



Decision and Reasons for Decision

Application Number:	210514
Applicant:	Wildlife Preservation Society of Queensland, Logan Branch Inc.
Respondent:	Department of Infrastructure and Planning
Third Party:	Ms S Murphy
Decision Date:	20 January 2009
Catchwords:	<p>FREEDOM OF INFORMATION – section 44(1) <i>Freedom of Information Act 1992</i> (Qld) – personal affairs – whether identifying information is personal or business affairs – public interest balancing test</p> <p>FREEDOM OF INFORMATION – section 45(1)(c) <i>Freedom of Information Act 1992</i> (Qld) – matter concerning the business affairs of a third party – adverse effect – prejudice to future supply – public interest balancing test</p> <p>FREEDOM OF INFORMATION – section 45(3) <i>Freedom of Information Act 1992</i> (Qld) – whether disclosure of the matter in issue would disclose the purpose or results of research – adverse effect</p> <p>FREEDOM OF INFORMATION – section 46(1)(b) <i>Freedom of Information Act 1992</i> (Qld) – matter communicated in confidence – prejudice to future supply – public interest balancing test</p>

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REASONS FOR DECISION

Summary

1. On the information available to me, I am satisfied that:
 - folios 2-3, 4-35, 61-88, 104-132 and 142-145 are not exempt from disclosure under the *Freedom of Information Act 1992* (Qld) (**FOI Act**)
 - folios 1, 146 and 147-148 are partially exempt from disclosure under section 44(1) of the FOI Act.

Background

2. By letter dated 27 November 2007, Wildlife Logan (**Applicant**) sought access to (**FOI Application**):

... copy of a letter dated 29 September 2005 from Mr J and Ms S Murphy addressed to the Office of Urban Management in relation to land at 675 Ford Road, Priestdale (Lot 28 on RP 173044).
3. By letter dated 14 January 2008, the Department of Infrastructure and Planning (**DIP**) sought the views of Ms S Murphy (**Third Party**) on whether the matter in issue or part/s of the matter in issue contained exempt matter under the FOI Act.
4. By letter dated 29 January 2008¹, the Third Party objected to the release of the matter in issue to the applicant, and made submissions that:
 - the Matter in Issue was exempt under sections 46(1)(a) and/or 46(1)(b) of the FOI Act as it was communicated to the Premier in confidence
 - the Matter in Issue was exempt under sections 45(1)(b), 45(1)(c) and 45(3) of the FOI Act as it related to business affairs, commercial value and research
 - parts of the Matter in Issue were exempt under section 44(1) of the FOI Act as it contained personal affairs information
 - the Matter in Issue was exempt under sections 36 and/or 41(1) of the FOI Act.
5. By letter dated 13 February 2008, DIP advised the Third Party of its decision to grant the Applicant partial access to the Matter in Issue (**Third Party Decision**).
6. By letter dated 17 March 2008, the Third Party applied for internal review of the Third Party Decision.
7. By letter dated 14 April 2008, Lindsay Walker, DIP, upheld the Third Party Decision with one exception relating to business affairs (**Internal Review Decision**).
8. By facsimile dated 13 May 2005, the Third Party applied to this Office for external review of the Internal Review Decision.

Decision under review

9. The decision under review is DIP's Internal Review Decision dated 14 April 2008.

¹ I note the Third Party's submissions were in fact dated 29 January 2007, which I assume was incorrect given that the facsimile was received on 30 January 2008. For the purpose of this review, I will refer to the submissions as dated 29 January 2008.

Steps taken in the external review process

10. By email dated 26 May 2008, this Office wrote to DIP to obtain copies of:
 - correspondence between DIP and the Applicant or the Third Party about the processing of the FOI Application;
 - documents containing information which the DIP decided to release to the Applicant contrary to the views of the Third Party
11. By letter dated 10 June 2008, DIP provided this Office with the requested documents.
12. In late June and August 2008, at the request of this Office, DIP provided additional documents concerning its consultation with the Third Party.
13. On 21 August 2008, a staff member of this Office contacted the Logan City Council (**Council**) to discuss the status of the development application made by the Applicant's father, J Murphy (**Other Party**) with the assistance of the Third Party.
14. On 21 August and 2 September 2008, a staff member of this Office contacted the Third Party to discuss the objections raised by the Third Party, and to negotiate a possible informal resolution.
15. On 29 September 2008, I communicated a preliminary view to the Third Party that:
 - folios 2-3, 4-35 and 142-145 should be released in full to the Applicant
 - folios 1, 146 and 147-148 should be partially released to the Applicant, with the exception of matter that is exempt under section 44(1) of the FOI Act
 - the Applicant should be refused access to folios 36-45, 46-60 and 133-141 pursuant to section 22(a) of the FOI Act.
16. By facsimile dated 13 October 2008, received on 14 October 2008, the Third Party:
 - advised that she did not accept the preliminary view set out in the letter dated 29 September 2008
 - made brief submissions in relation to the Applicant's conduct as a 'lobby' group
 - advised that there were factually incorrect matters contained in the letter dated 29 September 2008.
17. By email dated 14 October 2008, I wrote to the Third Party inviting her to correct any factual matters contained in the preliminary view in writing to this Office.
18. By facsimile dated 17 October 2008 the Third Party:
 - advised that her father, the Other Party, was the applicant to the Office of Urban Management and Council in respect of the development application, and that she had provided him with assistance in this process
 - made certain submissions which are outlined elsewhere in this decision.
19. On 18 December 2008 a staff member of this Office contacted Council to discuss the current status of the development application.
20. In making my decision in this matter, I have taken the following into consideration:
 - FOI Application

- letter from DIP to the Third Party dated 14 January 2008
- letter from the Third Party to DIP dated 29 January 2008, including submissions
- Third Party Decision
- Third Party's internal review application dated 17 March 2008, including submissions
- Internal Review Decision
- Third Party's external review application dated 13 May 2008
- Third Party's submissions dated 13 October 2008
- Third Party's submissions dated 17 October 2008
- development application RL-16/2006 and related documents available on Council's planning and development website
- information gathered in discussions with Council in respect of the development application
- documents to which the Applicant seeks access
- relevant legislation, cases and previous decisions of this Office.

