified the name of a third

party witness in an investigation. The Deputy Information Commissioner decided that disclosure of identifying information in respect of the relevant individual would disclose information concerning the personal affairs of that individual. The Deputy Information Commissioner was unable to identify any public interest considerations favouring disclosure to the applicant of the identity of the individual, and accordingly, he decided that the identifying information in respect of that individual was exempt matter under s.44(1) of the FOI Act.

The Deputy Information Commissioner also decided that there were no reasonable grounds for believing that additional documents, which fell within the terms of the applicant's FOI access application, existed in the possession or under the control of the respondent.

### **'SMH' and Department of Families**

(219/03, 20 June 2003)

The matter in issue in this case comprised the name of the applicant's putative father (i.e., the person named by her birth mother as her father, but with no verification) on a State Children's Department form, completed shortly after the applicant's birth in 1942. Although the applicant asserted that she had been told her putative father had died during World War II, that information could not be confirmed. AC Barker decided that, for the reasons stated in *Re "KBN" and Department of Families, Youth and Community Care* (1998) 4 QAR 422, the public interest considerations favouring disclosure of the matter in issue were not sufficiently strong to outweigh the public interest in protecting the privacy interests of the applicant's putative father and members of his family. AC Barker therefore affirmed the respondent's decision that the matter in issue was exempt matter under s.44(1) of the FOI Act.

### **'CCH' and Queensland Health**

(S 196/02, 23 June 2003)

The matter in issue comprised parts of a report prepared by a paediatric expert from the New Children's Hospital, Westmead, at the request of the Minister for Health. The Minister sought the report so as to assess concerns raised with her by the applicant relating to the treatment of his grandson by the Royal Children's Hospital, Brisbane ('RCH').

During the course of the review, the respondent agreed to give the applicant access to those parts of the report which responded to the particular concerns raised by the applicant with the Minister, i.e., the expert's opinion about the RCH's management of the applicant's grandson's condition, and about the RCH's proposals for the future care of the applicant's grandson. The matter remaining in issue related to the expert's opinion about other issues, unrelated to the RCH or its management of the applicant's grandson's condition, and which did not otherwise respond to the specific concerns raised by the applicant with the Minister.

The Deputy Information Commissioner found that such matter was exempt from disclosure to the applicant under s.46(1)(a) of the FOI Act, applying the principles established in *Re "B" and Brisbane North Regional Health Authority* (1994) 1 QAR 279. While there was no evidence of any express assurance of confidentiality as between the expert and the Minister, the Deputy Information Commissioner was satisfied, having regard to the nature and sensitivity of the matter in issue, that it was implicitly understood and accepted by the expert, and by the Minister, that such matter was communicated in confidence.

**'WRD' and Department of Corrective Services**  
(S 165/02, 25 June 2003)

The applicant sought access to a copy of a Withdrawal Summary which had been prepared by a psychologist following the applicant's withdrawal from the respondent's Sex Offender Treatment Program (SOTP). AC Moss found that sections of the Summary concerning the applicant's psychological profile and psychological testing were exempt from disclosure under s.42(1)(h). She was satisfied that the SOTP answered the description of a system or procedure for the protection of persons, and that disclosure of the matter in issue could reasonably be expected to prejudice the SOTP.

AC Moss also found that other sections of the Summary, comprising details of the applicant's sexual offences, concerned either the personal affairs of the applicant's victims, or the shared personal affairs of the applicant and his victims. AC Moss was satisfied that the strong public interest in protecting the victims' privacy, was not outweighed by public interest considerations identified by the applicant as weighing in favour of disclosure to him of the matter in issue. She decided that the matter in issue was exempt matter under s.44(1) of the FOI Act.

**Bruce Bell as agent for 'IGY' and Queensland Police Service**

(S 12/02, 27 June 2003)

The matter in issue in this review related to sexual offences committed by a person for whom the applicant held a power of attorney and acted as agent in making the application (the offender was serving a prison sentence in connection with the offences). Some of the documents in issue were available for purchase by the applicant under the

respondent's administrative access scheme. However, the respondent retained a general discretion under that scheme to withhold some personal information. The respondent advised that it would intend deleting segments of information from some documents in issue in this case, including the names of child complainants.

In relation to those documents which the respondent advised could be purchased by the applicant without deletions, AC Moss was satisfied that the respondent was entitled to refuse access under s.22(b) of the FOI Act. However, having regard to the comments made by the Information Commissioner in *Re 'JM' and Queensland Police Service* (1995) 2 QAR 516, AC Moss decided that it was necessary to deal, under the FOI Act, with those documents from which the respondent intended to delete information before giving administrative access to the applicant.

