OFFICE OF THE INFORMATION COMMISSIONER (QLD)

Decision No. 03/2001
Application S 180/00

Participants:

GEORGE ANTONY
Applicant

GRIFFITH UNIVERSITY
Respondent

DECISION AND REASONS FOR DECISION

FREEDOM OF INFORMATION - refusal of access - curriculum vitae and supporting documents submitted by the successful candidate for an academic appointment - whether disclosure would found an action for breach of confidence - application of s.46(1)(a) of the *Freedom of Information Act 1992* Qld.

FREEDOM OF INFORMATION - refusal of access - whether disclosure could reasonably be expected to have a substantial adverse effect on the management or assessment by the University of its personnel - application of s.40(c) of the *Freedom of Information Act 1992* Qld.

Freedom of Information Act 1992 Qld s.30(3)(c), s.40(c), s.41(1), s.44(1), s.46(1)(a), s.46(1)(b), s.78, s.81
Freedom of Information Act 1982 Vic s.33(1), s.35(1)

"B" and Brisbane North Regional Health Authority, Re (1994) 1 QAR 279
Baldwin and Department of Education, Re (1996) 3 QAR 251
Cairns Port Authority and Department of Lands, Re (1994) 1 QAR 663
Dyki and Federal Commission of Taxation, Re (1990) 22 ALD 124
Hawck and Department of Training and Industrial Relations, Re (Information Commissioner Qld, S 150/96, 31 January 1997, unreported)
Love and the University of Melbourne, Re (2000) 16 VAR 251
McCann and Queensland Police Service, Re (1997) 4 QAR 30
Murphy and Queensland Treasury & Ors, Re (1995) 2 QAR 744
Pemberton and The University of Queensland, Re (1994) 2 QAR 293
Shaw and The University of Queensland, Re (1995) 3 QAR 107

DECISION

I decide to vary the decision under review (which is identified in paragraph 3 of my accompanying reasons for decision) by finding that the matter remaining in issue (which is identified in paragraph 8 of my accompanying reasons for decision) is not exempt matter under s.46(1) or s.40(c) of the *Freedom of Information Act 1992* Qld, and the applicant is entitled to obtain access to it under the *Freedom of Information Act 1992* Qld.

Date of decision: 30 March 2001

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F N ALBIETZ
INFORMATION COMMISSIONER

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REASONS FOR DECISION

Background

1. The applicant seeks review of the respondent's decision refusing him access, under the *Freedom of Information Act 1992* Qld (the FOI Act), to certain documents relating to a selection process for an academic appointment. The applicant was an unsuccessful candidate for a position as Lecturer in Environmental Economics in the School of Environmental Studies at Griffith University (the University). By letter dated 30 March 2000, the applicant sought access, under the FOI Act, to "a copy of the application material of the successful candidate, as well as those of documents generated by the selection committee, including but not limited to criteria of assessment and scoring sheets, …".

2. By letter dated 18 April 2000, the University informed the applicant that it had identified three documents (comprising 17 pages in total) as being responsive to the applicant's FOI access application, but that it had decided to refuse access to the documents under s.41(1) and s.46(1)(a) of the FOI Act.

3. By letter dated 12 May 2000, the applicant sought internal review. The University's internal review decision, dated 9 June 2000, was made by the Deputy Vice-Chancellor, Professor W J Lovegrove, who affirmed the initial decision.

4. By letter dated 8 August 2000, the applicant applied to me for review, under Part 5 of the FOI Act, of Deputy Vice-Chancellor Lovegrove's decision.

External review process

5. During this review, the applicant contended that the University had failed to locate all documents responsive to the terms of his FOI access application. The Deputy Information Commissioner caused inquiries to be made of the University in that regard. As a result, a number of statutory declarations were provided by the University confirming that no further

responsive documents existed. On being provided with copies of the statutory declarations, the applicant was prepared to accept that the University held no other documents responsive to the terms of his FOI access application.

6. Copies of the documents to which the applicant had been refused access were obtained and examined. They comprised:

- Appointment Recommendation/Approval Form
- referee reports (2)
- the application submitted by the successful candidate for the advertised position.

