OFFICE OF THE INFORMATION COMMISSIONER (QLD)

Decision No. 96002
Application S 11/95

Participants:

DAVID EDWARD LITTLE
TIMOTHY CARUTHERS LITTLE
DONALD CHARLES LITTLE
DIANE ROSEMARY CANTONI
Applicants

DEPARTMENT OF NATURAL RESOURCES
Respondent

DECISION AND REASONS FOR DECISION

FREEDOM OF INFORMATION - refusal of access - valuation report on land owned by the applicants which the respondent proposes to acquire - whether prepared for briefing, or the use of, the Governor, a Minister or a chief executive in relation to a matter proposed by a Minister to be submitted to Cabinet or Executive Council - whether exempt matter under s.36(1)(c) or s.37(1)(c) of the *Freedom of Information Act 1992* Qld.

FREEDOM OF INFORMATION - matter in issue being matter of a kind mentioned in s.41(1)(a) of the *Freedom of Information Act 1992* Qld (deliberative process matter) - whether disclosure of the matter in issue would be contrary to the public interest - public interest in fair treatment of persons whose property may be compulsorily acquired by government for public purposes - application of s.41(1) of the *Freedom of Information Act 1992* Qld - whether matter in issue consists of expert opinion or analysis, excluded from eligibility for exemption under s.41(1) by virtue of s.41(2)(c).

FREEDOM OF INFORMATION - whether disclosure of the matter in issue could reasonably be expected to have a substantial adverse effect on the financial or property interests of the State - application of s.49 of the *Freedom of Information Act 1992* Qld.

Freedom of Information Act 1992 Qld s.36(1), s.36(1)(c), s.37(1), s.37(1)(c), s.41(1), s.41(1)(a), s.41(1)(b), s.41(2)(c), s.49, s.52, s.81
Acquisition of Land Act 1967 Qld s.7, s.8, s.9, s.9(3), s.9(4), s.9(5), s.9(6), s.12(5), s.12(5A), s.12(5B), s.15, s.15(1B), s.15(6)
Acts Interpretation Act 1954 Qld s.14A
Freedom of Information Act 1982 Cth s.36

Valuers Registration Regulation 1992 Qld s.6(1)

"B" and Brisbane North Regional Health Authority, Re (1994) 1 QAR 279
Beanland and Department of Justice and Attorney-General, Re (Information Commissioner Qld, Decision No. 95026, 14 November 1995, unreported)
Cairns Port Authority and Department of Lands, Re (1994) 1 QAR 663
Eccleston and Department of Family Services and Aboriginal and Islander Affairs, Re (1993) 1 QAR 60
Hopkins and Department of Transport, Re (Information Commissioner Qld, Decision No. 95028, 28 November 1995, unreported)
Hudson as agent for Fencray Pty Ltd and Department of the Premier, Economic and Trade Development, Re (1993) 1 QAR 123
Jones and Shire of Swan, Re (Information Commissioner WA, Decision Ref: D00694, 9 May 1994, unreported)
Mildenhall and Department of Premier and Cabinet (No. 1), Re (1995) 8 VAR 284
Murtagh v Federal Commissioner of Taxation (1984) 54 ALR 313
Searle Australia Pty Ltd v Public Interest Advocacy Centre and Anor (1992) 36 FCR 111
Victorian Public Service Board v Wright (1986) 160 CLR 145; 64 ALR 206
Whitehouse v Carlton Hotel Pty Ltd (1987) 162 CLR 282

DECISION

I set aside the decision under review (being the internal review decision made on behalf of the respondent by Mr Martin Holmes on 23 December 1994). In substitution for it, I decide that the applicants have a right to be given access under the *Freedom of Information Act 1992* Qld to the matter withheld from them pursuant to the decision under review.

Date of Decision: 22 March 1996.

....
F N ALBIETZ
INFORMATION COMMISSIONER

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REASONS FOR DECISION

Background

1. The applicants seek review of a decision by the respondent to refuse them access under the *Freedom of Information Act 1992* Qld (the FOI Act) to parts of a valuation report (and its covering memorandum) in respect of a parcel of land owned by the applicants near Kuranda in North Queensland (hereinafter referred to as "the subject land"). The valuation report was prepared for the purposes of a proposed acquisition by the respondent of the subject land. It addresses a number of proposals from acquisition of the full parcel of land to acquisition of various portions of the subject land.

2. By a letter dated 21 September 1994 to the Department of Lands (now the Department of Natural Resources), the applicants sought access under the FOI Act to:

   (a) any report, submission, memorandum or other writing made on or after the 1st January, 1989 which assesses, contains reference to or otherwise touches or concerns the value of [the subject land];

   (b) any report, submission, memorandum or other writing made on or after the 1st January 1989 which assesses, contains reference to or otherwise touches or concerns the amount of compensation that would be payable by the Crown in the event that [the subject land] *were to be resumed.*

3. I need not recount all the steps which occurred in the respondent's processing of the FOI access application and the applicants' subsequent application for internal review under s.52 of the FOI Act, but I note that the decision now under review is that made on behalf of the respondent on 23 December 1994 by Mr Martin Holmes. Mr Holmes determined that the valuation report now in issue (which was prepared by a valuer who was an officer of the respondent Department) is exempt matter under s.41(1) and s.49 of the FOI Act, for the following reasons:

> *The Report contains valuation and other information in respect of the Crown's assessment of the quantum of compensation payable for the acquisition. As this information would form the basis of the Crown's primary evidence should the matter be referred to the Land Court, access to these documents at this time could greatly prejudice the Crown's case in the Land Court.*
>
> *The disclosure of the contents of the Report could reasonably be expected to have a substantial adverse effect on the financial and property interests of the State.*
>
> *The non-disclosure of this information is aimed at protecting the interests of the Crown in the event that this matter is referred to the Land Court for a decision. Under these circumstances it would not be in the public interest to disclose this information.*
>
> *Furthermore, the preparation of the "Valuation Report" is part of the deliberative process involved in the functions of government and the release of this information at this time would be contrary to the public interest.*
>
> *This information is therefore exempt matter pursuant to sections 41(1) and 49 of the FOI Act.*

4. By letter dated 17 January 1995, the applicants sought review by the Information Commissioner, under Part 5 of the FOI Act, in respect of Mr Holmes' decision.