Matter in issue

21. DIP proposes to release the following folios in full to the Applicant:

Folio No.	Date	Description
2-3	29/09/2005	Letter to Office of Urban Management
4-35	September 2005	Development Application, Reconfiguration of a Lot (Development Permit), Operational Works (Preliminary Approval)
61-88 & 104-132	September 2002	Extract from Tract Consulting Pty Ltd Report
142-145		Consultation Schedule

22. DIP proposes to release the following folios in part to the Applicant:

Folio No.	Date	Description
1	29/09/2005	Letter to Regional Planning Minister, Office of Urban Management <i>(Matter deleted pursuant to section 44(1) of the FOI Act)</i>
146	23/09/2005	Statutory Declaration of J Murphy <i>(Matter deleted pursuant to section 44(1) of the FOI Act)</i>
147-148	26/09/2005	Statutory Declaration of S Murphy <i>(Matter deleted pursuant to section 44(1) of the FOI Act)</i>

23. The Third Party objects to the release of the folios identified above.

24. Accordingly, the Matter in Issue in this review is comprised of:

Folio No.	Date	Description
1	29/09/2005	Letter to Regional Planning Minister, Office of Urban Management
2-3	29/09/2005	Letter to Office of Urban Management
4-35	September 2005	Development Application, Reconfiguration of a Lot (Development Permit), Operational Works (Preliminary Approval)
61-88 & 104-132	September 2002	Extract from Tract Consulting Pty Ltd Report

142-145		Consultation Schedule
146	23/09/2005	Statutory Declaration of J Murphy
147-148	26/09/2005	Statutory Declaration of S Murphy

Findings

Section 44(1) of the FOI Act

25. DIP submits that folios 1, 146, 147 and 148 are partially exempt from disclosure under section 44(1) of the FOI Act.
26. In particular, the information identified by DIP as exempt under section 44(1) of the FOI Act includes:
 - folio 1: PO Box address, mobile telephone number and signature
 - folio 146: street address and signature
 - folio 147: street address
 - folio 148 signature
27. I note the Third Party contends that other information contained in the Matter in Issue may be exempt under section 44(1) of the FOI Act in addition to the information identified above.
28. In her submissions to DIP dated 29 January 2008, the Third Party states that:

'the documents contain personal affairs information about persons including names, home addresses, property information, signatures and educational qualifications and experience.'
29. The applicant has maintained her contentions in this regard in the external review.
30. I will now consider the application of section 44(1) of the FOI Act.
31. Section 44(1) of the FOI Act provides that:

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.

32. In applying section 44(1) of the FOI Act, I must assess whether disclosure of the Matter in Issue would disclose information concerning the personal affairs of a person other than the Applicant.
33. If this is the case, a public interest consideration favouring non-disclosure is established, and the matter in issue will be exempt unless there are public interest considerations favouring disclosure which outweigh all public interest considerations favouring non-disclosure.

What are personal affairs?

34. A number of decisions of this Office have considered the scope and meaning of the term 'personal affairs'. The Information Commissioner has previously found that information concerns the 'personal affairs of a person' if it concerns the private aspects

of a person's life. While there may be a substantial grey area within the ambit of the phrase 'personal affairs', that phrase has a well accepted core meaning which includes:

- family and marital relationships
- health or ill health
- relationships and emotional ties with other people
- domestic responsibilities or financial obligations.

35. Whether or not matter contained in a document comprises personal affairs information is a question of fact, to be determined according to the proper characterisation of the information in question.

Identifying information

36. Not all information concerning a person will be personal affairs information. For example, a person's name, by itself, is not information concerning a person's personal affairs. To be personal affairs information, it must link an identifiable individual to information about a personal aspect of their life. In many cases, the deletion of identifying information will allow the remainder of a document to be disclosed to an Applicant without affecting a person's privacy.

Address and telephone number

37. In this case, the following matter is in issue:

- in folio 1: a PO Box address and a mobile telephone number
- in folio 146: a street address; and
- in folio 147: another street address

38. I note that the Information Commissioner has previously considered whether a person's address and telephone number constitute their personal affairs.

39. In *Stewart*² the Information Commissioner noted that:

- a person's name, address and telephone number were matters falling into the 'grey area' rather than within the 'core meaning' of the phrase 'personal affairs of a person'
- such matter must be characterised according to the context in which it appears.

40. In deciding whether or not an address and telephone number concerned a person's personal affairs, the Information Commissioner has previously distinguished between a person's private and business activities. For example, the Information Commissioner has made it clear³ that residential addresses and residential telephone numbers are properly to be characterised as information that concerns a person's personal affairs, but a business address or business telephone number is not. The Information Commissioner has said:

The address at which a person chooses to reside and make their home seems to me to fall within that zone of domestic affairs which is clearly central to the concept of 'personal affairs'. A business address would be materially different.

² At paragraphs 86-90.

³ In decisions such as *Pearce and Qld Rural Adjustment Authority; Various Landholders (Third Parties)* (1999) 5 QAR 242.

41. Decisions of this Office have consistently indicated that ordinarily, information concerning a person's business or the activities of a person conducting their business does not concern a person's personal affairs.

42. On this point, the Information Commissioner has said⁴:

For a matter to relate to 'business affairs'... it should ordinarily, in my opinion, relate to the affairs of a business undertaking which is carried on in an organised way (whether it be full time or only intermittent) with the purpose of obtaining profits or gains (whether or not they actually be obtained).