7. During the course of this review, the applicant advised that he no longer sought access to the two referee reports, and hence they are no longer in issue in this review. In a letter to the University's solicitors dated 28 November 2000, the Deputy Information Commissioner conveyed his preliminary view that the Appointment Recommendation/Approval Form did not qualify for exemption under s.41(1) of the FOI Act. The Deputy Information Commissioner did, however, express a preliminary view that parts of the document qualified for exemption under s.44(1) of the FOI Act. The University accepted the Deputy Information Commissioner's preliminary view (as did the applicant in respect of the parts qualifying for exemption under s.44(1) of the FOI Act). Accordingly, the applicant has obtained partial access to the Appointment Recommendation/Approval Form, and that document is no longer in issue in this review.

8. Thus, the documents remaining in issue in this review are the application (comprising a curriculum vitae, statement addressing the selection criteria, and covering letter) submitted by the successful candidate for the position referred to in paragraph 1 above (the subject position). The applicant has also indicated that he does not wish to contest the University's claims for exemption in respect of the following personal affairs information contained in the documents in issue: the successful candidate's residential address, telephone and facsimile numbers, and e-mail address; his marital status, nationality, age, and date and place of birth; and the names, position held, telephone and facsimile numbers, and e-mail addresses of nominated referees. Accordingly, the matter remaining in issue in this review comprises the documents identified in the first sentence of this paragraph, minus the information identified in the second sentence of this paragraph.

9. In a letter to the University dated 17 August 2000, the Deputy Information Commissioner discussed the requirements to establish exemption under s.46(1)(a) of the FOI Act and advised that, on the material before him, he was not satisfied of the existence of a binding obligation of confidence requiring the University to refrain from disclosing to the applicant the matter which remains in issue in this review. The Deputy Information Commissioner referred the University to my decisions in *Re Baldwin and Department of Education* (1996) 3 QAR 251 and *Re Hawck and Department of Training and Industrial Relations* (Information Commissioner Qld, S 150/96, 31 January 1997, unreported), and said that he could see no reason for there to be a departure from the approach in those decisions.

10. The University responded to the Deputy Information Commissioner's letter dated 17 August 2000 through a letter from its solicitors dated 15 September 2000. The University maintained its position that the matter in issue qualified for exemption under s.46(1)(a), and also s.40(c), of the FOI Act, and set out written arguments in support of its case. The applicant was provided with a copy of the University's response and attachments, and invited to lodge a written submission in reply, which he did by letter dated 3 October 2000. However, the comments made by the applicant in that letter are not relevant to the issues which remain for determination.

11. By letter dated 23 August 2000, the Deputy Information Commissioner wrote to the successful candidate for the subject position. The Deputy Information Commissioner explained why, on the material before him, he could find nothing to support the University's reliance upon s.46(1)(a) of the FOI Act as a ground for not disclosing the matter in issue to the applicant. The Deputy Information Commissioner also explained that information concerning the personal affairs of the successful candidate, that qualified for exemption under s.44(1) of the FOI Act, would not be disclosed to the applicant. (The Deputy Information Commissioner had forwarded a copy of the matter in issue, on which he had highlighted the information that, in his preliminary view, qualified for exemption under s.44(1) of the FOI Act.) The successful candidate was invited to respond to the letter, and to apply to be a participant in this review (in accordance with s.78 of the FOI Act), if he so wished.

12. The successful candidate did not respond to the Deputy Information Commissioner's letter, or return the telephone messages left on his voicemail by a member of my staff.

13. In making my decision, I have taken into account the following:

- the contents of the matter in issue;
- the initial decision on behalf of the University dated 18 April 2000;
- the application for internal review dated 12 May 2000;
- the internal review decision dated 9 June 2000;
- the application for external review dated 8 August 2000; and
- the University's submissions dated 15 September 2000.