5. During the course of the external review process, attempts have been made to negotiate a resolution of the dispute over access to the valuation report. At the same time, negotiations for the acquisition by the respondent of the subject land have continued. As a result of these processes, the respondent has made certain concessions, which have allowed the applicants access to most of the valuation report. The matter remaining in issue broadly comprises the valuation figure for the subject land (and other valuation figures for portions of the subject land, and for other items addressed in the valuation process), segments of the report which record the methodology and reasoning on which the valuer's approach and the various valuation figures were based, and a one page Executive Summary which briefly canvasses issues relevant to proposals for acquisition of the whole, or portions only, of the subject land.

6. There are three ways in which the respondent may acquire land:

   (a) an open-market transaction in which the respondent is in the same position as any other prospective purchaser of land;

   (b) acquisition, with the agreement of the landowner, under s.15 of the *Acquisition of Land Act 1967* Qld, either with the amount of compensation also agreed, or with compensation to be determined by the Land Court; or

   (c) in the absence of the landowner's agreement to acquisition, compulsory acquisition of land under s.9 of the *Acquisition of Land Act*, with compensation to be determined by the Land Court.

7. The purpose of acquisition of the applicants' land is for the construction of a school. At the time of preparation of this decision, negotiations between the applicants and the respondent for the sale of the subject land were well advanced, but (I have been informed by the applicants' solicitors) not yet concluded. However, if those negotiations ultimately do not

result in an agreement, the respondent has available to it all the powers to compulsorily acquire land which are contained in the *Acquisition of Land Act*.

8. The respondent has lodged the following material in support of its case that the matter remaining in issue is exempt matter under the FOI Act:

   - a written submission, dated 2 May 1995
   - an affidavit of Michael Francis Shine, sworn 28 April 1995
   - an affidavit of Dennis William Long, sworn 2 May 1995
   - an affidavit of Peter Francis Tooley, sworn 2 May 1995.

9. The material lodged on behalf of the respondent addressed its initial claims for exemption under s.41(1) and s.49 of the FOI Act, but in addition, and for the first time, the respondent claimed that those parts of the valuation report which have not been released to the applicants are exempt under s.36(1)(c) and s.37(1)(c) of the FOI Act, as amended (with retrospective effect) in March 1995.

10. In response, the applicants rely on:

    - an affidavit of Michael Andrew Jonsson (the solicitor who has the conduct of this matter on behalf of the applicants) sworn 24 May 1995
    - a written submission dated 24 May 1995.

11. The respondent was given the opportunity to reply to the evidence and submissions lodged on behalf of the applicants, but, by letter dated 19 June 1995, declined that opportunity.

12. Relevant parts of the evidence and submissions lodged by the participants are referred to below.

<u>Application of s.36 and s.37 of the FOI Act</u>

13. The respondent claims that the matter remaining in issue is exempt under s.36(1)(c) and s.37(1)(c) of the FOI Act. Sections 36 and 37 of the FOI Act provide (so far as relevant for present purposes):

> ***Cabinet Matter***
>
> ***36.(1)*** *Matter is exempt matter if—*
>
> *(a) it has been submitted to Cabinet; or*
>
> *(b) it was prepared for submission to Cabinet and is proposed, or has at any time been proposed, by a Minister to be submitted to Cabinet; or*
>
> *(c) it was prepared for briefing, or the use of, a Minister or chief executive in relation to a matter—*
>
> *(i) submitted to Cabinet; or*
>
> *(ii) that is proposed, or has at any time been proposed, to be submitted to Cabinet by a Minister; or*

...

*(**4**) In this section—*

*"**Cabinet**" includes a Cabinet committee or subcommittee.*

*"**chief executive**" means a chief executive of a unit of the public sector.*

...

*"**submit**" matter to Cabinet includes bring the matter to Cabinet, irrespective of the purpose of submitting the matter to Cabinet, the nature of the matter or the way in which Cabinet deals with the matter.*

Executive Council matter

37.(1) *Matter is exempt matter if—*

(a) it has been submitted to Executive Council; or

(b) it was prepared for submission to Executive Council and is proposed, or has at any time been proposed, by a Minister to be submitted to Executive Council; or

(c) it was prepared for briefing, or the use of, the Governor, a Minister or a chief executive in relation to a matter—

(i) submitted to Executive Council; or

(ii) that is proposed, or has at any time been proposed, to be submitted to Executive Council by a Minister; or

...

*(**4**) In this section—*

*"**chief executive**" means a chief executive of a unit of the public sector.*

...

*"**submit**" matter to Executive Council includes bring the matter to Executive Council, irrespective of the purpose of submitting the matter to Executive Council, the nature of the matter or the way in which Executive Council deals with the matter.*

14. Both s.36 and s.37 were amended after the commencement of this external review, in a manner which considerably expanded the breadth of their spheres of application. In *Re Beanland and Department of Justice and Attorney-General* (Information Commissioner Qld, Decision No. 95026, 14 November 1995, unreported) at paragraphs 55-56, I found (for reasons which apply in identical fashion to s.37) that the March 1995 amendments to s.36 were expressly given retrospective operation, with the result that s.36 and s.37, as amended,

must be applied even in cases where, as here, the relevant FOI access application predated the March 1995 amendments to s.36 and s.37.

15. Section 81 provides that, in a review by the Information Commissioner, the agency which made the decision under review has the onus of establishing that the decision was justified or that the Information Commissioner should give a decision adverse to the applicant. The respondent therefore carries the onus of establishing the material facts and circumstances which would attract the application of s.36(1)(c) or s.37(1)(c) to the matter remaining in issue.

The evidence

16. The evidence discloses that in August 1994 the respondent was instructed to acquire the subject land for a proposed high school site. The letter of instruction stated: "*In the first instance acquisition by negotiation is proposed. However, if a negotiation acquisition is not successful, it is proposed that resumption action be taken. Sufficient land is required to provide a suitable school site, (15 to 20 hectares) but if insufficient land remains to provide a viable block for the owners, the whole parcel (29.7931 hectares) should be acquired.*" (exhibit "A" to Mr Shine's affidavit).

17. The Program Director, Land Use, within the respondent Department wrote to the applicants' solicitors in September 1994 and received a reply indicating that the applicants were prepared to consider negotiating a sale to the Crown of the whole or part of the subject land, and asking what the Crown was prepared to offer (exhibits "B" and "C" to Mr Shine's affidavit).

18. The Regional Director of the Far North Region of the respondent Department was then instructed by the Program Director, Land Use, to "*urgently arrange a detailed valuation of the selected area (when established) and also a valuation of the whole parcel. The two valuations are necessary for the purpose of assessing compensation but at this stage it is not known whether part or whole of the land is to be negotiated*" (exhibit "D" to Mr Shine's affidavit).