43. In my view, it is clear that the Matter in Issue in this case relates to the conduct of, albeit possibly a one off, business undertaking to develop property, that business undertaking being conducted in an organised way with a view to obtaining a profit from the sale of subdivided land.

44. It is equally clear that the Matter in Issue cannot be personal affairs information if it relates to the 'business affairs' of an individual.

45. In relation to the PO Box address and telephone number in folio 1, this information appears in the Matter in Issue in a particular context. It identifies the Third Party in relation to the application for Ministerial exemption.⁵ This PO Box address and telephone number is also disclosed in the Form 1 Development Application and related correspondence to and from Council regarding the subdivision of land.

46. I consider that information contained in the application for Ministerial exemption and the subsequent development application concerns the business affairs of the Third Party and Other Party. Both applications relate to the business undertakings of the Third/Other Party which have been carried on in an organised way for the purpose of obtaining profits or gains, that is, to subdivide and sell land.

47. The addresses and telephone number referred to in folio 1 were given to the Office of Urban Management (**OUM**) (now the Department of Infrastructure and Planning) and Council in the context of the Third/Other Party's application for ministerial exemption and subsequent development application. The Third/Other Party disclosed this information in the course of conducting their business affairs, being the proposed subdivision of land.⁶

48. I note that the street address in folio 146 is different to the street address in folio 147. These street addresses appear in statutory declarations made by the Third and Other Party in support of the application to OUM. While it is unclear whether these addresses constitute either the business and/or residential addresses of the Third Party and Other Party, a search of Google Maps indicates that each address is located in a residential area. Further, these addresses do not appear in the Third/Other Party's application to OUM or Council, which supports the view that these addresses are more likely to be residential and not business in nature. Additionally, the fact that the PO Box address has previously been used by the Third/Other Party for business purposes in the applications to OUM and Council supports this view.

⁴ *Stewart and Department of Transport* (1993) 1 QAR 227 at paragraph 103 (**Stewart**).

⁵ Although the third party submits that she was not the applicant in respect of the Ministerial exemption, her name appears in these documents in support of the application.

⁶ I refer to correspondence between the Third Party/Other Party and Council in respect of the development application to and from the Third Party's PO Box address, and the Form 1 Development Application which lists the Third Party's PO Box address and telephone number.

49. I consider that disclosure of the street addresses in folios 146 and 147 would disclose information concerning the personal affairs of either of the Third Party or Other Party, i.e the address at which the Third Party and/or Other Party chose to reside and make their home.
50. I accept that information concerning where a person lives and makes their home is central to the concept of that person's personal affairs.
51. Accordingly, I am satisfied that:
- the PO Box and telephone number identified in folio 1 were provided by the Third Party/Other Party to Council and OUM for the purpose of conducting their business affairs, namely, to subdivide and sell land
 - the street addresses identified in folios 146 and 147 concern the personal affairs of the Third Party/Other Party because this is where they chose to live and make their homes, which is central to the concept of personal affairs information.

Summary

52. On the basis of the matters set out above, I am satisfied that:
- the street addresses identified in folios 146 and 147 are exempt from disclosure (and should not be released to the Applicant) under section 44(1) of the FOI Act
 - the PO Box address and telephone number identified in folio 1 are not exempt from disclosure under section 44(1) of the FOI Act, and should be released to the Applicant

Signature

53. The Information Commissioner has previously decided that a person's signature clearly falls within the meaning of the phrase 'personal affairs' for the purpose of section 44(1) of the FOI Act.
54. The signatures which appear in folios 1, 146 and 148 are exempt from disclosure (and should not be released to the Applicant) under section 44(1) of the FOI Act.

Names and educational qualifications

55. As I discussed above, a person's name itself is not personal affairs information, and must be considered in its context. In this case, the names of individuals (eg Third/Other Party, consultants, Councillors) are identified in documents concerning the proposed subdivision and sale of land.
56. I am satisfied that the names disclosed in the Matter in Issue do not link an individual to a private aspect of their life, but rather, identify an individual in connection with their business or employment affairs.
57. I note the Third Party acknowledges in her submissions to DIP dated 17 March 2008, that the Matter in Issue concerns the business affairs of herself and the Other Party:

How can it be reasonably held that information relating to the development of a property does not concern business or commercial affairs? – it is quite clearly a business/commercial endeavour. The documents which are subject to the FOI application directly concern our business/commercial affairs.

58. In relation to the Third Party's contention that a person's educational qualifications and experience should be exempt from disclosure under section 44(1) of the FOI Act, I have not considered this issue as the information referred to by the Third Party is contained in documents which do not form part of the Matter in Issue and are not part of this review.

Public interest balancing test

59. Due to 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 and must decisively tip the scales if there are no public interest considerations which favour disclosure of the information in issue.
60. Accordingly, I must:
- consider any public interest considerations favouring disclosure of the personal affairs information, namely the public interest in government accountability or public participation and awareness
 - determine whether these public interest considerations outweigh the public interest in the protection of personal privacy and any other public interest considerations favouring non-disclosure of the personal affairs information.
61. I have not identified any public interest consideration favouring disclosure of the personal affairs information identified above that would outweigh the public interest in maintaining the privacy of individuals. Accordingly, I remain satisfied that the following information is exempt under section 44(1) of the FOI Act:
- folio 1: signature
 - folio 146: street address and signature
 - folio 147: street address
 - folio 148: signature

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

62. Section 45(1)(c) of the FOI Act provides that:

45 Matter relating to trade secrets, business affairs and research

(1) *Matter is exempt matter if –*

...

(c) *its disclosure –*

- (i) *would disclose information (other than trade secrets or information mentioned in paragraph (b)) concerning the business, professional, commercial or financial affairs of an agency or another person; and*
- (ii) *could reasonably be expected to have an adverse effect on those affairs or to prejudice the future supply of such information to government*

unless its disclosure would, on balance, be in the public interest.