Application of s.46(1)(a) of the FOI Act

14. Section 46(1)(a) of the FOI Act provides:

> ***46.(1)*** *Matter is exempt if—*
>
> *(a) its disclosure would found an action for breach of confidence;*
>
> …

15. I discussed the requirements to establish exemption under s.46(1)(a) in *Re "B" and Brisbane North Regional Health Authority* (1994) 1 QAR 279. The test for exemption is to be evaluated by reference to a hypothetical legal action in which there is a clearly identifiable plaintiff, possessed of appropriate standing to bring a suit to enforce an obligation of confidence said to be owed to that plaintiff, in respect of information in the possession or control of the agency faced with an application, under s.25 of the FOI Act, for access to the information in issue. I am satisfied that the successful candidate for the subject position would have the requisite standing in respect of the matter remaining in issue.

16. In *Re "B"*, I indicated that there are five cumulative criteria that must be satisfied in order to establish a case for protection in equity of allegedly confidential information:

(a) it must be possible to specifically identify the information in issue, in order to establish that it is secret, rather than generally available information (see *Re "B"* at pp.303-304, paragraphs 60-63);

(b) the information in issue must possess "the necessary quality of confidence"; i.e., the information must not be trivial or useless information, and it must possess a degree of secrecy sufficient for it to be the subject of an obligation of conscience, arising from the circumstances in or through which the information was communicated or obtained (see *Re "B"* at pp.304-310, paragraphs 64-75);

(c) the information in issue must have been communicated in such circumstances as to fix the recipient with an equitable obligation of conscience not to use the confidential information in a way that is not authorised by the confider of it (see *Re "B"* at pp.311-322, paragraphs 76-102);

(d) it must be established that disclosure to the applicant for access under the FOI Act would constitute a misuse, or unauthorised use, of the confidential information in issue (see *Re "B"* at pp.322-324, paragraphs 103-106); and

(e) it must be established that detriment is likely to be occasioned to the original confider of the confidential information in issue if that information were to be disclosed (see *Re "B"* at pp.325-330, paragraphs 107-118).

17. In his letter to the University dated 17 August 2000, the Deputy Information Commissioner noted that the University had not sought to address the above five criteria in either its initial or internal review decisions. While the University had stated, in its decision dated 18 April 2000, that: "The documents were prepared and provided to the University in confidence and on the basis that the documents would not be released to any other person", the Deputy Information Commissioner informed the University that, having viewed the matter in issue, he could find nothing on the documents to support this contention. Neither the curriculum vitae (CV) and response to the selection criteria submitted by the successful candidate, nor his covering letter submitting his application, contained any reference to the documents being provided in confidence. The Deputy Information Commissioner stated that he had also viewed the material to which potential job applicants to the University are referred on the University's website. In addition to the advertisement for the relevant position, applicants for employment are referred to the Position Classification Standard, the Summary Conditions of Employment, and Faculty/Office Information. The Deputy Information Commissioner could find no statement in the website material that job applications would be treated in confidence by the University.

18. Accordingly, on the material available to him, the Deputy Information Commissioner expressed the preliminary view that he was not satisfied of the existence of a binding obligation of confidence which required the University to refrain from disclosing the job application of the successful candidate to an applicant for access under the FOI Act. The Deputy Information Commissioner invited the University to lodge evidence and/or written submissions in support of a case for exemption.

19. The University responded by lodging written submissions (made through its solicitors) dated 15 September 2000. The written submission had three attachments, apparently intended as evidentiary material - a Draft Recruitment and Selection Policy dated 24 March 2000, a Draft Recruitment and Selection Policy dated 16 November 1999, and an undated document titled "Confidentiality and Proceedings of Selection Committees". However, it was established in the course of resolving the 'sufficiency of search' issues referred to in paragraph 5 above that the Draft Recruitment and Selection Policies had not been approved at the time of the relevant selection process for the subject position. The highest that their relevance could be put (see *per* letter from the University's solicitors dated 8 November 2000) was that: "The Draft Policy

incorporates most of the practices previously applied in recruitment and selection. These practices had not been documented before." Nevertheless, it is necessary for me to address the case put forward by the University for the application of s.46(1)(a).