19. The evidence before me is that negotiations have continued between the applicants and the respondent for the sale of the subject land by private treaty. There is no evidence to the effect that formal procedures under the *Acquisition of Land Act* have yet been set in train by the respondent, although there is clear evidence of an intention to do so in the event that negotiations for a voluntary sale are unsuccessful.

20. Against this background, the evidence lodged by the respondent falls well short of establishing the material facts which would attract the application of s.36(1)(c) or s.37(1)(c) of the FOI Act to the matter remaining in issue.

21. Mr Shine is a senior officer in the Acquisitions Section within the Land Use Program of the respondent Department. His duties include the acquisition of land for school sites. Mr Shine has deposed that:

> *8. After the valuation was received in the Acquisitions Section* [of the respondent Department] *it was placed on the relevant Departmental file which relates to the proposed acquisition and the file, together with the valuation, will in due course be sent from the Acquisitions Section to the Cabinet Legislation and Liaison Unit within the Department of Lands for the purpose of briefing the Honourable the Minister and the Governor in Council in relation to the proposed acquisition of the land, whether by agreement or by compulsory process, under the* Acquisition of Land Act 1967. [my underlining.]

> *9. In either case a Proclamation by the Governor in Council is published in the Gazette formally taking the land in question for the purpose stated in the Proclamation.*
>
> *10. Section 9(6) of the Acquisition of Land Act 1967 requires the Governor in Council to consider every application made to the Minister for a Proclamation including all statements and documents accompanying that application in the process of deciding whether to make the Proclamation to take the land.*

22. Mr Shine's evidence assumes that acquisition of the subject land will proceed under the *Acquisition of Land Act*, whether by way of compulsory resumption under s.9, or acquisition under s.15 after a written agreement to acquire has been reached with the landowner. Mr Shine has not mentioned the possibility (which is expressly contemplated and reserved by s.15(1B) of the *Acquisition of Land Act*) of acquisition by purchase. The applicants assert (p.2 of their written submission) that their continuing negotiations with the respondent are negotiations for the sale by private treaty of the subject land. I am not prepared to accept that it is inevitable that the matter of the acquisition of the subject land will be submitted to the Governor in Council, in accordance with either s.9 or s.15 of the *Acquisition of Land Act*, while there remains a possibility of a sale by private treaty.

23. However, to further test the respondent's evidence, I will assume for the moment that there is such an inevitability. Mr Shine's evidence is that the relevant Departmental file, including the valuation, would be forwarded to the respondent's Cabinet Legislation and Liaison Unit for the purposes of briefing the Minister and the Governor in Council in relation to the proposed acquisition of land. Mr Shine is not in a position to say what occurs from that point, and the evidentiary 'trail' is picked up in the affidavit of Mr Long, the respondent's Cabinet Legislation and Liaison Officer (see paragraph 24 below). Mr Shine does, however, make a point of referring to s.9(6) of the *Acquisition of Land Act*. That provision requires the Governor in Council to consider all statements and documents accompanying an application for resumption made to the Minister under s.9(3). Section 9(4) prescribes the kinds of statements and documents which must accompany an application for resumption made to the Minister under s.9(3); it does not include a valuation report on the land proposed for resumption. The Minister may require additional information to be furnished (s.9(5)), but there does not appear to be any necessity for the Minister to routinely require a valuation report to be furnished, especially since the object of s.9(6) is to ensure that the Governor in Council is satisfied that land may lawfully be taken for a purpose authorised under the *Acquisition of Land Act*, and that the procedural requirements of s.7 and s.8 have been followed. The question of compensation for the compulsory acquisition of land is dealt with in other sections of the Act (see s.12(5), (5A) and (5B) of the *Acquisition of Land Act*). Again in the case of acquisition under s.15, a valuation report is not prescribed as a kind of document which must be furnished to the Minister or the Governor in Council, and the object of providing for Governor in Council approval under s.15(6) is to ensure that the Governor in Council is satisfied that the land in question may be lawfully taken for the purpose for which it is proposed to be taken. There is no suggestion on the face of s.15 that the Governor in Council is intended to have any role in approving the amount of compensation payable to a landowner for the acquisition of the relevant land.

24. Mr Long, the respondent's Cabinet Legislation and Liaison Officer, deposes that when the relevant Departmental file on the acquisition of the applicants' land is received by him:

> *4. ... a Briefing Minute will be prepared for the use of the Honourable the Minister in Cabinet in accordance with the established practices in relation to matters to be considered by Cabinet.*

> 5. *In addition a Draft Proclamation will be prepared for consideration by the Governor in Council for the purposes of taking the applicants' land under the* Acquisition of Land Act 1967.
>
> 6. *The Draft Proclamation will then be placed on the file which will be sent to the Office of Cabinet for reference by the Honourable the Minister and the Governor in Council at the appropriate time. The Briefing Minute is not placed on the file, but is kept securely elsewhere in accordance with government policy as to the confidentiality of such documents.*

25. It is notable that Mr Long does not depose that the valuation report will accompany the Briefing Note prepared for the Minister, let alone that the valuation report was prepared for briefing, or the use of, the Governor, or a Minister or a chief executive (as required by the wording of s.36(1)(c) or s.37(1)(c) of the FOI Act). It appears that the only document which Mr Long prepares for consideration by the Governor in Council under the *Acquisition of Land Act* is a Draft Proclamation. The relevant Departmental file (which would contain a copy of the valuation report) is then sent to the Office of Cabinet so that it is available "for reference" by the Minister and the Governor in Council at the appropriate time. There is no statement in the evidence to the effect that the valuation report, or the file containing it, will be given to the Governor or the Minister for their briefing or use. Since, as I have explained at paragraph 23 above, the Governor in Council is given no statutory function, under s.9 or s.15 of the *Acquisition of Land Act*, of considering or approving the amount of compensation payable to a landowner, there is no reason to expect that a valuation report would be required for briefing, or the use of, the Governor in Council.

26. Mr Tooley, in his affidavit, deposes that he holds the position of Program Director, Land Valuations, in the respondent Department. Mr Tooley does not, however, depose to any material facts relevant to the application of s.36(1)(c) or s.37(1)(c). He merely attempts to swear the very issue for determination:

> 2. *I say that the valuation of the applicants' land prepared by the Department of Lands in connection with a proposed acquisition for School Purposes is exempt from disclosure under the Freedom of Information Act by reason of the provisions of Sections 36(1)(c)(ii) and 37(1)(c)(ii) of that Act which apply to documents prepared for the consideration of Cabinet or the Executive Council.*
>
> 3. *I say that the valuation in question is such a document.*

These assertions, without evidence of facts which support them, must properly be disregarded.