63. The Information Commissioner has previously considered the application of section 45(1)(c) of the FOI Act in earlier decisions of this Office and concluded that matter will be exempt under section 45(1)(c) of the FOI Act if it satisfies the following three cumulative requirements:

- the information concerns the business, professional, commercial or financial affairs of a person, including a company or agency (but not trade secrets or information that has an intrinsic commercial value)
- disclosure of the relevant information could reasonably be expected to have either of the following effects:
 - an adverse effect on the business, professional, commercial or financial affairs of the person, which the relevant information concerns; or
 - prejudice to the future supply of such information to government
- the weight of all identifiable public interest considerations against disclosure must equal or outweigh that of all identifiable public interest considerations favouring disclosure.

Business, professional, commercial or financial affairs

64. Section 45(1)(c) of the FOI Act can apply only if sub-sections 45(1)(a) and (b) are not applicable, that is, if the matter in issue is information other than trade secrets or information that has an intrinsic commercial value to an agency or another person.⁷

65. As previously noted, the Matter in Issue relates to the proposed subdivision of land.

66. The Information Commissioner has previously found that the common link between the words 'business, professional, commercial or financial' in section 45(1)(c) of the FOI Act is to activities carried on for the purpose of generating income or profits.⁸

67. I note the Third Party's submissions on this point, dated 29 January 2008:

- *The ... family entity that owns the property, runs the property as a business and is the proponent of the subdivision application/proposal (the entity holds an ABN)*
- *The seeking of a subdivision approval for the property is a business/commercial endeavour. Significant time, cost and effort have been expended on progressing the subdivision application/proposal. The documents significantly concern the subdivision application/proposal.*
- *The disclosure of the documents would disclose information concerning the business and commercial affairs of family members and could reasonably be expected to have an adverse effect on business and commercial affairs of family members.*

68. Additionally, as previously noted at paragraph 55, the Third Party submits:

How can it be reasonably held that information relating to the development of a property does not concern business or commercial affairs? – it is quite clearly a business/commercial endeavour. The documents which are subject to the FOI application directly concern our business/commercial affairs.

69. I agree with the Third Party's contentions in this regard and as I consider that the proposed subdivision and sale of land by the Third/Other Party is a business undertaking which they have carried on in an organised way for the purpose of obtaining profits or gains.

⁷ *Cannon and Australian Quality Farms Limited* (1994) 1 QAR 491 at paragraph 66 (**Cannon**).

⁸ See *Cannon* at page 520.

70. Accordingly, on the information currently available to me, I find that the Matter in Issue:
- may be characterised as information concerning the business, professional, commercial or financial affairs of the Third Party/Other Party
 - satisfies the first cumulative requirement for section 45(1)(c) of the FOI Act.

Adverse effect

Third Party Submissions

71. In her submissions dated 29 January 2008, the third party states:

The disclosure of the documents would disclose information concerning the business and commercial affairs of family members and could reasonably be expected to have an adverse effect on business and commercial affairs of family members. The subdivision application for the property has not yet been decided by Council.

It is reasonably expected that if the documents are disclosed to the applicant they will seek to use the information for the purpose of adversely affecting [sic] the application. The Albert and Logan News (Friday, November 16, 2007) quotes the Wildlife Preservation Society of Queensland's vice president Simon Baltais as saying that the subdivision application 'was the type that Council's should reject' and David Keoh from Logan Wildlife [sic] (the applicant) has submitted to Council that, 'we call on Logan City Council to reject the proposed sub-division of 675 Ford Road.'

72. In her submissions dated 17 October 2008, the Third Party also states:

In respect to a consideration of reasonable and unreasonable expectation of effects of disclosing information, I do wonder what you genuinely feel the applicant in this matter wants the information for, noting the applicant's key purpose... Perhaps a practical consideration of this matter could be obtained, respectfully, if you made contact with someone in the private sector involved in such matters, maybe a small family business doing a development or perhaps a planner, and ask them whether they would see any issues with information not contained in a development application being given to a lobby group before a matter is finalised. Perhaps mention that the group has made or has been attributed as making public statements that are not true, and see what their view is.

73. I am aware that Council issued a Decision Notice pursuant to section 3.5.15 of the *Integrated Planning Act 1997* (Qld) (**IP Act**) on 19 August 2008⁹ regarding the proposed subdivision.
74. The Third Party submits that Council's decision contains a number of conditions which are not satisfactory to the Third Party. On 1 September 2008, the Third Party gave notice to Council to suspend the appeal period pursuant to section 3.5.18 of the IP Act. Subsequently, on 28 September 2008, the Third Party made representations to Council about matters contained in the Decision Notice pursuant to section 3.5.17 of the IP Act.
75. At the date of this decision, Council had not made a decision regarding the representations.
76. Given that the Third Party's earlier submissions were made prior to the Decision Notice, the Third Party now submits that disclosure of the Matter in Issue to the Applicant:

⁹ This information is publicly available from Council's Planning and Development online system.