20. Criterion (a) set out in paragraph 16 above is satisfied, since the information in issue can be specifically identified. As to criterion (b), however, I am not satisfied that all of it is information of a confidential nature. In order to qualify for protection in an action for breach of confidence, the information in issue must be objectively confidential in character, and not merely treated as such by the supplier and recipient of the information. I am not satisfied that information about the successful candidate's past employment and involvement in running a business operation, nor the list of his publications, comprise information that has the necessary quality of confidence.

21. As to criterion (c), I agree with what was said by the Deputy Information Commissioner on p.2 of his letter to the University dated 17 August 2000 (see paragraph 17 above). There is no evidence that an express assurance was sought by, or given to, the successful candidate for the subject position that the documents remaining in issue would be treated in confidence by the University. However, as was correctly pointed out in the written submissions lodged on behalf of the University, that is not necessarily an end of the matter. It is not necessary for there to have been an express undertaking not to disclose information. Such an obligation can be inferred from an examination of the whole of the relevant circumstances attending the communication of the alleged confidential information: see *Re "B"* at p.318, paragraphs 89-90 and the cases there cited.

22. Given the onus which it carries under s.81 of the FOI Act, it is incumbent on the University to satisfy me of the existence of material facts and circumstances that would support a finding that, upon the communication to it of the matter in issue, the University became fixed with an equitable obligation of conscience, binding it to treat those documents in confidence, which obligation still subsists. However, the University has not provided any evidence that the successful candidate understood or expected that the documents in issue would be treated in confidence. It has provided some evidence to the effect that it was the University's practice to treat documents of this kind in confidence, but no evidence that the University's practice in that regard was conveyed to, or was otherwise understood and relied upon by, the successful candidate. By letter dated 23 August 2000, the successful candidate was informed of this review, alerted to this issue, and invited to participate in the review, but did not respond.

23. In the absence of relevant evidence in this regard, the University has submitted that "… given the restricted basis upon which the application was made (i.e., for the purposes of a job application), and the knowledge of this by the University, a clearly enforceable obligation of conscience on the University arises not to use the confidential information in a way that is not authorised by the successful applicant." This appears to be an attempt to rely on the 'limited purpose' test referred to in *Re "B"* at pp.312-316, paragraphs 80-83; and p.317, paragraph 87. I am not satisfied that this is a sufficient basis to support a finding that the University was fixed with an equitable obligation of confidence in respect of the matter in issue, given the absence of any evidence of the kind referred to in paragraph 22 above, and particularly given the obligations of the University as a public authority with respect to accountability for adherence to merit and equity principles in recruitment and selection procedures.

24. I note that in *Re Love and the University of Melbourne* (2000) 16 VAR 251, the respondent University voluntarily disclosed to an unsuccessful candidate for academic positions the CV's of the successful candidates (see at p.254, paragraph 11). The respondent University succeeded in an argument that the CV's of unsuccessful candidates qualified for exemption under both confidentiality and privacy exemptions (s.35(1) and s.33(1), respectively, of the *Freedom of Information Act 1982* Vic), although the confidentiality exemption provision relied upon there did not turn on the same test contained in s.46(1)(a) of the Queensland FOI Act, i.e., whether disclosure would found an action for breach of confidence.

25. I have consistently held that CV's and related material lodged by unsuccessful applicants for public sector employment ordinarily qualify for exemption under s.44(1) of the FOI Act: see *Re Baldwin*; *Re Hawck*. There are sound reasons why privacy considerations should attach to information of that kind, and why there is ordinarily an expectation that the identity of an applicant for employment would not be disclosed unless and until he or she was appointed to the advertised vacancy, for example:

- unsuccessful applicants would frequently not want their current employers, or even other prospective employers, to know that they had applied for other positions, nor indeed that they had applied unsuccessfully; and
- the prospect of disclosure in such circumstances may inhibit people from applying, and hence reduce the calibre of the field available for selection.