Analysis and application of the relevant provisions

27. In paragraphs (a), (b) and (c) of s.36(1) and s.37(1), respectively, of the FOI Act, a clear progression is evident in the categories of matter on which the legislature has conferred a 'class claim' for exemption (i.e., where exemption is conferred merely by membership of a defined class or category, irrespective of whether disclosure of the actual contents of a document falling within the defined class would have any prejudicial consequences). The first category comprises matter which has been submitted to Cabinet or Executive Council. The second category requires that matter must have been prepared for submission to Cabinet or Executive Council, and must be, or must have been, proposed by a Minister to be submitted to Cabinet or Executive Council. Where matter has not been submitted to Cabinet or Executive Council, nor prepared for that purpose, it may qualify for exemption under the

third category if it was prepared for briefing, or the use of, prescribed persons in relation to a matter submitted, or proposed by a Minister to be submitted, to Cabinet or Executive Council.

28. The words following the verb "prepared" in s.36(1)(c) and s.37(1)(c), respectively, attach a purposive requirement to that word. To qualify for exemption, it must be established that the matter in issue was prepared for briefing, or the use of, a prescribed person (a Minister or chief executive in respect of both s.36(1)(c) and s.37(1)(c), or the Governor in respect of s.37(1)(c) only). In addition, the briefing or use must relate to a matter which has been submitted to Cabinet or Executive Council, or which is proposed, or has at some time been proposed, by a Minister to be submitted to Cabinet or Executive Council. (I note that the respondent has not suggested that the matter of the acquisition of the subject land, or of any amount to be paid for the land, has been submitted to Cabinet or Executive Council; rather it relies on the second limb of each provision, i.e., s.36(1)(c)(ii) and s.37(1)(c)(ii).)

29. The respondent has not provided any evidence which establishes that the valuation report containing the matter in issue was prepared for briefing, or the use of, the Governor, a Minister or a chief executive. (The highest which Mr Shine was able to put it was that the valuation was contained in a file that he believes will, in due course, be sent to the respondent's Cabinet Legislation and Liaison Unit for the purpose of briefing the Minister. With respect, that only addresses the purpose of sending the file.) In my opinion, it is clear that the valuation report was not prepared for the purpose of briefing, or the use of, the Governor, a Minister or a chief executive. The purpose for which the valuation report was prepared is explained on page 3 of the respondent's own submission:

> *When the Department is required to acquire a property, the Department approaches the property owners to determine if they are willing to sell and what is their asking price. In the meantime the Department arranges for a valuation report for the property to be prepared. Upon receipt of the property owners' asking price, the Department will declare its valuation amount then negotiate with the owner to arrive at a mutually acceptable price. If no asking price is forthcoming from the property owner, the Department will make an offer, which is, in most circumstances, the valuation amount. If agreement cannot be reached on a price, the matter will be referred to the Land Court.*

I am satisfied on the material before me that the valuation report was prepared for the purpose of negotiating with the applicants to acquire the subject land at an agreed fair price (or, failing agreement, for the purpose of establishing, in proceedings before the Land Court, the amount of compensation to which, in the respondent's contention, the applicants are entitled, upon the acquisition of the subject land by the Crown under the *Acquisition of Land Act*).

30. Although not strictly necessary for determination in this case (given the deficiencies in the respondent's evidence), the applicants' written submission has raised an issue of statutory construction which is of general significance for the interpretation and application of s.36(1)(c) and s.37(1)(c) of the FOI Act. It is the first issue raised in the following extract from the applicants' written submission. The second issue raised in the following extract illustrates another ground on which the respondent has failed to make out its case for exemption in this instance:

> *9. ... The time of creation of a document is the time at which the purpose for its creation is to be ascertained* [citing *Re Hudson as agent for Fencray Pty Ltd and Department of the Premier, Economic and Trade Development* (1993) 1 QAR 123 at p.134]. *In the situation where matter has been prepared for a*

single purpose, it is a relatively simple exercise to determine whether that purpose qualifies for exemption under either section 36(1)(c)(ii) or 37(1)(c)(ii). Matter may, however, have been prepared for more than one purpose (including both qualifying and non-qualifying purposes). The Act is ambiguous to the extent that it does not specify the test which must be applied in determining the eligibility of matter for exemption in circumstance where it has been prepared for both a qualifying and a non-qualifying purpose. At the one extreme, Parliament may have intended that matter will be exempt if at least one of several purposes underlying its preparation is a qualifying purpose (and however incidental that purpose may be). At the other extreme, matter may only have been intended by Parliament to be exempt if it was prepared solely for a qualifying purpose of purposes. In the case of ambiguity, the Act should be construed in the manner which furthers, rather than hinders, its objects. In resolving this ambiguity, the promotion of free access to information (section 5(1) of the Act) dictates that the narrower construction (i.e. the sole purpose test) should be preferred [citing *Victorian Public Service Board v Wright* (1986) 160 CLR 145; s.14A of the *Acts Interpretation Act 1954* Qld]. *Accordingly, for matter to be exempt under either provision, it must have been prepared solely for a qualifying purpose or purposes.*

10. Secondly, the use of the phrase "... is proposed, or has at any time been proposed ..." in sections 36(1)(c) and 37(1)(c) of the Act imports a limitation upon the qualifying purposes thereby introduced. The phrase does not connote the future tense. Thus, matter which was prepared for briefing or the use of a prescribed person in relation to a matter which may (or even will) at some future time be proposed to be submitted to Cabinet or Executive Council by a Minister will not qualify for exemption.

...