The matter remaining in issue comprised statements of complainants and witnesses, transcripts of interviews, information about the sexual offences committed by the applicant, details of the complainants' relationships with the applicant, and other personal details such as age, address, signature, et cetera. AC Moss was satisfied that the matter in issue concerned the personal affairs of third parties and was prima facie exempt from disclosure to the offender under s.44(1) of the FOI Act, subject to the application of the public interest balancing test. She decided that, on balance, the public interest considerations in favour of disclosure of the matter in issue did not outweigh the strong public interest in favour of protecting the privacy of the child victims and of witnesses, and therefore that the matter was exempt from disclosure under s.44(1) of the FOI Act.

## **Gresham and Queensland Thoroughbred Racing Board**

(S 3/02, 30 June 2003)

The matter in issue comprised an audit report prepared by a firm of accountants in relation to the financial accounts and financial systems of the Toowoomba Turf Club. AC Moss found that the report was not exempt from disclosure to the applicant under s.41(1) of the FOI Act as most, if not all, of the report comprised factual matter or expert opinion, and was therefore excluded from s.41(1) by the operation of s.41(2)(b) and s.41(2)(c) of the FOI Act.

AC Moss also decided that the report did not qualify for exemption under s.45(1)(c) of the FOI Act because she was not satisfied that its disclosure could reasonably be expected to have an adverse effect on the Club's business, commercial or financial affairs. In addition, she expressed the view that disclosure of the report would, on balance, be in the public interest and referred to the findings made by the Information Commissioner in *Re Gresham and Queensland Principal Club* (S 26/01, Information Commissioner Qld, 13 August 2001, unreported).

## **'DSH' and Queensland Treasury**

(S 240/00 and S 241/00, 30 June 2003)

The matter in issue comprised various referee reports provided to the respondent by employees of the respondent, in respect of successful 'internal' job candidates. The applicant was an unsuccessful candidate in each of the relevant job selection processes.

Applying the principles established in *Re Pemberton and University of Queensland* (1994) 2 QAR 293, AC Moss found that disclosure of the referee reports in issue, to persons other than the

subject of the report and the decision-makers in the relevant selection process, could reasonably be expected to inhibit a substantial number of supervisors from recording adverse comment in their referee reports, and that the provision of bland, tempered referee reports to selection panels would prejudice the panels' ability to fully and effectively assess the relevant candidates' abilities and suitability for appointment. That, in turn, could reasonably be expected to have a substantial adverse effect on the management or assessment by the respondent of its personnel.

While recognising that the applicant, as an unsuccessful candidate in the relevant job selection processes, had an interest in the matter in issue which was greater than that of any member of the general public, AC Moss was satisfied that disclosure of the referee reports to the applicant would not, on balance, be in the public interest, and that they therefore comprised exempt matter under s.40(c) of the FOI Act.

## **Grehan and Department of Employment, Training and Industrial Relations**

(S 53/01, 30 June 2003)

The applicant sought access to 53 categories of documents relating to a grievance lodged in 1999 against himself and another officer of an Institute of TAFE. The respondent gave the applicant access to a number of documents under the FOI Act, and had already allowed him administrative access to what it contended were all the documents relating to the subject matter of his FOI access application. The applicant contended that there must be further relevant documents in the respondent's possession or under its control, which had been concealed by the respondent from the Information Commissioner, and from other agencies to whom the applicant had complained about corruption in the Institute.

After negotiations were held regarding the respondent's interpretation of some parts of the applicant's FOI access application, and inspection of documents by a member of staff of the Information Commissioner's Office, the respondent agreed to give the applicant access to some additional documents.

The Deputy Information Commissioner decided that there were no reasonable grounds for believing that the respondent had, in its possession or under its control, any further documents which fell within the terms of the applicant's FOI access application, and that the searches and inquiries conducted by the respondent in an effort to locate all responsive documents had been reasonable in all the circumstances of the case.

#### **Price and Gatton Shire Council**

(L 44/01, 30 June 2003)

The respondent directed its staff to research a number of matters about which the applicant had

lodged a complaint. The applicant then applied for access under the FOI Act to all documents located by the respondent as a result of that research. The respondent gave the applicant access to a number of documents relating to the matters complained of, but the applicant contended that there must be further documents, known to the respondent's Chief Executive Officer, which the applicant described as "dirt" files containing information improperly obtained and adverse to the applicant. (Similar claims by the applicant in a previous review involving the respondent had not been substantiated.)

AC Barker found that there were no reasonable grounds for believing that the applicant had not been provided with all documents which had been located by the respondent's officers in the course of their research into the applicant's complaints, and that the searches and inquiries conducted by the respondent to locate any additional documents responsive to the terms of the applicant's FOI access application had been reasonable in all the circumstances of the case.





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