

OFFICE OF THE INFORMATION )  
COMMISSIONER (QLD) )

L 3 of 1993  
(Decision No. 94010)

Participants:

NOEL & MARLENE BUSSEY  
Applicants

- and -

COUNCIL OF THE SHIRE OF BOWEN  
Respondent

### **DECISION AND REASONS FOR DECISION**

FREEDOM OF INFORMATION - refusal of access - letter of complaint to the respondent about the behaviour of the applicants' dogs - letter suggests breaches of the respondent's By-laws concerning the keeping of dogs - whether letter is an exempt document under s.42(1)(b) of the *Freedom of Information Act 1992 Qld*.

*Freedom of Information Act 1992 Qld* s.42(1), s.42(1)(b), s.42(2), s.52, s.78

*Accident Compensation Commission v Croom* [1991] 2 VR 322

*Byrne and Gold Coast City Council, Re* (Information Commissioner Qld, Decision No. 94008, 12 May 1994, unreported)

*Croom and Accident Compensation Commission, Re* (1989) 3 VAR 441

*McEniery and the Medical Board of Queensland, Re* (Information Commissioner Qld, Decision No. 94002, 28 February 1994, unreported)

*Richardson and Commissioner for Corporate Affairs, Re* (1987) 2 VAR 51

**DECISION**

The document in issue (being a written complaint from an individual to the dog catcher employed by the Council of the Shire of Bowen, received on 22 July 1992) is an exempt document under s.42(1)(b) of the *Freedom of Information Act 1992 Qld*, and accordingly the decision under review is affirmed.

Date of Decision: 24 June 1994

.....

F N ALBIETZ  
**INFORMATION COMMISSIONER**

## TABLE OF CONTENTS

	<b>Page</b>
Background.....	1
The Relevant Exemption Provision .....	2
The External Review Process .....	2
The Evidence .....	4
Application of s.42(1)(b) to the Present Case.....	8
Sources Who Supply False Information.....	11
Conclusion .....	12

Participants:

NOEL & MARLENE BUSSEY  
Applicants

- and -

COUNCIL OF THE SHIRE OF BOWEN  
Respondent

### **REASONS FOR DECISION**

#### **Background**

1. The applicants seek review of the respondent's decision to refuse them access to a letter written to the Bowen Shire Council's dog-catcher complaining about the applicants' dogs. The letter in issue is claimed by the respondent to be exempt under s.42(1)(b) of the *Freedom of Information Act 1992 Qld* (referred to in these reasons for decision as the FOI Act or the Queensland FOI Act).
2. The applicants lodged with the Council of the Shire of Bowen (the Council) an FOI application dated 2 June 1993 requesting access to a letter of complaint about the applicants' dogs, said to have been made in August or September 1992. The Council's initial decision in response was made by the Deputy Shire Clerk, Mr O E Cropper, who, by letter dated 16 June 1993, informed the applicants as follows:

*No documents are held by this Council concerning a complaint received in August or September, 1992. This statement is made following a search of Council's files, Ranger's Diary and enquiries being made of Council's Ranger.*

*A written complaint was received by Council on 22nd July, 1992 and following your telephoned advice on the 15th June, 1993 that the complaint may have occurred a little earlier than August, 1992 the following decision relates to that document namely a written complaint received by Council on 22nd July, 1992.*

...

*... Access to the letter of complaint received on the 22nd July, 1992 is refused pursuant to Section 42 (1) (b) which provides that "matter is exempt matter if its disclosure could reasonably be expected to ...(b) enable the existence or identity of a confidential source of information, in relation to the enforcement or administration of the law, to be ascertained; ..."*

*The substance of the complaint was that the dogs are always out chasing cars, bicycles, Post Man etc. It is alleged that one of the dogs had tried to bite a child.*

*In making this decision regard has been had to the fact that the letter is hand written and inspection of it could identify the complainant.*

*The proper working of the Council would be affected by release of the document as the public may have serious doubts as to whether individuals can ever safely report*

*a breach or suspected breach of the law.*

3. The applicants exercised the right conferred by s.52 of the FOI Act to seek review of Mr Cropper's decision by a more senior officer of the Council. In their application for internal review, the applicants were at pains to deny the substance of the letter of complaint (to the extent to which it had been disclosed to them in Mr Cropper's letter), and also stated:

*We were forced to put up a \$2,500 fence to keep our dogs in the yard, even though they are NOT vicious. All because of the lies that was in that letter written to you. This is why we think we have a right to know who the writer was.*

4. The internal review was undertaken by the Shire Clerk, Mr L R Carrett. By letter dated 6 July 1993, Mr Carrett affirmed the initial decision, observing that:

*The matter in question relates to advice that Council received, drawing attention to the control of dogs located at [the applicants' home address] in breach of Council's By-law regarding the control of animals. As such, it is clearly within the intent and ambit of s.42(1)(b).*

5. By letter dated 9 July 1993, the applicants applied to the Information Commissioner for external review of Mr Carrett's decision of 6 July 1993. In that letter, the applicants briefly stated their case as follows:

*Because of that letter full of lies (22/7/1992) we feel we have been unjustly harassed and Victimised, that is why we feel we should be allowed to know who wrote it so as not to suspect innocent persons.*

### **The Relevant Exemption Provision**

6. Section 42(1)(b) of the FOI Act provides as follows:

**42.(1)** *Matter is exempt matter if its disclosure could reasonably be expected to -*

...

*(b) enable the existence or identity of a confidential source of information, in relation to the enforcement or administration of the law, to be ascertained ... .*

### **The External Review Process**

7. A copy of the document in issue was obtained and examined, following which I requested that the Council provide me with a copy of its by-laws relating to the control of animals, as referred to in Mr Carrett's decision.
8. A copy of the relevant portion of the Council's By-laws was provided to me by the Council. Chapter 8 of the Council's By-laws deals with "Animals and Birds", and Part II of Chapter 8 deals with "Dogs and Goats". In particular, by-laws 18(i) and (ii), and 22A are relevant in the present case:

*18.(i) The keeper of a dog whether registered by the Council or not shall effectively prevent such dog from wandering at large on a road or park or land under the control of the Council. A person who contravenes or fails to comply with this*

*provision of this By-law shall be guilty of an offence.*

*(ii) A dog shall be deemed to be wandering at large if it is not securely held in control by some person by means of a chain or leash.*

*22A. No person shall keep a dog on any premises, unless there exists upon such premises an enclosure sufficient, in the opinion of Council, effectively to contain such animal at all times.*

9. I subsequently contacted the third party, and was advised that the third party objected to the document in issue being disclosed to the applicants. The third party was invited to apply, in accordance with s.78 of the FOI Act, to be a participant in the review proceedings, but did not take up that opportunity. Nevertheless, evidence was obtained from the third party by way of a statutory declaration executed on 14 September 1993 in relation to facts and circumstances surrounding the third party's forwarding to the Council of the letter of complaint received on 22 July 1992.
10. After obtaining the third party's evidence, I wrote to the applicants setting out my preliminary view that the Council had correctly claimed that the document in issue was exempt under s.42(1)(b) of the FOI Act, and setting out reasons in support of that view. The applicants were asked to indicate whether they accepted or contested my preliminary view. In that letter, I extended to the applicants the opportunity to provide me with a written submission addressing the issue of whether or not the third party's letter was exempt under the provisions of the FOI Act.
11. The applicants responded by letter dated 30 September 1993, advising that they did not accept my preliminary view that the document in issue is exempt under s.42(1)(b) of the FOI Act. The bulk of their letter is concerned with denying the allegations made against the behaviour of their dogs. I note that it is no function of mine to make a judgment about the correctness of the allegations concerning the applicants' dogs. The only parts of the applicants' letter which relate to the issue for my determination in this review are as follows:

*Well Sir, we are not happy with the out-come, as we did pay a fee to find out the identity of the so called informant.*

...

*If the Complainant is a neighbour, they must have a very dark secret to hide when they haven't got the guts to identify themselves personally, so that the matter can be discussed calmly and sensibly. I realise that they have rights, but so do we.*

...

*It seems so ridiculous that we can not gain satisfaction through this new Legislation after we have been through all the correct channels. It is not as though this was a case of a death threat or a kidnapping, or some other serious crime.*

*We also said that we were not interested in the contents of the letter, as we just wanted to learn the identity of the person or persons.*

*I thought by law that you were innocent until proved guilty, but in this case it seems to be the reverse. And further to this matter we do not wish to intend to put in writing that we accept this particular submission on section S.42 (1)(B) of the Freedom of Information Act.*

12. Once the applicants had made it clear that I must proceed to a formal determination, I extended to

the Council the opportunity to present evidence in support of its case that the third party's letter is an exempt document under s.42(1)(b) of the FOI Act. Evidence was provided by way of statutory declarations from Mr Carrett executed on 18 April 1994 and from Mr G M Smythe (a Council officer) executed on 2 June 1994.