16. In summary, if the Respondent seeks to invoke exemption under sections 36(1)(c)(ii) or 37(1)(c)(ii), it is not enough for it to glibly assert the possibility that proceedings may be taken at some future time under the Acquisition of Land Act 1967. *The Department must establish, by appropriate evidence, that the subject valuation was prepared solely for briefing or use by a prescribed person in relation to a matter that either is or has been proposed for submission by a Minister to Cabinet or Executive Council. The mere possibility of such a proposal being made at some future time cannot satisfy either section. At its highest, the Respondent's evidence suggests that the valuation may form part of the material to be used to brief the Minister and the Governor in Council if acquisition of the applicants' land is to proceed either compulsorily or by agreement under the* Acquisition of Land Act 1967. *These contingencies were, when the valuation was brought into existence, and remain, nothing more than speculation.*

31. I think there is considerable force in these submissions. Put at its highest, the respondent's case depends on the proposition that one of the purposes for which the valuation report was prepared (remote and contingent though it must have been) was for briefing or use of the Governor, a Minister or a chief executive in the event that the applicants' land had to be acquired under the *Acquisition of Land Act* (though, as I have explained above, the evidence falls short of establishing that proposition in any event). If the applicants' first submission quoted above is correct, it affords a complete answer to that proposition.

32. I consider that the applicants are correct in asserting that the words of s.36(1)(c) and s.37(1)(c) are ambiguous in their application to a situation where the matter in issue has been prepared for more than one purpose, including one or more which is not a qualifying purpose according to the terms of s.36(1)(c) or s.37(1)(c). (I note that precisely the same difficulty may arise in the interpretation of s.36(1)(b) and s.37(1)(b).) I also accept that it is correct in the context of freedom of information legislation to resolve any such ambiguity in favour of an interpretation which would further, rather than hinder, free access to information: *Victorian Public Service Board v Wright* (1986) 160 CLR 145 at p.153; *Searle Australia Pty Ltd v Public Interest Advocacy Centre and Anor* (1992) 36 FCR 111 at p.115. (I note that these cases were not referred to by the Victorian Administrative Appeals Tribunal (M T McNamara, Presiding Member) when coming to the opposite conclusion on an essentially identical issue in *Re Mildenhall and Department of Premier and Cabinet (No. 1)* (1995) 8 VAR 284 at p.290. I do not think the Tribunal's reliance on *Whitehouse v Carlton Hotel Pty Ltd* (1987) 162 CLR 282, a case where the context was far removed from the interpretation of ambiguous words in a statutory provision contained in remedial/beneficial legislation, can be logically preferred to the principles I have stated in this paragraph.)

33. I have a significant reservation, however, as to whether the ambiguity should be resolved in favour of the narrowest possible interpretation (i.e. a 'sole purpose' test) or whether a less extreme interpretation would be more appropriate given the nature of the exemption provisions in question. The application of a strict 'sole purpose' test may produce unintended consequences: for example, a document that was prepared for the purpose of briefing a Minister, a chief executive, and a number of senior officials of a Department (on a matter submitted, or proposed by a Minister to be submitted, to Cabinet or Executive Council) may not qualify for exemption under s.36(1)(c) or s.37(1)(c) if a 'sole purpose' test were applied, because the purpose of briefing senior officials other than the chief executive would not be a qualifying purpose.

34. I consider that the test which is most appropriate to the nature of these exemption provisions, one which places a sensible limit on the breadth of the class of documents eligible for exemption while remaining consistent with the natural sense of the words chosen by the legislature, is a 'dominant purpose' test. I use the adjective "dominant" in its primary sense (according to the Australian Concise Oxford Dictionary) of "ruling, prevailing, most influential", such that there can be only one of two or more purposes for the preparation of a document which is the dominant of those purposes. In circumstances where there were multiple purposes for the preparation of the matter in issue, not all of which are qualifying purposes under s.36(1)(c) or s.37(1)(c), the application of those provisions would require a finding on an ultimate question of fact, to be determined by an objective examination of the relevant primary facts and circumstances, as to whether or not the dominant purpose for the preparation of the matter in issue was one of the qualifying purposes for exemption under s.36(1)(c) or s.37(1)(c). Where a specific and direct purpose for the preparation of the matter in issue can be identified from the relevant primary facts and circumstances, that will ordinarily be the most reliable indicator of the dominant purpose for which the matter in issue was prepared.

35. Whether a 'sole purpose' test or a 'dominant purpose' test is applied in this case, the respondent's contention that the matter in issue is exempt under s.36(1)(c) or s.37(1)(c) must fail. The matter in issue was certainly not prepared for the sole purpose of briefing the Governor, or a Minister or a chief executive, and the dominant purpose for its preparation was that which I have stated in paragraph 29 above.

36. I also consider that the applicants' second submission quoted at paragraph 30 above is correct. The evidence does not establish that there is a matter which is now proposed, or has at any time been proposed, by a Minister to be submitted to Cabinet or Executive Council, and in relation to which the matter in issue was prepared for briefing, or the use of, the

Governor, or a Minister or a chief executive. The respondent has lodged no evidence of a proposal by a Minister to submit such a matter to Cabinet or Executive Council. This is an additional reason why the respondent's case for exemption under s.36(1)(c) or s.37(1)(c) must fail.

37. I note that there is a curious difference in the positioning of the words "by a Minister" in the context of s.36(1)(c)(ii) and s.37(1)(c)(ii) as compared to s.36(1)(b) and s.37(1)(b). In s.36(1)(b) and s.37(1)(b), the words "by a Minister" immediately follow the verb "proposed", making it clear that the relevant proposal for submission of the matter in issue to Cabinet or Executive Council must be a proposal by a Minister. In s.36(1)(c)(ii) and s.37(1)(c)(ii), the words "by a Minister" do not immediately follow the verb "proposed", which raises the question of whether the words "by a Minister" might have been intended to qualify the verb "submitted" rather than the verb "proposed". In my opinion, that cannot have been the legislature's intention. If intended to qualify the verb "submitted", the words "by a Minister" would be otiose, since a matter can only be submitted to Cabinet or Executive Council by a Minister. Moreover, Parliament cannot, in my opinion, have intended to create a 'class claim' for exemption capable of being triggered by the simple expedient of an official, no matter how junior, proposing that a matter be submitted by a Minister to Cabinet or Executive Council, and preparing documents for briefing, or the use of, a chief executive in relation to the matter. Such an interpretation would be inconsistent with, and allow the potential for widespread abuse of, the professed objects of the FOI Act, especially those concerned with enhancing the accountability of government and government officials, and promoting informed public participation in the processes of government (including policy development processes). According to s.14A of the *Acts Interpretation Act 1954* Qld, in interpreting a provision of an Act, the interpretation that will best achieve the purpose of the Act is to be preferred to any other interpretation. Applying that approach, the words "by a Minister" must in my opinion be construed as qualifying the verb "proposed" rather than the verb "submitted" in s.36(1)(c)(ii) and s.37(1)(c)(ii) of the FOI Act. The same result would follow from the application of the interpretive principle referred to in paragraph 32 above.

