



Decision and Reasons for Decision

Application Number: 210512

Applicant: NPT

Respondent: Department of Health

Decision Date: 19 May 2009

Catchwords: **FREEDOM OF INFORMATION – Section 28A of the *Freedom of Information Act 1992 (Qld)* – refusal of access – whether reasonable basis for the agency to be satisfied document sought does not exist – photographs**

Section 44(1) of the *Freedom of Information Act 1992 (Qld)* – personal affairs – whether identifying information about complainants contained within applicant’s mental health records the personal affairs of those individuals – public interest balancing test

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REASONS FOR DECISION

Summary

1. Having considered the parties' submissions and evidence, relevant legislation and decisions I am satisfied that:
 - the photographs sought by the applicant do not exist and therefore access may be refused under section 28A(1) of the *Freedom of Information Act 1992* (Qld) (**FOI Act**)
 - the matter in issue qualifies for exemption under section 44(1) of the FOI Act.

Background

2. By application dated 21 January 2008, the applicant wrote to the Department of Health, also known as Queensland Health (**QH**) and requested access to the following for the period 6 to 8 December 2007 (**FOI Application**):

In-patient hospital notes
Out-patient hospital notes
Community Health Service notes
Laboratory reports

3. On 7 February 2008, QH decided to (**Original Decision**):
 - grant the applicant full access to 69 pages
 - grant the applicant partial access to 2 pages
 - deny the applicant access to 9 pages.
4. By application dated 11 February 2008, the applicant sought internal review of the Original Decision to refuse her access to 9 documents (**Internal Review Application**).
5. On 14 April 2008,¹ Ms T Stubbs, A/District Manager at QH, affirmed the Original Decision in respect of the documents to which access had been denied in full.²
6. By application dated 14 May 2008, the applicant sought external review of the above decision (**External Review Application**).

Decision under review

7. The decision under review is the Affirmed Decision referred to in paragraph 8.

Steps taken in the external review process

8. By letters dated 27 August 2008, I indicated to the parties in this review that:
 - QH had made its internal review decision outside the time limits stipulated under the FOI Act and accordingly, its Principal Officer is taken to have made a

¹ The applicant indicates that she received the letter advising of this decision on 21 April 2008.

² In addition to its claim under section 46(1)(b) of the FOI Act, QH also claimed that the documents qualify for exemption under section 42(1)(h) of the FOI Act. QH also confirmed that the Original Decision contained an error in that there are 8 documents to which access is being denied, not 9 as previously indicated.

decision on or about 9 April 2008 affirming the Original Decision (**Affirmed Decision**)³

- the External Review Application had been accepted
 - an external review of QH's Affirmed Decision to partially exempt 2 pages and fully exempt 8 pages under the FOI Act would be conducted.
9. In a telephone conversation with a staff member of the Office of the Information Commissioner (**Office**) on 3 October 2008, QH agreed to withdraw most of its claim for exemption over folio 13B.
 10. By letters dated 13 November 2008 I updated the applicant on the progress of this review and requested that QH, in accordance with the above telephone conversation, provide the applicant with further access to folio 13B.
 11. In a meeting with a staff member of the Office on 1 December 2008, QH accepted my preliminary view that folio 19B only qualifies for partial exemption under section 44(1) of the FOI Act.
 12. By letter dated 6 February 2009 I provided QH with my preliminary view regarding the matter remaining in issue.
 13. By letter dated 20 February 2009 QH responded to the preliminary view above.
 14. By letter dated 25 February 2009 I asked QH to provide the applicant with access to the additional information that it had (in response to my preliminary view) agreed to release.
 15. By letter dated 12 March 2009 I provided the applicant with my preliminary view regarding the relevant issues in the review.
 16. By fax dated 25 March 2009 the applicant indicated that she did not accept the preliminary view at paragraph 15 above but declined the opportunity to provide further submissions or evidence in support of her case.
 17. In making my decision in this review, I have taken into account the following:
 - FOI Application, Internal Review Application and External Review Application
 - Original Decision
 - QH's letter to the applicant dated 14 April 2008
 - the Matter in Issue
 - documents released to the applicant in response to the FOI Application
 - written correspondence from QH dated 20 February 2009
 - written correspondence from the applicant dated 25 March 2009
 - file notes of telephone conversations and meetings between the Office and QH on 3 October 2008, 1 December 2008, 20 February 2009 and 16 April 2009
 - the part of the Sunshine Coast and Cooloola Health Service District Procedure Manual titled 'Patient Identification'
 - an entry in the applicant's progress notes dated 6 December 2007
 - relevant provisions of the FOI Act as referred to in this decision
 - decisions of the Information Commissioner as referred to in this decision.

