

OFFICE OF THE INFORMATION COMMISSIONER (QLD)

Decision No. 99008
Application S 186/98

Participants:

KEN PEARCE
Applicant

QUEENSLAND RURAL ADJUSTMENT AUTHORITY
Respondent

VARIOUS LANDHOLDERS
Third Parties

DECISION AND REASONS FOR DECISION

FREEDOM OF INFORMATION - refusal of access - access application framed as a request for items of information, rather than as a request for access to documents - discussion of limited circumstances in which this is permissible under the terms of the *Freedom of Information Act 1992 Qld* - consideration of s.30(1)(e) of the *Freedom of Information Act 1992 Qld*.

FREEDOM OF INFORMATION - refusal of access - matter in issue comprising trading names and addresses of landholders who successfully applied for financial assistance under a government scheme, together with the dollar amount of funding each received - whether matter in issue can properly be characterised as information concerning the personal affairs of a person other than the applicant - whether disclosure would, on balance, be in the public interest - application of s.44(1) of the *Freedom of Information Act 1992 Qld*.

FREEDOM OF INFORMATION - refusal of access - whether matter in issue comprises information concerning the business, commercial or financial affairs of the landholders - whether disclosure could reasonably be expected to prejudice the future supply of like information to government - whether disclosure could reasonably be expected to have an adverse effect on the business, commercial or financial affairs of the landholders - application of s.45(1)(c) of the *Freedom of Information Act 1992 Qld*.

FREEDOM OF INFORMATION - refusal of access - existence and scope of any obligation or understanding of confidence binding the respondent not to disclose the matter in issue - whether the matter in issue comprises exempt matter under s.46(1)(a) or s.46(1)(b) of the *Freedom of Information Act 1992 Qld*.

Freedom of Information Act 1992 Qld s.14, s.21, s.25, s.25(2), s.25(4), s.30(1)(e), s.44(1), s.45(1)(c), s.46(1)(a), s.46(1)(b), s.78

Freedom of Information Act 1982 Cth

"B" and Brisbane North Regional Health Authority, Re (1994) 1 QAR 279

Cannon and Australian Quality Egg Farms Limited, Re (1994) 1 QAR 491

Colakovski v Australian Telecommunications Corporation (1991) 100 ALR 111

Commissioner of Police v the District Court of New South Wales and Perrin (1993) 31 NSWLR 606

The Director-General, Department of Families, Youth and Community Care and Department of Education and Ors, Re (1997) 3 QAR 459

Hearl and Mulgrave Shire Council, Re (1994) 1 QAR 557

State of Queensland v Albietz [1996] 1 Qd R 215

Stewart and Department of Transport, Re (1993) 1 QAR 227

Smith Kline and French Laboratories (Aust) Limited and Ors v Secretary, Department of Community Services and Health (1991) 28 FCR 291

DECISION

I set aside the decision under review (being the decision made on behalf of the respondent by Mr A N J Ford on 9 November 1998). In substitution for it, I decide that the matter in issue (described in paragraph 11 of my accompanying reasons for decision) does not qualify for exemption under the *Freedom of Information Act 1992* Qld, except for the following information which I find is exempt matter under s.44(1) of the *Freedom of Information Act 1992* Qld—

- the addresses of the homesteads/properties (but not the postcodes which form part of those addresses) appearing adjacent to the following file reference numbers recorded in the document in issue: 20131; 22256; 34626; 36406; 36631; 38285; 39059; 39321; 39703; and 50251.