- may delay or harm the Third Party's negotiations with Council in relation to the Decision Notice and the subsequent representations made
- arm the Applicant with information that may enable it to make objections, apply pressure to Council or fuel an inclination to agitate against a favourable outcome for the Third Party

Analysis

77. I consider there are two factors that negate the Third Party's submissions in relation to adverse effect. Firstly, the application for Ministerial exemption is not substantially different to the information already available in relation to the application made to Council. Secondly, the nature of the Council process the Third Party is presently involved in to obtain approval for the development application.
78. In relation to the first aspect, disclosure of the Matter in Issue to the Applicant will not have the adverse effects identified by the Third Party because the Matter in Issue is not significantly or materially different to the development application considered by Council. This is because the Third Party's argument that the Applicant would be 'armed' with information to lobby Council turns on the information from OUM being different to that already given to Council.
79. A comparison of the Matter in Issue with the documents available on Council's website regarding the development application shows that:
- the Matter in Issue is not significantly or materially different from the development application considered by Council
 - the substance of the information contained in the Matter in Issue is in keeping with the information considered by Council.
80. I note the Other Party's initial application to the OUM for Ministerial exemption states:
- I wish to apply for an exemption... for a development application that was, on 27 October 2004, in an advanced stage of readiness for lodging with a local government.*
81. The Other Party supported this statement to the Minister by providing evidence of his advanced stage of readiness (the documents which now form part of the Matter in Issue in this review).
82. Enquiries made by staff of this Office to Council established that Council consulted OUM as part of the development application process. Council informed this Office that OUM did not provide any adverse comments or objections to the development application.
83. Had there been a difference in substance between the application to Council and the application to OUM, OUM would have raised this with Council. OUM did not take issue with the substance of the development application with Council, thus the development application was not substantially different to the application to OUM.
84. Given my view that the two applications are not substantially different in nature, it is difficult to accept that release of the Matter in Issue to the Applicant will have the adverse effects identified by the Third Party. Release of the Matter in Issue to the Applicant will not disclose additional information to that which it already has in its possession and already used to inform its objection to the development application to Council.

85. I consider that the Other Party's statement to the Minister, together with OUM's position during third party consultation, supports the view that disclosure of the Matter in Issue is unlikely to have the adverse effects identified by the Third Party, as the substance of the two applications do not substantially differ.
86. Further, I do not consider that disclosure of the Matter in Issue will 'arm' the Applicant with information that will enable it to agitate against the Third Party's negotiations with Council. The Applicant has already made it known to Council that it objects to the Third Party's development application. This objection process was available to the Applicant in the ordinary course of the development application, and the Applicant availed itself of that process.
87. The second factor that negates the Third Party's submissions is Council's process regarding the development application.
88. I note that Council has not made a decision in relation to the Third Party's representations. Pursuant to section 3.5.17 of the IP Act, if Council agrees with any of the representations made by the Third Party, it must issue a new decision notice called a Negotiated Decision Notice. If Council does not agree with any of the representations made by the Third Party, it must give written notice to the Third Party stating its decision about the representations. Section 3.5.17(6) of the IP Act also provides that before Council agrees to a change under section 3.5.17 of the IP Act, it must reconsider those matters considered when the original decision was made, to the extent that those matters are relevant.
89. Thus, section 3.5.17 of the IP Act allows Council to issue a new decision if it agrees with any of the representations made by the Third Party but does not allow Council to alter its original decision regarding the development application if it does not agree with the representations. Council's original decision (including conditions) will remain if Council does not agree with the Third Party's representations.
90. Additionally, in my view it cannot be reasonably expected that disclosure of the Matter in Issue to the Applicant will alter the course of action, if any, already decided upon by the Applicant. The Applicant may agitate against the Third Party's negotiations, as they have done previously, even without knowledge of the contents of the Matter in Issue. I also note that the IP Act does not provide for the submission of third party objections at the current stage of the Council's development application process.
91. Even if, hypothetically, the Applicant were to successfully agitate against the Third Party's negotiations, at the very least the Third Party would be in the same position that she is in now, with the conditions, which in her view are unfavourable, attached to Council's Decision Notice. In my view, to say that Council will agree to more favourable conditions as a result of the Third Party's representations, with or without the Applicant's intervention, is merely speculative.

Reasonable expectations

92. I note that, in deciding whether disclosure of the Matter in Issue 'could reasonably be expected to' have an adverse effect on the business, commercial or financial affairs of the Third Party, I must answer this question having regard to the FOI Act and relevant case law.
93. While a consideration of an Applicant's purpose or reasons for seeking access to information under the FOI Act can be informative, especially when considering any public interest arguments, it is not a requirement of the FOI Act. Indeed, the FOI Act

does not require an Applicant to disclose its reasons for seeking access to particular information, or to demonstrate any connection with the information sought. There is no legal 'standing' requirement under the FOI Act.

94. The Information Commissioner has previously stated that the phrase 'could reasonably be expected to' requires a decision-maker to:

*... discriminate between unreasonable expectations and reasonable expectations, between what is merely possible (e.g. merely speculative/conjectural 'expectations') and expectations which are reasonably based, i.e. expectations for the occurrence of which real and substantial grounds exist.*¹⁰

95. On the basis of the information available to me, and in light of my comments above, I am satisfied that:

- while the Third Party may hold real and substantial concerns that disclosure of the Matter in Issue will have an adverse effect on her business or commercial affairs, this question must be assessed objectively, on the basis of all available material and evidence.
- there is nothing in the material currently before me to persuade me that the adverse effects identified by the Third Party are reasonably based and likely to happen as a result of disclosure of the Matter in Issue, rather than merely speculative
- on the material available to me, I am not satisfied that this limb of the 2nd requirement of section 45(1)(c) of the FOI Act is met.

Prejudice to future supply of information

96. Information may also be exempt under section 45(1)(c) of the FOI Act if its disclosure could reasonably be expected to prejudice the future supply of such information to government.

Third Party Submissions

97. In her submissions dated 29 January 2008, the third party states:

I believe that disclosure of the documents could reasonably be expected to prejudice the future supply of such information, given the particular circumstances of this matter. If people became aware that despite Government advising a person that certain information will be treated as confidential and not disclosed, and it subsequently is disclosed by Government, it is reasonable to conclude that in future people will be reticent to disclose or fully disclose confidential or sensitive information to Government. For example, in the current scenario, if in future Government required people to submit information to show 'an advance stage of readiness' in relation to some type of change associated with a further amendment of the SEQ Regional Plan and they were aware that there was no warranty in respect to the confidentiality of certain information, it is reasonably likely that people would structure their submission to omit, reduce the level of detail or otherwise protect their confidential information (eg. a Hydrology Report produced by X consultant on X date with perhaps a summary of the report) but not provide the document on the basis that Government cannot protect the confidentiality of the information contained within.