³ However, for the purpose of the review, I have taken into account QH's views as expressed in its letter of 14 April 2008.

Matter in issue

18. During the course of this review, QH:
- withdrew its claim for exemption under section 42(1)(h) of the FOI Act
 - indicated that it would only be seeking to claim that parts of the documents being considered in this review qualify for exemption under section 44(1) of the FOI Act.
19. In response to the preliminary view, the applicant indicated that she also wished to pursue access to the photographs previously mentioned in the Internal Review Application.
20. In view of the above, the relevant issues to be determined in this review include whether the:
- photographs to which the applicant refers exist as documents of QH
 - remaining parts of the 10 documents in issue⁴ (**Matter in Issue**) qualify for exemption under section 44(1) of the FOI Act.

Findings

Photographs

21. In the applicant's most recent correspondence to the Office she has indicated that QH has not provided her with access to four photographs which she states were taken of her at the time of her admission to Nambour General Hospital.
22. In relation to these photographs, QH has previously advised the applicant:⁵
- After discussion with staff from Ward LGE I have established that it is practice to either take a photograph or place an armband on patients when they are admitted to the ward for identification purposes when administering medication. They have informed me that the photos are either given to the patients on discharge or destroyed as the photograph is not kept on file.*
23. In view of QH's position, I have considered whether QH may refuse the applicant access to the photographs sought under section 28A of the FOI Act.

Section 28A(1) of the FOI Act

24. Section 28A(1) of the FOI Act provides:

28A Refusal of access—documents nonexistent or unlocatable

- (1) *An agency or Minister may refuse access to a document if the agency or Minister is satisfied the document does not exist.*

Example—

documents that have not been created

⁴ This includes folios 3B, 4B, 7B, 8B, 9B, 10B, 13B, 17B, 18B and 19B of the applicant's Sunshine Coast Adult Mental Health Record.

⁵ In the Internal Review Decision.

25. In *PDE and the University of Queensland*⁶ (*PDE*) the Acting Information Commissioner indicates that:⁷

*Sections 28A(1) and (2) of the FOI Act address two different scenarios faced by agencies and Ministers from time to time in dealing with FOI applications: circumstances where the document sought does not exist and circumstances where a document sought exists (to the extent it has been or should be in the agency's possession) but cannot be located. In the former circumstance, an agency or Minister is required to satisfy itself that the document does not exist. If so satisfied, the agency or Minister is not required by the FOI Act to carry out all reasonable steps to find the document. In the latter circumstance an agency or Minister is required to satisfy itself that the document sought exists (to the extent that it has been or should be in the agency's possession) **and** carry out all reasonable steps to find the document before refusing access.*

26. In *PDE* the Acting Information Commissioner also considered how an agency is to satisfy itself as to the non-existence of documents sought by an applicant and indicated that to be satisfied that a document does not exist, it is necessary for the agency to rely upon its particular knowledge and experience with respect to various key factors including:

- the administrative arrangements of government
- the agency structure
- the agency's functions and responsibilities (particularly with respect to the legislation for which it has administrative responsibility and the other legal obligations that fall to it)
- the agency's practices and procedures (including but not exclusive to its information management approach)
- other factors reasonably inferred from information supplied by the applicant including:
 - the nature and age of the requested document/s
 - the nature of the government activity the request relates to.

27. To be satisfied under section 28A(2) of the FOI Act that a document can not be found an agency must take 'all reasonable steps' to locate a document. Section 28A(1) is silent on the issue of how an agency is to satisfy itself that a document does not exist. When proper consideration is given to the key factors discussed at paragraph 26 above and a conclusion reached that the document sought does not exist, it may be unnecessary for the agency to conduct searches. However, where searches are used to substantiate a conclusion that the document does not exist, the agency must take all reasonable steps to locate the documents sought.⁸

28. Therefore, in applying section 28A(1) of the FOI Act it is relevant to first ask whether there are reasonable grounds for QH to be satisfied that the requested documents do not exist. If, as in this case, the agency has used searches to satisfy itself that the documents sought do not exist, it is then necessary to consider whether the agency has taken all reasonable steps to find the documents sought.