13. Copies of the statutory declarations of Mr Carrett, Mr Smythe and the third party were forwarded to the applicants, subject to the deletion of material which would enable identification of the third party. The applicants were provided with the opportunity to make a further written submission in response to the evidence. By letter dated 13 June 1994, the applicants indicated that they did not wish to make any further submission.

### **The Evidence**

14. The material parts of the third party's evidence are contained in paragraphs 3-7 of the third party's statutory declaration executed on 14 September 1993:

3. *In the third paragraph of the complaint letter, I noted that it may seem that I am "dobbing" in [the applicants]. By using the words 'dobbing in' I meant that I was turning Mr Bussey in to the authorities with respect to his two dogs. At that time, I did not believe that the person who 'dobs' another person in would be identified by the authorities to the individual who has been dobbed in. For example, you would not expect a person who 'dobs' another in to the police to be identified to the person who is being investigated by the police.*
4. *At the time of writing the complaint letter I had the expectation that, upon receiving the letter, the dog catcher would go to the subject property and investigate the situation in relation to Mr Bussey's two dogs. I expected that, upon arriving at the subject property, the dog catcher would have found the dogs sitting in the street as they were usually out and on the road.*
5. *I also had the expectation that, in investigating my complaint, the substance of the allegations which are recorded in paragraph 2 of the complaint letter would be put to Mr Bussey by the dog catcher. Those allegations being that his two dogs were always out, chasing cars, bicycles, the postman, etc., and that one of the dogs had tried to bite one of Mr Bussey's neighbour's children.*
6. *When writing the complaint letter I presumed that the confidentiality of my identity would be absolute. By this I mean that my identity as the person who wrote a letter of complaint in relation to Mr Bussey's dogs would never be released to Mr Bussey. Accordingly, I had the expectation that my identity would not be revealed by the dog catcher when he investigated my complaint.*

7. *Had I believed, at the time of writing the complaint letter, that my identity would be made known to Mr Bussey, I would have still written the letter but I would not have identified myself as the writer of the complaint.*

15. The material aspects of Mr Carrett's evidence, as set out in paragraphs 1-3, 8 and 9 of his statutory declaration executed on 18 April 1994, are as follows:

1. *I am familiar with the Council's Policies and Procedures in relation to complaints made to the Council (concerning dogs).*
2. *All complaints received by Council are treated confidentially whether or not the complainant has specified that the information has been given on a confidential basis. Assurances of confidentiality are often given by staff in accordance with Council Policy.*
3. *Upon receipt of a complaint concerning dogs, the letter, or if given by telephone, a written note of relevant details, is made available to the appropriate Council Officer for investigation. That investigation would normally involve one (1) or more of the following steps.*
  - (a) *Interview the complainant and any witnesses.*
  - (b) *Determine whether or not there appears to be a breach of the Council's By-Laws and if so;*
  - (c) *Where the complaint is that a dog is not under control in a public place, impound or attempt to impound the animal. If the dog is registered or by other means the owner can be ascertained contact him or her outlining the manner in which the dog may be released.*
  - (d) *In appropriate instances take the matter up with the owner of the alleged offending dog outlining the nature of the complaint and seeking to have the cause of complaint removed or otherwise satisfied.*
  - (e) *Where the foregoing actions are not successful and evidence and or witnesses are available, initiating legal action for a breach of the By-laws.*
  - (f) *If the complaint concerns an allegedly ferocious dog which has attacked a person; obtaining medical evidence concerning the nature of the wound; confirming the identity of the dog and the owner. With this information the owner is advised of the breach of the by-laws; that the dog is deemed ferocious. Unless a compromise (such as having the dog removed from the town area) can be reached, the dog is taken and put down.*

...