38. For the foregoing reasons, I am satisfied that the matter in issue is not exempt matter under s.36(1)(c) or s.37(1)(c) of the FOI Act.

Application of s.41 of the FOI Act

39. The respondent also claims that the matter remaining in issue is exempt matter under s.41 of the FOI Act, which (so far as relevant for present purposes) provides:

> ***41.(1)*** *Matter is exempt matter if its disclosure—*
>
> *(a) would disclose—*
>
> *(i) an opinion, advice or recommendation that has been obtained, prepared or recorded; or*
>
> *(ii) a consultation or deliberation that has taken place;*
>
> *in the course of, or for the purposes of, the deliberative processes involved in the functions of government; and*
>
> *(b) would, on balance, be contrary to the public interest.*
>
> ***(2)*** *Matter is not exempt under subsection (1) if it merely consists of—*
>
> ...

(b) factual or statistical matter; or

(c) expert opinion or analysis by a person recognised as an expert in the field of knowledge to which the opinion or analysis relates.

...

40. A detailed analysis of s.41 of the FOI Act can be found in *Re Eccleston and Department of Family Services and Aboriginal and Islander Affairs* (1993) 1 QAR 60 at pp.66-72, where I said:

> *21. Thus, for matter in a document to fall within s.41(1), there must be a positive answer to two questions:*
>
> *(a) would disclosure of the matter disclose any opinion, advice, or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, (in either case) in the course of, or for the purposes of, the deliberative processes involved in the functions of government; and*
>
> *(b) would disclosure, on balance, be contrary to the public interest?*
>
> *22. The fact that a document falls within s.41(1)(a) (i.e. that it is a deliberative process document) carries no presumption that its disclosure would be contrary to the public interest. ...*

41. I am satisfied that the matter remaining in issue falls within the terms of s.41(1)(a) of the FOI Act. Paragraph 12 of Mr Shine's affidavit identifies the relevant deliberative process involved in the functions of government as: "*... negotiations with the applicants as to the compensation payable* [for acquisition of the subject land], *and ... determining whether or not agreement can be reached as to the amount of compensation payable, or whether the matter should be referred to the Land Court*."

42. The respondent has submitted two main arguments as to why disclosure of the matter remaining in issue would be contrary to the public interest. The first argument, in essence, overlaps the respondent's contention, for the purposes of invoking s.49 of the FOI Act, that disclosure would prejudice the financial or property interests of the State. I have therefore drawn on the respondent's evidence and submissions relevant to s.49 in order to fully expound what I understand to be the nature of its case in this regard. The following paragraphs of Mr Tooley's affidavit are relevant:

> *5. I say that there is a public interest in the non-disclosure of deliberative process matters before the process of deliberation has been completed and the appropriate authority has decided upon and agreed to the amount of compensation payable for the acquisition of the land required for the relevant public purpose.*
>
> *6. I say that public interest is greater than, and prevails over, the private interest of the applicants in this matter in seeking to discover the details of the Department's valuation.*

7. *Further, or alternatively, I say that the disclosure of the valuation would have a substantial adverse effect on the financial or property interests of the State within the meaning of Section 49* Freedom of Information Act *because of the negotiating advantage which the applicants would enjoy vis-à-vis the State in a situation in which there has been no mutual exchange of valuations and supporting data.*

8. *I say that in my experience as a valuer for the State the longer an opponent has a valuation in his or her possession the greater the opportunity to subject that valuation to detailed critical analysis, thereby gaining a significant advantage at any subsequent negotiation over the side which has not received a valuation by way of exchange.*

9. *I say, therefore, that the subject valuation should be exempt from disclosure under Section 49* Freedom of Information Act *until the applicants are ready to make a mutual exchange of valuations and/or supporting data after they have first retained a valuer to make a valuation on their behalf of the land to be acquired from them.*

43. The respondent's written submission addressed this argument as follows (at p.4):

> *In applying the public interest it is submitted that in the acquisition of land process, the Department, in the negotiating process is required to maximise the public benefit by acquiring the land for a fair price and the property owner is similarly trying to maximise his benefit. A normal commercial practice is in effect. The valuation report is seen as the Department's negotiating base and release of the report without a mutual exchange taking place would prejudice negotiations. In the event that the quantum of compensation payable is referred to the Land Court, for the Department to release the valuation report to the property owner without a mutual exchange of documentation short circuits the natural process of* mutual exchange *and results in an unfair bias in favour of the property owner that would not be in the interest of procedural fairness. The Department is then placed in a disadvantaged position when presenting its case in the Land Court which would be contrary to the public interest.*

44. An essentially similar point is made in a slightly different way in the respondent's written submission on s.49 of the FOI Act:

> *If there was no mutual exchange of valuation reports and the Department divulged its negotiating base i.e. its valuation report, the Department would be at a distinct disadvantage. Such action would enable the property owner to then acquire a valuation which would take into consideration the contents of the Department's report. The property owner's valuation would not be independent and would invariably be considerably higher than the Department's valuation. This unfair commercial practice could reasonably be expected to have an adverse effect on the negotiated price and therefore on the financial interest of the State. Any increased price which has resulted from biased negotiations would be seen as substantial in the eyes of the taxpayers of Queensland. As the Department has published policies and procedures for the taking of land, the premature release of the valuation report in question would be setting a precedent which could reasonably be*

expected to have a substantial adverse effect on the financial interests of the State. Such an outcome would not be in the public interest ... .

45. I do not think there is any substantial merit in the respondent's arguments. They are reminiscent of the arguments advanced by the respondent in *Murtagh v Federal Commissioner of Taxation* (1984) 54 ALR 313, where the Commonwealth equivalent of s.41 of the FOI Act (s.36 of the *Freedom of Information Act 1982* Cth) was invoked to oppose the disclosure to the taxpayer of documents explaining the basis for a taxation assessment that the taxpayer had appealed to the Taxation Board of Review. The arguments for the Commissioner of Taxation (set out at ALR pp.328) included:

> *... If the taxpayer were given access to the Commissioner's working files, the taxpayer would know precisely what the Commissioner knew and also what the Commissioner did not have knowledge of.*
>
> *... This would put the taxpayer in a far stronger position* vis-à-vis *the Commissioner than the Commissioner* vis-à-vis *the taxpayer.*

46. This line of argument by the Commissioner of Taxation was convincingly dismissed by the Commonwealth Administrative Appeals Tribunal, chaired by Davies J (President) (at p.329):