98. In her submissions dated 17 March 2008, the third party states:

¹⁰ Cannon at paragraphs 62 as stated in *B and Brisbane North Regional Health Authority* (1994) 1 QAR 279 at paragraphs 154-161 ('B').

...Schedule 4 of the South East Queensland Regional Plan did not prescribe documentation to be supplied to evidence an 'advance stage of readiness'. Examples of what might evidence same are outlined in Schedule 4. We supplied full information on the basis that it was confidential and would not be disclosed. I note that a number of the documents that we provided to the Premier are not specified in Schedule 4 and are not part of the lodged development application. I would comment that I feel a situation where certain information is prescribed to be provided in order to obtain an approval, is distinguishable from a situation where one can elect the nature of information or the level of information they wish to provide in support of obtaining an approval, particularly when the information or matter concerns a sensitive matter. I think this view should be considered in relation to the matter of whether disclosure of the information could reasonably be expected to prejudice the future supply of 'such information' (ie not other general information, but the same information). I note that 'prejudice the future supply of information' also means that people provide less detailed information.

Analysis

99. The Information Commissioner has previously considered the term 'prejudice the future supply of information' and said¹¹

*...the test is not to be applied by reference to whether the particular confider whose confidential information is being considered for disclosure, could reasonably be expected to refuse to supply such information in the future, but by reference to **whether disclosure could reasonably be expected to prejudice future supply of such information from a substantial number of the sources available or likely to be available to an agency.***

100. and that:

*where persons are under an obligation to continue to supply such confidential information (e.g. for government employees, as an incident of their employment; or where there is a statutory power to compel the disclosure of the information) or **persons must disclose information if they wish to obtain some benefit from the government (or they would otherwise be disadvantaged by withholding information) then ordinarily, disclosure could not reasonably be expected to prejudice the future supply of such information.***

[my emphasis]

101. To determine whether disclosure of information could reasonably be expected to prejudice the future supply of such information to government:

- I must be satisfied that disclosure could reasonably be expected to prejudice the future supply of such information from a substantial number of the sources available or likely to be available to an agency; and
- where persons must disclose information if they wish to obtain some benefit from the government (or they would otherwise be disadvantaged by withholding information) then ordinarily, disclosure could not reasonably be expected to prejudice the future supply of such information.

102. In this case the Matter in Issue concerns the Other Party's (with the assistance of the Third Party) application and supporting documents for a Ministerial exemption under the Regulatory Provisions of the *South East Queensland Regional Plan 2005-2026*. The purpose of this application was to satisfy OUM (the relevant authority at the time) that the criteria for Ministerial exemption was satisfied, ie to obtain a benefit from the government.

¹¹ 'B' at paragraph 161.

103. I note the Third Party's submissions that:

- the Other Party provided substantial information to the Minister on the basis that it was confidential and would not be disclosed, even though full disclosure was not prescribed by the *South East Queensland Regional Plan 2005-2026*
- in the future applicants may omit, reduce the level of detail or otherwise protect their confidential information when making submissions to the Minister

104. While I accept that the precise standard of documents to be tendered to the Minister is not prescribed in the *South East Queensland Regional Plan 2005-2026*, it is my view that no benefit can be obtained from the Government in the form of Ministerial exemption unless at least a minimum standard of supporting documents are provided. If a future applicant seeks to obtain the benefit of Ministerial exemption, that applicant will have to provide at least a minimum standard of documentation in support of their application. I do not consider that release of the Matter in Issue will stop the future supply of this kind of information to the Minister from a substantial number of applicants seeking to obtain the benefit of a Ministerial exemption.

105. Accordingly, I am satisfied that:

- disclosure of the Matter in Issue could not reasonably be expected to prejudice the supply of such information to DIP from a substantial number of applicants seeking Ministerial exemption
- the Matter in Issue does not satisfy the second limb of the 2nd requirement in section 45(1)(c) of the FOI Act.

Public interest balancing test

106. The Third Party has expressed concern about public interest considerations. Although it is unnecessary for me to consider the public interest arguments in respect of this section (as the first and second limbs of the 2nd requirement in section 45(1)(c) were not satisfied), I will address this issue for the sake of completeness.

107. If I were satisfied that the Matter in Issue met the requirements of section 45(1)(c) of the FOI Act, this would establish a *prima facie* public interest consideration favouring non-disclosure. However, like section 44(1) of the FOI Act, section 45(1)(c) requires an assessment of whether there are any public interest considerations favouring disclosure of the Matter in Issue which on balance, would outweigh the public interest in protecting the business, commercial and financial affairs of the Third Party, or any other public interest considerations in favour of non-disclosure.

Public interest considerations favouring disclosure

Government accountability

108. There is a general public interest in enhancing government accountability.¹² Disclosure of information about how government functions are conducted, including the Minister's conduct in granting exemptions, can enhance the accountability of government agencies and individual officers in the performance of their official functions.

Public participation

¹² Section 4 of the FOI Act.

109. There is a public interest in disclosing information about issues currently being considered by government agencies, as this can lead to a more informed debate about the issues. In particular, it is in the public interest to disclose information about planning and local development to members of an affected community to enable public debate on the issues.
110. As previously noted, the Other Party sought Ministerial exemption for a development application that was (as represented in the Matter in Issue) on 27 October 2004 in an advanced stage of readiness for lodging with Council. It would be contrary to the granting of the Ministerial exemption if the development application that was subsequently lodged with Council was significantly or materially different to the information considered by the Minister. If this were the case, the development application would not have been in an advanced stage of readiness for lodging with Council at the time of the application for Ministerial exemption and public debate on this issue would be warranted.