8. *The identity of a complainant is not made known to the alleged offender, however, in some instances the offender may suspect, or know from the surrounding circumstances or earlier contact between them, the name of the complainant.*



*Even in these circumstances Council Officers will neither confirm nor deny the identity of the complainant.*

9. *The fact that an allegation may concern a dog attack on a child does not alter the requirement that the identity of a complainant shall not be revealed. In identifying the dog involved it may be that the alleged offender becomes aware of the complainant.*

16. At paragraph 5 of his statutory declaration, Mr Carrett states that, upon receiving the third party's complaint about the applicants' dogs, an investigation was undertaken by a Council officer, Mr Smythe. Mr Smythe's report dated 17 July 1992 in respect of that investigation forms Annexure "A" to Mr Carrett's statutory declaration. Mr Smythe's report was in the following terms:

*A complaint was received from [the third party] concerning two possibly savage dogs which were harassing people. On inspection I found the dogs were very placid. They were both registered and there was containment. A number of other dogs were seen wandering in the area. It appears that there could be a bit of a neighbourhood disagreement going on.*

17. Annexure "B" to Mr Carrett's statutory declaration is an internal Council memorandum, generated after receipt of the applicants' FOI access request, when Mr Smythe was requested to provide a statement about his contact with the applicants in respect of the third party's complaint. Annexure "B" comprises Mr Smythe's response, dated 17 June 1993, in which he stated:

*I confirm that my only dealing with Mr Bussey was as per my report on file 33/13 dated 17/7/92.*

18. Also annexed as an exhibit to Mr Carrett's statutory declaration as Annexure "C" is a copy of the Shire Clerk's memorandum to all staff dated 16 March 1984. That memorandum is in the following terms:

*I have been directed to advise the following:-*

1. *When a complaint is received, the name of the complainant is not to be divulged to the offending party.*
2. *The officer authorised to investigate the complaint, is to report only on the facts to the Departmental Head concerned.*
3. *Your co-operation is also requested in advising other staff of the above instruction.*
4. *The Chairman may suspend any officer who divulges the name of the complainant.*

19. The material aspects of Mr Smythe's evidence, as set out in paragraphs 3-5 and 8 of his statutory declaration executed on 2 June 1994, are as follows:

3. *I recall that in or about July 1992, a complaint was received by the Council from the third party in respect of the two dogs owned by Mr and Mrs Bussey. I do not recall whether my first knowledge of the complaint by the third party was as a result of a telephone call from the third party to the Council*

or through the Council's receipt of the third party's letter dated 22 July 1992. I recall that, at the time the third party's complaint was received, I was filling in for the Shire Ranger who I believe was on leave at the time. In view of the fact that my report concerning the investigation I undertook in response to the third party's complaint (which report is discussed at paragraph 6 of this declaration) is dated 17 July 1992 and the third party's letter is stamped as having been received by the Council on 22 July 1992, I believe that the third party's complaint was first received by the Council through a telephone call from the third party.

4. *I recall that on or about 17 July 1992, I attended at the subject property to investigate the third party's complaint. I recall that, upon arriving at the subject property, I observed that two dogs were on the property and that they were contained within a fence. After observing the dogs, I went up to the front door of the house and knocked on the door. The door was answered by an individual and I had a conversation with that individual. I do not recall the identity of the person who answered the door. I recall that, whilst I was at the subject property, I found out that the two dogs were registered. I also recall observing that the two dogs were very placid. I do not have a recollection of what I discussed with the individual I spoke with at the subject property on 17 July 1992; however, I believe that I would have told that individual that I had received a complaint that the dogs had been harassing people.*
5. *The purpose for my attending at the subject property on 17 July 1992, was to ascertain whether or not there had been any breach of the Council's bylaws concerning dogs. Unless there was suitable containment of the dogs residing at the subject property, there would have been a breach of the Council's bylaws. The purpose of the investigation was also for me to make a decision about whether or not the dogs were in fact aggressive and had been harassing people.*
- ...
8. *I was aware at the time of investigating the third party's complaint that it is the Council's policy that, when a complaint in relation to a dog is investigated by an officer employed by the Council, the identity of the complainant is under no circumstances communicated to the owners of the dog which is the subject of the complaint. Accordingly, on each occasion that I have investigated a complaint about a dog, I have never disclosed the identity of the source of the complaint to the owners of the relevant dog. While I have no recollection of my conversation with the individual I spoke with at the subject property on 17 July 1992, I believe that I would have followed my usual procedure and would not have identified the third party as the source of the complaint about Mr and Mrs Bussey's dogs. My conversation with the individual at the subject property on 17 July 1992 would have been limited to the substance of the third party's complaint (being that the dogs had been harassing people) and to the issue of whether or not the dogs were registered.*