The applicant's submissions

29. The applicant submits that:

⁶ (Unreported, Office of the Information Commissioner, 9 February 2009).

⁷ At paragraph 34.

⁸ See *PDE*.

- Four photographs of her were taken by two nurses during her admission to Nambour General Hospital.
- In an interview with a staff member of QH on 23 February 2009, she was led to believe that the photographs exist and will be provided to her.

QH's submissions

30. In relation to the applicant's submissions above, I sought and received further submissions from QH. These are summarised below:
- The QH staff member with whom the applicant had an interview on 23 February 2009 has reviewed her notes of that meeting and indicates that she made no representations to the applicant relating to the existence or provision of any photographs.
 - The part of QH's procedure manual titled 'Patient Identification' (**Procedure Manual**) states that in relation to the taking of photographs, a patient admitted to Lower Ground East (LGE)⁹ must sign a consent form prior to having a photograph taken. If the patient does not consent to a photograph being taken, that person must wear an identification band.
 - There is no entry in the applicant's medical file which indicates a photograph was taken or that the applicant provided consent to the taking of a photograph.

Application of section 28A(1) of the FOI Act

Are there reasonable grounds to be satisfied that the requested documents do not exist?

31. In relation to this issue, QH has confirmed it has been unable to locate any photographs on the applicant's medical file and has suggested that given the applicant's state of mind on admission it is possible that no photographs were taken. I note that in an entry in the applicant's progress notes dated 6 December 2007, a staff member of QH describes the applicant as follows: *'[the applicant on admission] was irritable with the admission process, dismissive & not wanting to complete risk assessment tonight...'*

Findings of fact

32. In the circumstances I am satisfied that:
- the applicant was admitted to LGE at Nambour General Hospital on 6 December 2007
 - Nambour General Hospital's practice relating to the admission of patients to LGE is documented in its Procedure Manual
 - if photographs of the applicant were taken on admission, they would be retained on the applicant's medical file
 - in accordance with the Procedure Manual, if photographs were taken during the applicant's admission, it is reasonable to expect that the applicant would have signed a consent form and this form would have been retained on her medical file

⁹ The applicant's file confirms she was admitted to the Psychiatric Intensive Care Unit (PICU) which is located in LGE.

- QH has searched the applicant's medical file and not located any photographs or evidence of consent to the taking of any photographs.

Has QH taken all reasonable steps to locate the photographs?

33. The decision as to whether an agency has taken all reasonable steps to find a document must be made on a case by case basis, and where relevant, with reference to:
- the key factors in the FOI and internal review applications including the nature of the documents sought
 - the date the documents may have been created and the personnel who may have been responsible for creating them
 - the regulatory obligations and/or aspect of service delivery that might be involved
 - departmental approval processes and delegations in relation to the document or service in respect of which documents are sought
 - the agency's record keeping practices, including where and in what form the documents sought may be stored, multiple locations, requirements under the *Public Records Act 2002* (Qld) including retention and disposal regimes.
34. In determining whether QH has taken all reasonable steps to locate the photographs sought by the applicant it is appropriate in this instance to have regard to:
- the relevant procedures for patient admission to LGE at Nambour General Hospital
 - any additional documentation that might point to the existence of the photographs as well as the location at which this documentation, if it existed, would be filed
 - the location in which the documents, if they existed, would be filed
 - any other relevant information concerning the patient's admission.
35. I am satisfied that in light of the procedures relating to the admission of patients to LGE, ensuring that all reasonable steps are taken to locate the photographs sought would include searching the applicant's medical records to locate the photographs and/or the relevant consent form.
36. I accept QH's submission that its staff have searched the applicant's medical file and not located any photographs or evidence of consent to the taking of any photographs. I also accept QH's submission that the QH staff member referred to in the applicant's submissions made no representations to the applicant relating to the existence or provision of any photographs. In conducting these searches and inquiries, I am satisfied that QH has taken all reasonable steps to locate the photographs sought.
37. I find that there are reasonable grounds for QH to be satisfied that the photographs do not exist for the purposes of section 28A(1) of the FOI Act because these documents were not created. This finding is consistent with what is recorded about the applicant's demeanour on admission and in particular her refusal to complete aspects of the admission process.