Public interest considerations favouring non-disclosure

Third Party Submissions

111. In her submissions dated 29 January 2008, the Third Party states:

Further a relevant public interest consideration is that persons are treated fairly in their dealings with Government. The department will be unfairly dealing with us if it discloses information that we provided in confidence.

112. In her submissions dated 17 March 2008, the Third Party states:

You appear not to have given any consideration to public interest considerations in relation to persons being treated fairly in their dealings with government. Given the facts and circumstances of this matter eg. the confidential nature of the information for a number of reasons including that it related to development applications that had not yet been lodged or decided; discussions held with OUM regarding the confidentiality of the submission; the information submitted being lodged on this basis; the potentiality of disclosure under the FOI Act not being identified by OUM; the disclosure of information reasonably being expected to have an adverse impact; the development application not being decided; etc; I would have expected that reasonable weight should be given to this particular public interest consideration in decision-making on this matter.

113. In her final submissions dated 17 October 2008, the Third Party states:

The matter of a relevant public interest consideration being that people are treated fairly in their dealings with Government has been previously raised but respectfully does not appear to have been considered. I still feel this is a relevant consideration.

Analysis

114. I accept that there is a public interest in individuals receiving fair treatment in accordance with the law in their dealings with government agencies. In this regard, I acknowledge the Third Party's submissions that:
- it was her belief that the information imparted to the Minister would be treated as confidential and that she/the Other Party would be dealt with unfairly if this information was disclosed to a third party.

- she/the Other Party was not given an opportunity to be selective in providing information to the Minister

115. If I were making findings about the public interest in this decision, and if the Third Party's argument was found to have merit, I consider that such a public interest argument would still be insufficient to outweigh the public interest considerations in favour of disclosure which I have identified above.

Summary

116. Had it been necessary to decide the issue of whether disclosure of the Matter in Issue would, on balance, be in the public interest, I would have been satisfied that:

- there is a public interest in government accountability and transparency, particularly in relation to the approval of local developments
- disclosure of the Matter in Issue would allow public debate on the issue of development in the local area.
- there is a public interest in providing the public with an opportunity to scrutinise the Minister's role in granting exemptions and to ascertain whether exemptions are being properly granted
- disclosure of the Matter in Issue would allow the public to consider whether the Third Party acted within the limits of the Ministerial exemption granted
- although there is a public interest in individuals receiving fair treatment in accordance with the law in their dealings with government agencies, this public interest consideration would not outweigh the public interest considerations in favour of disclosure which I have identified above.

117. In conclusion, even if I had found that the Matter in Issue was exempt under section 45(1)(c) of the FOI Act, I consider that the public interest considerations favouring disclosure would outweigh the public interest favouring non-disclosure.

Section 45(3) of the FOI Act

118. Section 45(3) of the FOI Act exempts matter which would disclose the purpose or results of research in certain circumstances.

119. In particular, Section 45(3) of the FOI Act provides that:

45 Matter relating to trade secrets, business affairs and research

(3) *Matter is exempt matter if -*

- (a) *it would disclose the purpose or results of research, whether or not the research is yet to be started, the research has started but is unfinished, or the research is finished; and*
- (b) *its disclosure could reasonably be expected to have an adverse effect on the agency or other person by or on whose behalf the research was, is being, or is intended to be, carried out.*

120. Information will only be exempt if the following two cumulative requirements are satisfied:

- a) it discloses the purpose or results of research; and

- b) its disclosure could reasonably be expected to have an adverse effect on the agency or other person by or on whose behalf the research was, is being, or is intended to be, carried out.

Third Party Submissions

121. In her submissions to DIP dated 29 January 2008, the Third Party states:

Further, the disclosure of the documents would disclose the purpose and results of research which could be prejudicial to the application for the reasons outlined above.

122. In her submissions to DIP dated 17 March 2008, the Third Party states:

Your assessment that some of the documents do not constitute research in respect to s.43(3) [sic] seems inconsistent with the opinion you express in several areas that the 'documents are factual in nature'. Information given by planners would surely meet the definition of research.

123. In her final submissions to this Office dated 17 October 2008, the Third Party states:

I also consider some of the information in question could reasonably be considered as research, particularly if considering the definition adopted by the Department of Infrastructure and Planning, which centres around investigation and assessment of matters to form conclusions.

Analysis

124. The Information Commissioner has previously considered the meaning of the word 'research' in the context of section 45(3) of the FOI Act and found that it was used in the sense of 'a search or investigation undertaken to discover facts and reach new conclusions by the critical study of a subject or by a course of scientific enquiry', or a 'diligent and systematic enquiry or investigation into a subject in order to discover facts or principles.'¹³
125. It may be that some of the Matter in Issue is research for the purpose of section 45(3) of the FOI Act and satisfies the first limb. However, I have not made any findings in this regard because under the terms of section 45(3)(b) of the FOI Act, there must be a reasonable basis for expecting that disclosure of the Matter in Issue could have an adverse effect on the person on whose behalf the research is carried out.
126. I refer to my reasons set out under the heading 'Adverse effect' at paragraphs 71-95 in my discussion of section 45(1)(c) of the FOI Act.
127. In relation to whether disclosure of the Matter in Issue could reasonably be expected to have an adverse effect on the Third Party, I found that:
- while the Third Party may hold real and substantial concerns that disclosure of the Matter in Issue will have an adverse effect on her business or commercial affairs, this question must be assessed objectively, on the basis of all available material and evidence.
 - there is nothing in the material currently before me to persuade me that the adverse effects identified by the Third Party are reasonably based and likely to happen as a result of disclosure of the Matter in Issue, rather than merely speculative

¹³ O'Dwyer and the Workers' Compensation Board of Queensland (1995) 3 QAR 97 at paragraph 23.