### **Application of s.42(1)(b) to the Present Case**

20. A detailed analysis of s.42(1)(b) of the FOI Act is set out in my reasons for decision in *Re McEniery and the Medical Board of Queensland* (Information Commissioner Qld, Decision No. 94002, 28 February 1994, unreported). At paragraph 16 of that decision, I said that matter will be eligible for exemption under s.42(1)(b) if the following three requirements are satisfied:
- (a) there exists a confidential source of information;
  - (b) the information which the confidential source has supplied (or is intended to supply) is in relation to the enforcement or administration of the law; and
  - (c) disclosure of the matter in issue could reasonably be expected to:
    - (i) enable the existence of a confidential source of information to be ascertained; or
    - (ii) enable the identity of a confidential source of information to be ascertained.
21. A "confidential source of information" means a person who has supplied information on the understanding, express or implied, that his or her identity will remain confidential (see paragraphs 21 and 22 of my decision in *Re McEniery*). There is no suggestion in the evidence before me of an express agreement between the Council and the third party that the third party's identity would remain confidential. In the absence of express agreement, the first requirement of s.42(1)(b) will be satisfied if it is clear, from an examination of the circumstances surrounding the imparting of the relevant information, that there was a common implicit understanding, on the part of both the provider of the information and the recipient, that the identity of the provider was to be treated as confidential. At paragraph 50 of my reasons for decision in *Re McEniery*, I described the factors which may (according to the circumstances of the particular case) be relevant in determining whether or not there was such a common implicit understanding:
50. *The determination of whether the relevant information was supplied by the informant and received by the respondent on the implicit understanding that the informant's identity would remain confidential (and hence whether the informant qualifies as a confidential source of information for the purposes of s.42(1)(b)) requires a careful evaluation of all the relevant circumstances including, inter alia, the nature of the information conveyed, the relationship of the informant to the person informed upon, whether the informant stands in a position analogous to that of an informer (cf. paragraph 25 above), whether it could reasonably have been understood by the informant and recipient that appropriate action could be taken in respect of the information conveyed while still preserving the confidentiality of its source, whether there is any real (as opposed to fanciful) risk that the informant may be subjected to harassment or other retributive action or could otherwise suffer detriment if the informant's identity were to be disclosed, and any indications of a desire on the part of the informant to keep his or her identity confidential (e.g. a failure or refusal to supply a name and/or address, cf. Re Sinclair, McKenzie's case, cited in paragraph 36 above).*

22. I consider that the circumstances surrounding the communication of the third party's complaint to the Council support a finding that there was a common implicit understanding on the part of both the third party and the Council that the third party's identity as the source of the complaint regarding the applicants' dogs was to remain confidential.
23. The evidence of the third party is to the effect that, while the third party expected that the substance of the complaint would be communicated to the applicants, the third party also expected that authorities receiving complaints of this nature would treat the identity of the complainant as confidential. In my opinion, the expectation of the third party was a reasonable one, having regard to the nature of the information conveyed and having regard to the procedures that the Council would need to follow in order to take appropriate action in respect of the third party's complaint. (Those procedures involved Mr Smythe attending at the applicants' property to observe the dogs which were the subject of the complaint.)
24. Further, the evidence discloses that Council employees had been instructed, in accordance with Council policy, that when a complaint in relation to a dog was investigated, the identity of the complainant was to be kept confidential. Presumably this policy was adopted to minimise the potential for recriminations between a complainant and the subject of the complaint, and because Council officers were ordinarily able to take action on complaints of this nature without it being necessary to disclose the identity of the complainant. The existence of such a policy cannot in itself be determinative. Policies need not be applied where they are inappropriate to particular cases. And since confidentiality is to be observed, if at all, for the benefit and protection of the informant, there is rarely likely to be any point in an authority (which customarily receives information) adhering to a policy of confidentiality where an informant wishes to, or is content to, make his or her identity known. Nevertheless, in this case, the evidence discloses that there was a common understanding on the part of the third party and relevant Council officers as to how complaints of this nature ought to be, and would be, treated, even though there is no suggestion in the evidence that Council's policy was made known to the third party, or that the third party sought any express assurance as to confidentiality of identity.
25. The position of the third party in the present case is analogous to that of an informer. Further, this is not a case where the proper investigation of the complaint required that the identity of the third party be made known to the applicants. In the present case, the proper investigation of the complaint would have required only that the applicants be given an opportunity to know the substance of the allegations made in respect of their dogs so that they could address those allegations. (It appears from the evidence that the Council has done precisely that.) Different circumstances might produce a different result, e.g. if a complaint alleges that the subject animal had attacked the complainant, disclosure of the victim's identity might become necessary, especially if some formal action was to be taken against the owners of the animal.
26. At paragraphs 36-43 of my decision in *Re McEniery*, I discussed the second requirement of s.42(1)(b), i.e. that the information communicated by a confidential source must relate to the enforcement or administration of the law. In particular, I expressed my opinion that the comments of Jones J (President) of the Victorian Administrative Appeals Tribunal in *Re Croom and Accident Compensation Commission* (1989) 3 VAR 441, at page 453-457, correctly captured the sense of the words "enforcement or administration of the law" as they are used in s.42(1)(b) of the Queensland FOI Act. Jones J stated, in part, as follows:

... s.31 [of the Freedom of Information Act 1982 Vic - a provision analogous to s.42 of the Queensland FOI Act] *embraces not only agencies involved in the detection, punishment and prevention of criminal law violations but also the enforcement of law through civil and regulatory action by agencies entrusted with that task. It is*

*not confined to the criminal law but encompasses a broad range of areas of the law. The concept of administration of the law is a broad one. It is wider than the concepts of 'investigation' and 'enforcement' but its breadth is limited by the context. What is being addressed by the legislature is administration of the law as a further process to investigation of breaches of the law or the enforcement of the law. As Peter Bayne points out, administration in this context can embrace such functions as the collection of information to monitor compliance.*

27. Further, at paragraph 43 of my decision in *Re McEniery*, I commented on a statement from the judgment of Young CJ, in the decision of the Full Court of the Supreme Court of Victoria in *Accident Compensation Commission v Croom* [1991] 2 VR 322, as follows:

*I could accept at face value Young CJ's statements to the effect that words like "enforcement or administration of the law" require a connection with the criminal law or with the process of upholding or enforcing civil law, with the proviso that the process of upholding or enforcing the civil law can, in appropriate cases, (and the process of upholding or enforcing criminal law will almost invariably) commence with and involve action taken within government agencies.*

28. The information communicated by the third party to the Council in the letter of complaint received on 22 July 1992 clearly relates to the enforcement or administration of the law, as that term is to be understood in the context of s.42(1)(b). The information conveyed by the third party related to the Council's enforcement of the law dealing with the control of dogs within Bowen. In particular, the information concerned the enforcement of a dog owner's legal obligations under by-laws 18(1) and 22A of the Council's By-laws (the terms of which are set out in paragraph 8 above). It is specifically provided in by-law 18(i) that a failure to comply with that by-law amounts to an offence for the purposes of the Council's By-laws. By-law 22A does not contain a specific provision to that effect but by-law 2(i) of Chapter 2 - General Provisions, states that any person who contravenes or fails to comply with any provision of the By-laws, or any requirement or direction duly given under any provision thereof, shall be guilty of an offence.

29. The circumstances of the present case can be contrasted with the relevant circumstances referred to in my recent decision in *Re Byrne and Gold Coast City Council* (Information Commissioner Qld, Decision No. 94008, 12 May 1994, unreported) where I said (at paragraph 17):

*In my opinion, a law which does no more than empower a government agency to carry out activities for the benefit of the public, as opposed to, for instance, imposing enforceable legal obligations, will not ordinarily be a law which attracts the application of s.42(1)(b) of the FOI Act.*

In that case, I found that information which enabled the Gold Coast City Council to exercise a statutory power to carry out certain activities for the benefit of the public (in that case, the power to mow grass on public land) would not attract the protection of s.42(1)(b) of the FOI Act. Here, the Council has identified two by-laws to which the information supplied by the third party related, both of which imposed legally enforceable obligations on individuals owning dogs within the jurisdiction of the Shire of Bowen.