> *We do not accept the contention put forward that it is in the interests of the public that negotiations between taxpayers and the Australian Taxation Office should proceed on inadequate knowledge. We abhor the contention that "mutual half-light" should be "the necessary pre-condition of negotiation and settlement". ... We think it highly undesirable that, in a case such as the present, both the Australian Taxation Office and the taxpayer should not work together to ascertain the relevant facts and to arrive at a proper conclusion having regard to the whole of the relevant facts. ... The process of ascertaining all relevant facts is likely to be enhanced if the taxpayer knows what are the facts which the Australian Taxation Office has taken into account. In so far as those facts are not the full facts of the matter, the taxpayer may supplement them with further information.*
>
> *In general, we do not think it desirable that the taxation system should proceed upon the basis of negotiation in "mutual half-light". ... we think an attempt should be made to arrive at the proper tax which is payable. This can be achieved only if all relevant facts are ascertained. In our opinion, the granting of access to documents which show the factual basis upon which officers of the Australian Taxation Office have proceeded is likely to advance this process.*

47. In my opinion, similar considerations should apply with equal, if not greater, force to processes by which an agency of government takes the property of citizens for public purposes. This is one of the most intrusive powers which a government is able to exercise against a citizen. Moreover, it is a fundamental principle of Australia's system of law and government that, in the absence of exceptional circumstances, the State ought not compulsorily acquire the property of a citizen on other than just terms. In my opinion, the balance of the public interest lies in ensuring that the process of acquisition is as transparent as possible for the affected citizen, who should be permitted access to information that would assist an assessment of whether fair compensation is paid for the property acquired.

48. I do not accept the respondent's argument (see paragraphs 42-43 above, and paragraph 6 of Mr Tooley's affidavit) to the effect that, as an agent for the wider public interest in

attempting to acquire property for public purposes, the greater public interest is served by maximising its negotiating advantage against a property-owner who is trying to "maximise his benefit". It would, in my opinion, be short-sighted and erroneous to suggest that the public interest in saving public money would justify a government agency in seeking to negotiate the acquisition of a citizen's property on less than just terms. The greater public interest lies in preserving the principle of public acquisition of private property on just terms. Any citizen may be affected by a government proposal to acquire private property for public purposes. The interest in fair treatment of citizens by government in the course of acquisition processes is an interest which is common to all citizens and for their benefit.

49. It is difficult to give any substantial weight to the respondent's contentions that disclosure of its valuation reports (other than in the course of a mutual exchange of valuations with a landowner whose property is targeted for acquisition) would give the landowner a significant negotiating advantage through having the opportunity to subject the respondent's valuation to detailed critical analysis, and to obtain a valuation report which took into consideration the contents of the respondent's valuation report. I can see no valid reason why a landowner whose property is targeted for acquisition should not have the opportunity to subject the respondent's valuation report to detailed critical analysis. The object of the exercise is, after all, to determine a fair amount of compensation for acquisition of the property. A landowner hoping to persuade the respondent that it has undervalued the landowner's property will have to convincingly attack the assumptions, or evidence, or methodology on which the respondent's valuation report is based, with or without the assistance of another report from an independent valuer. The respondent's professional valuers can be expected to defend and justify their assessments if they are satisfied they have not erred in any material respect.

50. Moreover, the respondent will ordinarily be in the superior bargaining position by virtue of its ability to resort to compulsory acquisition if a sale cannot be achieved by negotiation. If the respondent considers it is being subjected to undue delay by a meritless attack on its valuation report, it can invoke the machinery for acquisition under the *Acquisition of Land Act*, whereupon the landowner's interest in the relevant land is converted into a right to claim compensation under that Act. The dispute as to a figure which represents fair compensation would then be resolved by the Land Court under a procedure whereby both parties would be forced to disclose the basis of, and justify, the valuations which they place on the relevant property.

51. I do not accept that early disclosure of the respondent's valuation reports would involve procedural unfairness to the respondent in the event that an acquisition reached the stage of a contest in the Land Court over fair compensation for the property acquired. It is part of the discipline of a professional valuer to explain and justify assessments made in the exercise of professional judgment, and to re-assess them if satisfied (after taking into account assessments or criticisms by other professional valuers) that an error has occurred, or, for example, a logically preferable alternative approach to the valuation should have been adopted. Nor do I accept that the respondent would be disadvantaged in presenting its case to the Land Court. The Land Court's procedures will allow the respondent sufficient opportunity to subject the landowner's valuation reports and expert evidence to critical scrutiny. I doubt that any real advantage to the landowner, through having earlier access to the respondent's valuation reports and more time to subject them to critical scrutiny, would occur in most cases. I consider that any procedural advantage that did occur would be minor, and not such as to attract the application of s.41(1) of the FOI Act. Any such advantage could, in my opinion, only validly be claimed to be contrary to the public interest if it could be demonstrated that it was likely to result in the Land Court (with all its expertise in valuation matters) awarding more than fair compensation for property acquired under the *Acquisition of Land Act*.

52. The respondent's arguments have not persuaded me that disclosure to the applicants of the matter remaining in issue would be contrary to the public interest. In this regard, I note and endorse the

views expressed by the Western Australian Information Commissioner in another case involving a dispute over access to an agency's valuation reports by a landowner whose property was targeted for resumption, *Re Jones and Shire of Swan* (Information Commissioner WA, Decision Ref: D00694, 9 May 1994, unreported) at pp.8-9:

> *... it is not in the public interest that these negotiations be conducted in "mutual half-light". If it is in the public interest, and I consider that it is, that a local authority acquiring a ratepayer's property should make every effort to ensure that a price that is both fair and equitable to the ratepayer and fair to the ratepayers of the shire is paid to the ratepayer for his or her land, then - in my view - there is no damage to the public interest in disclosing to the ratepayer valuations of the property that have been obtained by the local authority in the course of that process.*
>
> *The agency has a considerable power to compulsorily resume a ratepayer's land. In my opinion, it is in the public interest that where negotiations have been undertaken by the agency for the voluntary acquisition of such land the agency is seen to act fairly in its dealings with ratepayers. Voluntary acquisition ought to be seen as a fair alternative to compulsory resumption proceedings and, in my opinion, it is in the public interest that the ratepayer in this instance be provided with access to the valuation reports in order to assist him to assess the basis upon which the agency's offer has been made and the fairness of that offer. Disclosure may facilitate the process of reaching agreement upon a fair market value for the property. In my view, that public interest outweighs the public interest , if indeed there is any, in the agency making a profit or "getting the best deal" in this matter. The public interest in acting fairly in the interests of the ratepayers of the shire as a whole is not incompatible with the public interest in acting fairly in the interests of this individual ratepayer.*