26. However, these considerations cease to be relevant to the successful applicant, once his/her appointment becomes information that is effectively in the public domain. Thus, Deputy President Gerber of the Commonwealth Administrative Appeals Tribunal held, in *Re Dyki and Federal Commission of Taxation* (1990) 22 ALD 124 (at pp.134-135):

> *...The two successful candidates have since been appointed to the advertised positions and their new status has entered the public domain. I am satisfied that it is both in the public interest and reasonable that promotions must not only be just, but seen to be just. It follows that those applications, having achieved their aim, are opened up to public scrutiny and their authors' claim to promotion is henceforth in the public domain. It follows that the applicants' claim to privacy must be deemed to have been abandoned, if only because it is public knowledge that they applied for promotions and were successful. Thus, the job applications for the two successful candidates have lost whatever entitlement to anonymity they had (subject to deletion of matters adjudged to be purely personal). ...*

27. It is arguable that the common expectation of confidential treatment of the identities of unsuccessful applicants for public sector employment might form a basis for establishing exemption under s.46(1)(a) or s.46(1)(b), at least in respect of information which, if disclosed, would enable identification of the unsuccessful applicant. However, in *Re Baldwin* at p.262 (paragraph 32), I expressed some reservations as to the applicability of s.46(1), having regard to the respondent agency's obligations with respect to accountability:

> *32. Moreover, I note from p.4 of Mr Parsons' reasons for decision that applicants for the position of Director - Finance were instructed to forward their applications marked "Private and Confidential", which I interpret as an explicit indication by the Department that it would honour the understanding which ordinarily attends such selection processes, i.e., that*

the Department would ensure that there was no unnecessary disclosure of the identities of the applicants for employment. (I should state that I do not regard that as involving a legally binding promise to treat every part of a job application in confidence. Any information which ought to be disclosed in the interests of accountability (for example, explaining to an applicant who was not shortlisted why the shortlisted candidates were considered more suitable in terms of the selection criteria) should, in my opinion, be available for disclosure, provided the anonymity of the unsuccessful candidates is not compromised without their consent or without other good cause).

28. In respect of the application of s.46(1)(a) to the CV and other supporting material submitted by the successful candidate for a public sector position, I made the following observations in *Re Hawck*:

> *31. In any event, I do not consider that any understanding of confidentiality which would be likely to be implied in such circumstances would extend beyond the time that the successful applicant was appointed to the position. In determining whether the Department would be bound by an obligation of confidence not to disclose a job application, it will be necessary to consider all relevant factors, one of which will be the uses to which the Department, in the exercise of its functions, must be expected to put the information.*
>
> *32. Until such time as a decision on appointment is made (and even after that time for unsuccessful applicants) the uses to which an application are likely to be put are generally limited to the selection process. However, once an appointment is made, the application of the successful applicant will form part of the ongoing personnel records of the agency and must be available for the agency to perform its functions, including its accountability functions in relation to the appointment of the successful applicant. In such circumstances it seems likely that if equity were to impose an obligation of confidence on the Department prior to an appointment being made, that obligation would only extend, in the case of the successful applicant for the position, until such time as he or she was appointed to the position.*

29. The written submissions and other material put forward on behalf of the University have not persuaded me that there is any warrant to depart from the principles I have applied in prior cases, as indicated above.

30. I note that the Draft Recruitment and Selection Policies provided to me by the University, which (although not in force at the material time) apparently reflect the practices applied in recruitment and selection at the time of the selection process for the subject position, contain key principles which emphasise equity and merit-based selection, and clearly state that recruitment and selection processes will "balance the needs for confidentiality and privacy with the need for transparency of processes".

31. I also note that Attachment 3 to the University's written submission dated 15 September 2000, contemplates that unsuccessful candidates should, on request, be given feedback that reflects the decisions of the Selection Committee. It adds the rider that feedback must not include details of other applications. If that rider was intended to ensure that the identities of other unsuccessful candidates are not disclosed, it is quite appropriate. While it may be possible to give feedback without comparing the basis of rating of an unsuccessful candidate against the selection criteria, with the basis of rating of the successful candidate, I consider that such a restriction would

impair the effectiveness of the exercise in many instances. In my experience, shortlisted candidates frequently satisfy all relevant selection criteria, but one candidate is ultimately assessed as satisfying one or more key selection criteria to a higher degree than other candidates. For my part, I would have thought that for feedback to unsuccessful candidates to be meaningful and effective, it would frequently necessitate comparison of the areas in which, and the basis upon which, the successful candidate was assessed as being superior to the unsuccessful candidate.