30. The third requirement of s.42(1)(b) is that disclosure of the matter in issue could reasonably be expected to enable the existence or identity of a confidential source of information to be ascertained. The applicants are aware of the existence of a confidential source, but do not know (and wish to ascertain) the identity of the confidential source. What I said of the third requirement of s.42(1)(b) in *Re McEniery* (at paragraphs 44 and 45) was as follows:

44. The phrase "could reasonably be expected to" in s.42(1) of the FOI Act

*bears the same meaning as it does in s.46(1)(b) of the FOI Act, and which was explained in Re "B" and Brisbane North Regional Health Authority at paragraphs 154-160. In the context of s.42(1)(b) of the FOI Act, it requires a judgment to be made by the decision-maker as to whether it is reasonable to expect that disclosure of particular matter in a document would enable the existence or identity of a confidential source of information to be ascertained. A mere risk that disclosure would enable existence or identity to be ascertained is not sufficient to satisfy the test imposed by these words. The words call for the decision-maker applying s.42(1) to discriminate between unreasonable expectations and reasonable expectations, between what is merely possible and expectations which are reasonably based, i.e. expectations for the occurrence of which real and substantial grounds exist.*

45. *In the present case, there is no doubt that disclosure of the matter in issue will enable the identity of the informant to be ascertained - the matter comprises such clearly identifying details as name and address. In other cases, the judgment required may be a more subtle and demanding one, such as whether the applicant for access under the FOI Act could deduce that only a certain person could have known and passed on to a government agency a particular item of information contained in a requested document.*

31. Based on my examination of the document in issue, there is no doubt that its disclosure would enable the identity of the third party to be ascertained. This means that I am satisfied that the three requirements of s.42(1)(b) (referred to in paragraph 20 above) are established in respect of the document in issue.
32. Before reaching a conclusion as to whether or not the third party's letter is an exempt document under s.42(1)(b) of the FOI Act, regard must also be had to s.42(2) which provides that matter is not exempt matter under s.42(1) if certain criteria are met. In the present case, however, none of the criteria in s.42(2) are applicable.
33. For the reasons given above, I am satisfied that the third party's letter to the Council's dog catcher received on 22 July 1992 is an exempt document under s.42(1)(b) of the FOI Act because its disclosure could reasonably be expected to enable the identity of a confidential source of information, in relation to the enforcement or administration of the law, to be ascertained.

#### **Sources Who Supply False Information**

34. The applicants, in their application for external review dated 9 July 1993 and also in their letters to me dated 30 September 1993 and 13 June 1994, expressed their belief that the information conveyed by the third party to the Council was false. The issue of informants who supply false information was discussed at paragraphs 56-64 of my decision in *Re McEniery*, where I set out the orthodox rationale for the legal position which applies in such cases, and which may seem anomalous to people in a position similar to the applicants who feel they have been unjustly accused without knowing who the accuser is.
35. In paragraph 64 of my decision in *Re McEniery*, I referred with approval to the decision of the Victorian Administrative Appeals Tribunal in *Re Richardson and Commissioner for Corporate Affairs* (1987) 2 VAR 51. In *Re Richardson*, the applicant sought access to a file note which recorded information that had been provided by a confidential source in relation to the applicant's activities as a director of a company in liquidation. The applicant argued that the substance of the matter contained in the file note was libellous and that he proposed seeking legal redress. The

applicant's argument was in the following terms:

*...it could not be in the public interest to protect a source of false information but rather it is in the public interest to protect persons like himself from having false accusations made against him.*

The Tribunal made the following comment in response to the applicant's submission:

*This argument may appear attractive when one only considers those who maliciously supply false information which they know to be untrue. However, when consideration is given to the case of a person who, in good faith, supplies information which is subsequently found on investigation to be inaccurate or mistaken, the difficulties inherent in such a construction become apparent. The legislation is clearly designed to protect the identity of informers and does not differentiate between the good, the bad or the indifferent. The freedom of information legislation relates to the provision of information in a documentary form in the hands of government agencies but is not concerned, as such, with the veracity of information contained in a document except under Part V of the Act which provides for the amendment of inaccurate personal records. ...*

36. I include this material in the hope that the applicants will appreciate that s.42(1)(b) of the FOI Act is not concerned with whether the confidential source of information supplies information which is false or erroneous.

### **Conclusion**

37. I find that the third party's letter to the Council received on 22 July 1992 is an exempt document under s.42(1)(b) of the FOI Act, and I affirm the decision under review.

.....  
F N ALBIETZ  
**INFORMATION COMMISSIONER**