53. The second of the respondent's arguments as to why disclosure of the matter remaining in issue would be contrary to the public interest is contained in the following paragraphs of Mr Tooley's affidavit:

> *10. Further, or alternatively, I say that I am a Member of the Valuers Registration Board pursuant to the* Valuers Registration Act 1992*, and in that capacity I am concerned to ensure that the provisions of the Act and the Regulation are carried into effect. Section 6(1) of the* Valuers Registration Regulation 1992 *provides as follows:*
>
> "6.(1) A registered valuer must not disclose or make use of a valuation made for a client.
>
> (2) Subsection (1) does not apply if -
>
> (a) the client gives the valuer written permission to disclose the details of the valuation; or
>
> (b) the valuer is required by law to disclose the details."
>
> *11. I believe that the aforesaid section 6 applies to registered valuers employed in the Department of Lands in their carrying out valuations pursuant to section 74 of the* Valuation of Land Act 1994*, and in particular the subject valuation.*

> 12. *It is of extreme concern to the Department of Lands that under the provisions of the* Freedom of Information Act 1992*, it finds itself in the position of having to provide information directly to a third party without the client's consent. This requirement is not placed on private sector operators. It clearly puts at risk client - service provider relationships and severely limits the Department's ability to be retained for valuation activities of this type. 1t further jeopardises the Department's ability to generate revenue.*

54. This evidence from Mr Tooley appears to be directed to the public interest test, in that it is being suggested that disclosure of the valuation report under the FOI Act would be against the public interest because such a disclosure would amount to a breach of a statutory duty of confidence owed by a registered valuer to a client. (I note that no claim for exemption has been made under s.46(1) of the FOI Act (matter communicated in confidence), nor could it be, given the terms of s.46(2) and the fact that the matter in issue is matter of a kind mentioned in s.41(1)(a) and was communicated between persons in the capacity of officers of an agency: see *Re "B" and Brisbane North Regional Health Authority* (1994) 1 QAR 279 at p.292, paragraphs 35-36).

55. The contention evident in Mr Tooley's affidavit is, however, untenable for two reasons. First, for reasons explained in *Re Cairns Port Authority and Department of Lands* (1994) 1 QAR 663 at pp.731-732 (paragraphs 175-180), I consider that s.6 of the *Valuers Registration Regulation* does not apply to valuers employed as officers of the respondent Department, when carrying out their duties of office. Secondly, even if that provision did apply to copies of the valuation report in issue that are held by valuers within the Land Valuations division of the respondent Department, copies are also held within the Acquisitions Section of the Land Use Program of the respondent Department, where they are held in that Section's capacity as client (or perhaps as agent for another Department as client) of the valuer who prepared the report. A client in possession of a valuation report prepared for the client's purposes ordinarily owes no duty of confidence in respect of the report: see *Re Hopkins and Department of Transport* (Information Commissioner Qld, Decision No. 95028, 28 November 1995, unreported) at paragraphs 32-46. Even if the respondent (or its client Department) had in this case engaged a private valuer, the resulting valuation report would still be subject to the FOI Act in the hands of the respondent (or its client Department). I do not think there is any real substance in the concerns expressed in paragraph 12 of Mr Tooley's affidavit. I consider that the contention raised in the above-quoted paragraphs of Mr Tooley's affidavit is not one deserving of any substantial weight in the application of s.41(1)(b) of the FOI Act.

56. Before leaving s.41, I should note that most, if not all, of the matter remaining in issue is excluded from eligibility for exemption under s.41(1) of the FOI Act by virtue of s.41(2)(c), because it merely consists of expert opinion or analysis by expert valuers (for the reasons explained in *Re Cairns Port Authority* at p.687, paragraphs 48-49). The respondent's written submission (at p.3) asserted (rather briefly, and without any supporting detail) that the matter in issue included advice and recommendations which were to be distinguished from "expert opinion or analysis". I think that such a distinction could frequently be difficult to draw, and that in many circumstances an expert's advice or recommendations would legitimately be regarded as encompassed within the phrase "expert opinion or analysis". In this case, the respondent has not sought to identify that matter which it asserts is advice or recommendation, and is distinguishable from expert opinion or analysis, so I have no basis upon which to address the merits of the issue in the instant case.

57. That issue is purely academic in any event, since I have considered on their merits the respondent's arguments in respect of the public interest balancing test contained in s.41(1)(b), and for the foregoing reasons, I am satisfied that disclosure to the applicants of the matter

remaining in issue would not be contrary to the public interest, and hence that it is not exempt matter under s.41(1) of the FOI Act.

Application of s.49 of the FOI Act

58. Section 49 of the FOI Act provides:

> ***49***. *Matter is exempt matter if its disclosure could reasonably be expected to have a substantial adverse effect on the financial or property interests of the State or an agency unless its disclosure would, on balance, be in the public interest.*

59. The correct approach to the application of the phrase "could reasonably be expected to" is explained in *Re "B"* at pp.334-341, paragraphs 154-160. Those words call for the 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.

60. For the reasons explained in *Re Cairns Port Authority* at pp.724-725 (paragraphs 147-150), I consider that the legislature must have intended the adjective "substantial" in the phrase "substantial adverse effect" to be used in the sense of grave, weighty, significant or serious.

61. The respondent's contentions on the application of s.49 are set out at paragraphs 42 and 44 above. I do not think these contentions have any substance, in the absence of evidence that would afford a reasonable basis for an expectation that disclosure of the matter in issue would result in the respondent paying more than fair compensation for the acquisition of the applicants' land. Having regard to the considerations to which I have referred at paragraphs 49-51 above, I am not satisfied that there are real and substantial grounds for expecting that disclosure of the matter remaining in issue would have any adverse effect on the financial or property interests of the State, and certainly not a substantial adverse effect.

62. In any event, considerations of the kind referred to at paragraphs 47, 48 and 52 above, would, in my view, warrant a finding that disclosure to the applicants of the matter in issue would, on balance, be in the public interest.

Conclusion

63. For the foregoing reasons, I set aside the decision under review, and in substitution for it, I find that the applicants have a right to be given access under the FOI Act to the matter in issue.

....

F N ALBIETZ
INFORMATION COMMISSIONER