32. I consider that, if an obligation of confidence were to be fixed upon the University by reference to the common understanding that identifying information in respect of applicants would be treated in confidence, the obligation would be subject to implicit conditions or exceptions to the effect that, if an applicant is successful and accepts appointment to a position, the material which he or she submitted in support of his/her application may be disclosed to the extent necessary to ensure transparency of the selection decision, effective and meaningful post-selection feedback to unsuccessful applicants, and accountability generally for adherence to merit and equity principles in job selection processes. I consider that disclosure of information recording the educational qualifications, training, and employment or business experience of successful candidates (plus relevant job-specific information, e.g., details of research and publications for an academic appointment), and their statements addressing the selection criteria, would be in keeping with the implicit conditions/exceptions I have explained above.

33. (I note that in previous cases involving documents of this kind submitted by successful applicants for public sector employment, the authors have asserted copyright in their documents. This is not a ground for exemption under the FOI Act, but, if the Department accepts that the author has copyright in the documents, it may permit access under the FOI Act by way of inspection only: see s.30(3)(c) of the FOI Act.)

34. I am not satisfied that the matter remaining in issue was communicated in such circumstances as to fix the University with an equitable obligation of confidence in respect of it, and I find that the matter remaining in issue does not qualify for exemption under s.46(1)(a) of the FOI Act.

Application of s.40(c) of the FOI Act

35. Section 40(c) of the FOI Act provides:

> ***40.*** *Matter is exempt matter if its disclosure could reasonably be expected to—*
>
> ...
>
> > *(c) have a substantial adverse effect on the management or assessment by an agency of the agency's personnel; ...*
>
> *unless its disclosure would, on balance, be in the public interest.*

36. I considered the application of s.40(c) of the FOI Act in *Re Pemberton and The University of Queensland* (1994) 2 QAR 293, *Re Murphy and Queensland Treasury & Ors* (1995) 2 QAR 744, *Re Shaw and The University of Queensland* (1995) 3 QAR 107, and *Re McCann and Queensland Police Service* (1997) 4 QAR 30. The focus of this exemption provision is on the management or assessment by an agency of the agency's personnel. If I am satisfied that any adverse effects could reasonably be expected to follow from disclosure of the matter in issue, I must then determine whether those adverse effects, either individually or in aggregate, constitute a substantial adverse effect on the management or assessment by the agency of its personnel. For

reasons explained in *Re Cairns Port Authority and Department of Lands* (1994) 1 QAR 663 (at pp.724-725, paragraphs 148-150), I consider that, where the Queensland Parliament has employed the phrase "substantial adverse effect" in s.40(c) of the FOI Act, it must have intended the adjective "substantial" to be used in the sense of grave, weighty, significant or serious.

37. In *Re "B"* at pp.339-341 (paragraphs 154-160), I analysed the meaning of the phrase "*could reasonably be expected to*", by reference to relevant Federal Court decisions interpreting the identical phrase as used in exemption provisions of the *Freedom of Information Act 1982* Cth. In particular, I said in *Re "B"* (at pp.340-341, paragraph 160):

> *The 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.*

The ordinary meaning of the word "expect" which is appropriate to its context in the phrase "could reasonably be expected to" accords with these dictionary meanings: "to regard as probable or likely" (Collins English Dictionary, Third Aust. ed); "regard as likely to happen; anticipate the occurrence ... of" (Macquarie Concise Dictionary, 3rd Rev. ed 1988); "Regard as ... likely to happen; ... Believe that it will prove to be the case that ..." (The New Shorter Oxford English Dictionary, 1993).

38. If I find that disclosure of the whole or any part of the matter in issue could reasonably be expected to have a substantial adverse effect on the management or assessment by the agency of its personnel, I must then consider whether disclosure of that matter would nevertheless, on balance, be in the public interest.