128. For the same reasons set out under the heading 'Adverse effect' in those earlier paragraphs, I am satisfied that the second requirement of section 45(3) is not established. As the requirements of section 45(3) are cumulative, it is not necessary for me to consider the remaining requirement of section 45(3) of the FOI Act, that is, whether the Matter in Issue would disclose the purpose or results of research.

129. Accordingly, I am satisfied that:

- the second requirement of section 45(3) of the FOI Act is not established
- the Matter in Issue does not qualify for exemption under section 45(3) of the FOI Act.

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

130. Section 46(1)(b) of the FOI Act provides that:

46 Matter communicated in confidence

(1) *Matter is exempt if -*

...

(b) *it consists of information of a confidential nature that was communicated in confidence, the disclosure of which could reasonably be expected to prejudice the future supply of such information, unless its disclosure would, on balance, be in the public interest.*

131. The Information Commissioner has previously found that information will be exempt under section 46(1)(b) of the FOI Act if:¹⁴

- a) it consists of information of a confidential nature
- b) it was communicated in confidence
- c) its disclosure could reasonably be expected to prejudice the future supply of such information; and
- d) the weight of the public interest considerations favouring non-disclosure equals or outweighs that of the public interest considerations favouring disclosure.

Third Party's Submissions

132. In her submissions to DIP dated 29 January 2008, the Third Party states:

The documents were communicated in confidence to the Premier, through the Office of Urban Management (OUM) and myself and [the Other Party] understood the documents would be treated as confidential and not disclosed to any party.

The documents contain information of a confidential and sensitive nature concerning a development application that has not yet been decided by Council.

In considering the documentation we would submit to the Premier in support of the request for exemption we felt that submissions would be treated as confidential as it was reasonably foreseeable that information that would be provided by people to demonstrate 'an advanced stage of readiness' could, and most likely would, contain confidential and sensitive information given amongst other things that:

¹⁴ B at paragraphs 146 to 147

- *The information was not necessarily finalised information eg. it could involve a final draft of a document, or it could be incomplete or partial information, etc;*
- *Some of the information that could be provided by people in order to demonstrate 'an advanced stage of readiness' was information that would not normally be submitted as part of the development application process; and*
- *The information related to development applications that had not yet been lodged or assessed and that the disclosure of this information could be prejudicial to the assessment of a development application (eg. a development proposal at an advanced stage may be somewhat different than a proposal at a final stage and this difference if disclosed to parties assessing the application could be prejudicial to the assessment of the final application).*

133. In her submissions to DIP dated 17 March 2008, the Third Party states:

We had understood that the submission to the Premier would be confidential and not disclosed. I note that the development application lodged by [the Other Party] has not yet been decided by Council. You discount that the matter was communicated in confidence based on an assumption that OUM's advice on confidentiality was in relation to the Public Records Act 2002. I would submit that if a reasonable person test is applied to this particular matter, a reasonable person given the facts and circumstances of the matter would find that our understanding that the matter would be and is confidential and communicated in confidence, is reasonably held. The facts and circumstances I refer to include: the confidential nature of the information given that it related to development applications that had not yet been lodged or decided (amongst other things); discussions held with OUM regarding the confidentiality of the submission the potentiality of disclosure under the FOI Act not being identified by OUM, including the South East Queensland Regional Plan which outlined the submission process; etc...

Analysis

134. As with sections 45(1)(c) and 45(3) of the FOI Act, the requirements of section 46(1)(b) are cumulative. Accordingly, for reasons I have discussed below, I will not make findings in relation to requirements a) and b) of section 46(1)(b) of the FOI Act because I am not satisfied that requirements c) and d) have been met.
135. In relation to requirement c) above, to determine whether disclosure of information could reasonably be expected to prejudice the future supply of such information to government:
- I must be satisfied that disclosure could reasonably be expected to prejudice the future supply of such information from a substantial number of the sources available or likely to be available to an agency; and
 - where persons must disclose information if they wish to obtain some benefit from the government (or they would otherwise be disadvantaged by withholding information) then ordinarily, disclosure could not reasonably be expected to prejudice the future supply of such information.
136. I refer to my reasons set out under the heading 'Prejudice to future supply of information' in my discussion of section 45(1)(c) at paragraphs 96-105. As noted there, the nature of the Ministerial exemption process is such that certain information is required from applicants who wish to receive the benefit of the Ministerial exemption. As such, disclosure of the Matter in Issue could not reasonably be expected to prejudice the future supply of information to DIP from a substantial number of applicants seeking the benefit of Ministerial exemption.
137. In relation to requirement d) above, I refer to my observations set out under the heading 'Public interest balancing test' at paragraphs 106-117 concerning the various

public interests and whether they weighed in favour of disclosure or non-disclosure. As noted there, it is my view that the weight of the public interest considerations favouring non-disclosure (such as individuals receiving fair treatment in accordance with the law in their dealings with the government) do not equal or outweigh that of the public interest considerations favouring disclosure (such as government accountability and public participation).

138. For the reasons set out above, I am satisfied that both requirements c) and d) of section 46(1)(b) of the FOI Act are not established. As the requirements of section 46(1)(b) are cumulative, it is not necessary for me to consider the remaining requirements of section 46(1)(b) of the FOI Act.

139. Accordingly, I am satisfied that:

- both the third and fourth requirements of section 46(1)(b) of the FOI Act are not established
- the Matter in Issue does not qualify for exemption under section 46(1)(b) of the FOI Act.

DECISION

140. I vary the decision under review and find that:

- folios 2-3, 4-35, 61-88, 104-132, 142-145 are not exempt from disclosure under the FOI Act and should be released to the Applicant
- folios 1, 146 and 147-148 are partially exempt from disclosure under the FOI Act and should be released to the Applicant with the exception of matter that is exempt under section 44(1) of the FOI Act.

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

Assistant Commissioner Corby

Date: 20 January 2009