Section 44(1) of the FOI Act

38. Section 44(1) of the FOI Act provides:

44 Matter affecting personal affairs

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

39. Section 44(1) therefore requires me to consider the following questions in relation to the matter in issue:

- Firstly, does the matter in issue concern the personal affairs of person/s (other than the applicant)? (**Personal Affairs Question**) If so, a public interest consideration favouring non-disclosure of the matter in issue is established.
- Secondly, are there public interest considerations favouring disclosure of the matter in issue which outweigh all public interest considerations favouring non-disclosure of the matter in issue? (**Public Interest Question**).

40. In *Stewart and Department of Transport*¹⁰ the Information Commissioner discussed the meaning of the phrase 'personal affairs of a person' as it appears in the FOI Act.¹¹ In particular, the Information Commissioner said that:

- information concerns a person's personal affairs if it concerns the private aspects of a person's life
- there is a substantial grey area within the ambit of the phrase 'personal affairs', but that phrase has a well-accepted core meaning which includes matter relating to:
 - family and marital relationships
 - health or ill health
 - relationships and emotional ties with other people
 - domestic responsibilities or financial obligations.

41. The Information Commissioner also noted in *Stewart* that:

- for information to be exempt under section 44(1) of the FOI Act, it must be information which identifies an individual or is such that it can readily be associated with a particular individual¹²
- information, such as a person's name, must be characterised according to the context in which it appears.¹³

42. Whether or not information contained in a document comprises information concerning an individual's personal affairs is a question of fact, to be determined according to the proper characterisation of the information in question.

Application of section 44(1) of the FOI Act to the Matter in Issue

Personal affairs question

43. The Matter in Issue comprises:

- details of the complainants' emotional concerns as they relate to the complaint.
- records of complaints made to QH about the applicant

¹⁰ (1993) 1 QAR 227 (**Stewart**).

¹¹ See paragraphs 79-114 of *Stewart*.

¹² At paragraph 81.

¹³ At paragraph 90. See also paragraphs 21 – 23 of *Pearce and Queensland Rural Adjustment Authority; Various Landowners (Third Party)* (1999) 5 QAR 242.

- information which could reasonably lead to the identification of the complainant/s including:
 - the complainant's name;
 - specific details about the events which formed the basis of each complaint.
44. As noted above, information concerning the emotional concerns of another person falls within the well-accepted core meaning of personal affairs.
45. In *Stewart*¹⁴ the Information Commissioner also found that the making of a complaint is a personal affair of a person for the purposes of section 44(1) of the FOI Act, where that person is acting as a private citizen exercising their right to raise a matter of concern to a government department.¹⁵ Therefore a complainant's identity and any information which may lead to that person's identity being ascertained is matter that is properly characterised as the complainant's personal affairs.
46. In terms of the substance of each complaint, the Information Commissioner has previously acknowledged¹⁶ that the act of making a complaint may be distinguished from the substance of the complaint, which may or may not comprise information concerning the personal affairs of the complainant.
47. Having considered the Matter in Issue, I am satisfied that the manner in which the complaints are presented within the Matter in Issue is such that the substance of each complaint, if released, could lead to the identity of the complainant/s being ascertained.

Shared personal affairs

48. In reviewing the Matter in Issue I note that a proportion is comprised of personal affairs information about the complainant/s and/or the complainant/s family and the applicant. This information can be characterised as the 'shared personal affairs' of the applicant and other persons.
49. The Information Commissioner has previously discussed the concept of 'shared personal affairs' in the context of section 44(1) of the FOI Act¹⁷ and stated that if the information concerning the personal affairs of the applicant cannot be separated from the personal affairs of another person, then:
- severance under section 32 of the FOI Act will not be practical;
 - the exception under section 44(2) of the FOI Act¹⁸ will not apply; and
 - the information will be prima facie exempt under section 44(1) of the FOI Act, subject to the public interest test.
50. Applying the above principles to any of the Matter in Issue which could be regarded as also involving the applicant's personal affairs, I am satisfied that:
- the information cannot be separated from the personal affairs of other individuals

¹⁴ At paragraph 88.

¹⁵ *Byrne and Gold Coast City Council* (1994) 1 QAR 477 (***Byrne***).

¹⁶ See *Byrne* at paragraphs 36-38.