39. The written submissions on behalf of the University argue that disclosure of the matter in issue would have a substantial adverse effect on the management or assessment of personnel for the following reasons:

i) the morale of participants would be damaged;
ii) criticism or adverse comments, while constructive when used within the system, could undermine the position of academics in their relationship with students and other academics;
iii) candour and frankness of referees and advisory selection panels could be inhibited;
iv) an unwillingness on the part of other academics to provide referee reports and to serve on selection panels could result;
v) undue stress on participants could ensue; and
vi) it would promote plagiarism and dissatisfaction with the selection process.

40. The University's submissions assert that "(t)he uncontrolled publication of successful job applicants' applications could have most disruptive consequences. Such consequences would be likely to lead to a breakdown in the recruitment process thereby adversely affecting to a serious degree the capacity of the University to ensure that the most appropriate person is appointed."

41. Points (ii), (iii) and (iv) set out in paragraph 39 above, have no substance (or indeed relevance) when applied to the actual matter remaining in issue (identified in paragraph 8 above). They appear to relate to referee reports and comments by selection panels, which is not the kind of information that remains in issue.

42. To my mind, there is an issue as to whether the words of s.40(c) are capable of extending to documents concerning a recruitment process, insofar as the documents relate to, or affect, only applicants for employment from outside the relevant agency. The scope of s.40(c) may well be confined to the management or assessment of existing personnel of the agency, rather than potential personnel. The words of s.40(c) are capable of extending to selection processes involving promotion or transfer of existing personnel, but probably not to the management of a recruitment process involving (nor to the assessment of) candidates for employment who are not already part of the agency's personnel.

43. I need not express a concluded view on that issue in this case, since there are indications in the matter in issue that the successful candidate was a part-time or casual employee of the University, and because I am not satisfied, in any event, that disclosure of the matter in issue could reasonably be expected to have a substantial adverse effect.

44. In relation to points (i) and (v) from paragraph 39 above, I am not satisfied that there is a reasonable basis for expecting that disclosure of the matter in issue could damage the morale of participants or cause them undue stress. I have explained that identifying information in respect of unsuccessful applicants for employment will qualify for exemption from disclosure under the FOI Act. I do not accept that the prospect that a successful applicant for employment might have his/her qualifications, experience, and case for satisfaction of the key selection criteria, made available for scrutiny on request, could reasonably be expected to damage the morale of participants or cause them undue stress, let alone to a level that would qualify as a substantial adverse effect.

45. Similarly, I am not satisfied that disclosure of the matter in issue could reasonably be expected to promote plagiarism and dissatisfaction with the selection process. It is possible (even if access is to be made available by way of inspection only - *cf.* paragraph 33 above) that some people could seek to adapt the style, or level of detail, of applications submitted by successful candidates, but it would make no sense to plagiarize the details of another person's educational qualifications, employment experience, research achievement or learned publications, nor indeed another person's precise claims as to how he/she satisfies key selection criteria.

46. I am not satisfied that disclosure of the matter remaining in issue could reasonably be expected to have a substantial adverse effect on the management or assessment by the University of its personnel.

47. In view of that finding, it is not necessary to consider the application of the public interest balancing test incorporated in s.40(c). However, I note that there are public interest considerations which favour disclosure of the matter in issue to enhance the accountability of the University for adherence to merit and equity principles in job selection processes. I also note that, in cases involving selection for promotion from a pool of existing agency personnel, disclosure which permits unsuccessful candidates to assess (by comparison with successful candidates) how their educational qualifications, work experience and work performance need to improve to be successful in obtaining future promotions, would arguably benefit the management by an agency of its personnel, or would (on balance) be in the public interest having regard to considerations of the kind addressed in *Re Pemberton* at pp.379-380, paragraphs 197-198.

48. I find that the matter in issue does not qualify for exemption from disclosure under s.40(c) of the FOI Act.

Conclusion

49. For the reasons set out above, I decide to vary the decision under review (being the decision made on behalf of the University by Deputy Vice-Chancellor W J Lovegrove dated 9 June 2000) by finding that the matter remaining in issue is not exempt matter under s.46(1) or s.40(c) of the FOI Act, and the applicant is entitled to obtain access to it under the FOI Act.

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F N ALBIETZ
INFORMATION COMMISSIONER