¹⁷ *B and Brisbane North Regional Health Authority* (1994) 1 QAR 279 at paragraph 176.

¹⁸ **44 Matter affecting personal affairs**

...
(2) *Matter is not exempt under subsection (1) merely because it relates to information concerning the personal affairs of the person by whom, or on whose behalf, an application for access to a document containing the matter is being made.*

- severance of the information from the Matter in Issue under section 32 of the FOI Act is impractical in the circumstances.

51. Accordingly, the Matter in Issue is prima facie exempt from disclosure under section 44(1) of the FOI Act.

Public Interest Question

52. The 'public interest' refers to considerations affecting the good order and functioning of community and governmental affairs, for the well-being of citizens. In general, a public interest consideration is one which is common to all members of the community, or a substantial segment of them, and for their benefit. The public interest is usually treated as distinct from matters of purely private or personal interest. However, some recognised public interest considerations may apply for the benefit of individuals in a particular case.

53. In *Fox and Department of Police*,¹⁹ the Information Commissioner indicated that:

Because of the way that section 44(1) of the FOI Act is worded and structured, the mere finding that information concerns the personal affairs of a person other than the applicant for access must always tip the scales against disclosure of that information (to an extent that will vary from case to case according to the relative weight of the privacy interests attaching to the particular information in issue in the particular circumstances of any given case), and must decisively tip the scales if there are no public interest considerations which tell in favour of disclosure of the information in issue. It therefore becomes necessary to examine whether there are public interest considerations favouring disclosure, and if so, whether they outweigh all public interest considerations favouring non-disclosure.

54. As the Matter in Issue concerns the personal affairs of persons other than the applicant, section 44(1) of the FOI Act requires me to consider whether there are sufficient public interest considerations favouring disclosure of the Matter in Issue to outweigh the public interest considerations favouring non-disclosure.

Public Interest considerations favouring disclosure

Agency submissions

55. QH indicates that the following public interest considerations favouring disclosure may be relevant:²⁰

- natural justice of the individual
- the applicant's 'need to know' the information
- QH's accountability for the delivery of public sector health services.

Applicant's submissions

56. In submissions to this Office, the applicant states:

- she has found a number of errors and anomalies in the documents already released to her by QH

¹⁹ (2001) 6 QAR 1 at paragraph 19.

²⁰ although relied upon in the context of its previous claim for exemption under section 46(1)(b) of the FOI Act, I consider these submissions are equally relevant to QH's current claim under section 44(1) of the FOI Act.

- she is concerned that the information currently being withheld from her also contains misleading or false information.
57. I have considered the Matter in Issue and each parties' submissions above and acknowledge that in the circumstances, the following public interest considerations are relevant when considering the public interest considerations that favour disclosure of the Matter in Issue:
- a) the public interest in persons accessing information concerning their personal affairs
 - b) the public interest in persons being able to ensure the accuracy of a public record that concerns them
 - c) the public interest in persons having the opportunity to dispute and/or defend adverse allegations made against them
 - d) QH's accountability for the delivery of public sector health services.
58. I recognise that there is a public interest favouring disclosure in persons being able to access information relating to their medical treatment.²¹
59. I also recognise that in certain circumstances there may be a public interest in a particular person having access to certain information because that information affects or concerns them to such a degree as to give rise to a justifiable 'need to know' which is more compelling than for other members of the public.
60. Additionally, I acknowledge the public interest in an individual having access to information concerning that individual's personal affairs. This is recognised in section 6 of the FOI Act, which provides:

6 Matter relating to personal affairs of applicant

If an application for access to a document is made under this Act, the fact that the document contains matter relating to the personal affairs of the applicant is an element to be taken into account in deciding—

- (a) *whether it is in the public interest to grant access to the applicant; and*
- (b) *the effect that the disclosure of the matter might have.*

61. Section 6 of the FOI Act therefore requires the decision-maker to give particular consideration to matter relating to the personal affairs of the applicant when considering the public interest.
62. In this review, disclosure of the Matter in Issue to the applicant would, in some cases, disclose information concerning the applicant's personal affairs.²² However, such disclosure would also necessarily disclose information concerning the personal affairs of others. Accordingly, I consider that the public interest in the applicant being able to access information held by government about her personal affairs carries less weight in this instance than it might otherwise because the information concerns other people's personal affairs and must be balanced against the public interest in the protection of personal privacy (which is discussed below).

²¹ Although this is qualified to an extent by section 44(3) of the FOI Act, which recognises that there may be instances where disclosure to the applicant of information of a health care nature concerning an applicant may be prejudicial to the applicant's physical or mental health or well-being.

²² Which is a factor to be taken into account in considering the effect that disclosure of the matter might have (section 6(b) of the FOI Act).

63. I accept that there is a public interest in members of the community being given ways of ensuring the accuracy of information concerning them that is held by government. I am therefore satisfied that some weight should be accorded to the public interest consideration identified at b) in paragraph 57 above.
64. In addition, the Information Commissioner has previously accepted that there is a legitimate public interest in the accountability of public hospitals for the provision of medical services in accordance with proper professional standards, and for timely and cost-effective service delivery.²³ Although this public interest consideration (noted at c) in paragraph 57 above) would normally carry considerable weight in the public interest balancing test, in this matter a significant amount of material has already been released to the applicant during the FOI process which essentially provides the applicant with the substance of the complaints. I am satisfied that disclosing the Matter in Issue, which is substantially identifying information, would not advance this public interest in the circumstances.
65. Having regard to the nature of the Matter in Issue, I do not consider that its disclosure would advance the public interest in QH's accountability in delivering health services.

Public Interest considerations favouring non-disclosure

Agency submissions

66. QH submits that in this case, the following public interest considerations outweigh any public interest considerations favouring disclosure of the Matter in Issue:
- the continued need for health services to receive information that can assist with client care
 - the potential prejudice to the future supply of similar information to QH.

Privacy Interest

67. As indicated above, there is an inherent public interest in protecting personal privacy if the matter in issue concerns the personal affairs of person/s other than the applicant. An appropriate weight must be allocated to that interest, having regard to the character and significance of the particular matter in issue.²⁴
68. In this matter I note that the complainant/s have communicated their concerns about the applicant's conduct to QH. These concerns/complaints, whilst made about the applicant also communicate personal information about the complainant/s. In view of this, I am satisfied that there is a strong public interest in protecting the privacy of the complainants.
69. Accordingly, I am satisfied that the weight to be given to the public interest in protecting the privacy of others, having regard to the nature of the Matter in Issue, is relatively high.

Flow of information

70. Disclosure of the Matter in Issue could reasonably be expected to identify persons who have provided information to QH in circumstances where they had concerns about the

²³ *Summers and Department of Health; Hintz (Third Party)* (1997) 3 QAR 479 at paragraph 27.

²⁴ *Lower Burdekin Newspaper Company Pty Ltd and Burdekin Shire Council; Hansen, Covolo and Cross (Third Parties)* (2004) 6 QAR 328 at paragraph 23.

mental health of the applicant. Government agencies such as QH discharge important functions on behalf of the community and in discharging those functions they frequently rely on information and assistance provided by members of the community.

71. Having regard to the context in which the Matter in Issue was created, I am satisfied that the public interest in ensuring the future flow of similar information to QH is an important factor weighing against disclosure in this case because:
- In monitoring the mental health of particular individuals in the community, QH relies on being informed by members of the public about whether those persons are exhibiting any abnormal or anti-social behaviours necessitating intervention/treatment by QH.
 - The release of the Matter in Issue may have a deterrent effect on members of the public volunteering such information in the future.
72. I am therefore satisfied that the weight to be given to this public interest consideration in relation to the Matter in Issue is relatively high.

Where does the balance of public interest considerations lie?

73. I have carefully considered the public interest consideration favoring disclosure and weighed this against the public interest in protecting the privacy of the individuals whose personal affairs are contained with the Matter in Issue and preventing the prejudice to the future flow of similar information to QH. In doing so I am satisfied that:
- The public interest consideration favoring disclosure, although significant is not sufficient to outweigh the public interest considerations weighing against disclosure of the Matter in Issue in this case.
 - The Matter in Issue qualifies for exemption under section 44(1) of the FOI Act.

DECISION

74. I vary the decision under review by finding that:
- access to the photographs may be refused under section 28A(1) of the FOI Act
 - the Matter in Issue qualifies for exemption under section 44(1) of the FOI Act.
75. I have made this decision as a delegate of the Information Commissioner, under section 90 of the *Freedom of Information Act 1992* (Qld).

Suzette Jefferies
Acting Assistant Commissioner

Date: 19 May 2009