Date of decision: 4 November 1999

.....
F N ALBIETZ
INFORMATION COMMISSIONER

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REASONS FOR DECISION

Background

1. The applicant seeks review of a decision by the Queensland Rural Adjustment Authority (the Authority) to refuse him access under the *Freedom of Information Act 1992 Qld* (the FOI Act) to the names and addresses of recipients of financial assistance under the Water Infrastructure Development Incentive Scheme (the Scheme) administered by the Authority, and the dollar amount of financial assistance each one received. The purpose of the Scheme is to provide landholders with financial assistance "to encourage investment in new surface water storages by landholders or occupiers of land for irrigation in relation to agricultural purposes that are both commercially and ecologically sustainable". The Scheme (which was announced in October 1997 as a pilot scheme to operate for two years) provides for a subsidy equivalent to 22.5% (up to a ceiling of \$150,000) of the cost of an approved water storage, with the subsidy payable in 3 equal annual instalments.
2. The applicant lodged with the Authority an FOI access application dated 20 September 1998, in the following terms:

I am seeking:

1. *the names and addresses of applicants for:*
 - a) *financial assistance for water infrastructure development under the Development Incentive Scheme; and*

b) *concessional loans for Qld rural industry under the Primary Industry Productivity Enhancement Scheme (PIPES); and*

2. *the names of applicants who were successful and details of the assistance provided.*

I am seeking details on all applicants since the schemes commenced.

Please separate information provided under the two schemes.

3. By letter dated 30 October 1998, the Authority's General Manager, Mr Colin Holden, informed the applicant of his decision that the information sought was exempt from disclosure to the applicant under s.44(1), s.45(1)(c) and/or s.46(1) of the FOI Act. By letter dated 3 November 1998, the applicant sought internal review of Mr Holden's decision. The internal review was conducted by the Authority's Chief Executive Officer, Mr A N J Ford. By letter to the applicant dated 9 November 1998, Mr Ford advised that he had decided to affirm Mr Holden's decision. By letter dated 18 November 1998, the applicant applied to me for review, under Part 5 of the FOI Act, of Mr Ford's decision.

Nature of the matter in issue

4. The applicant's FOI access application (see paragraph 2 above) is framed as a request for items of information, rather than as a request for access to documents. In *Re Hearl and Mulgrave Shire Council* (1994) 1 QAR 557 (at pp.567, paragraph 30), I said:

30. The FOI Act is not an Act which gives persons a legally enforceable right to obtain answers to questions asked of government agencies, or even to have government agencies extract answers to questions from documents in their possession. The legally enforceable right conferred by s.21 of the FOI Act is a right to be given access under the Act, and subject to the Act, to documents of an agency and official documents of a Minister. ...

Section 25(1) of the FOI Act makes it clear that a person applies to an agency or Minister for access to a document of the agency or an official document of the Minister. Section 25(2) makes it clear that the application for access must provide such information concerning the document as is reasonably necessary to enable a responsible officer of the agency or the Minister to identify the document.

5. In paragraph 31 of *Re Hearl*, I indicated that I did not wish to discourage agencies from providing answers to questions asked of them, or extracting answers to questions from documents in their possession, if they were prepared to do so outside of the framework of the FOI Act (as contemplated by the terms of s.14 of the FOI Act). I also suggested (in paragraph 32 of *Re Hearl*) that an appropriate approach to the interpretation of an FOI access application framed as a series of questions, or requests for items of information, would be to read it as a request for access to documents containing the information requested. (I note, however, that in the present case, a solicitor acting for the Authority suggested that there may be as many as 50,000 folios on which items of information covered by the terms of the applicant's FOI access application would appear - presumably most of them containing the names and/or addresses of applicants for financial assistance under the two schemes specified in the applicant's FOI access application.) However, pursuant to

s.25(2) of the FOI Act (and assuming that s.25(4) of the FOI Act had first been complied with), an agency would be entitled to refuse to deal with an FOI access application that did not provide such information concerning requested documents as was reasonably necessary to enable a responsible officer of the agency to identify the documents.

6. The ordinary and natural meaning of the words used by the legislature in s.21 and s.25 of the FOI Act makes clear that the right of access conferred by the FOI Act is not a right of access to information *per se*, but a right of access to information contained in the form of documents which exist in the possession or control of a particular agency or Minister, at the time that a valid access application under s.25 of the FOI Act is lodged with that agency or Minister. The natural corollary to this is that an agency or Minister is not obliged by the terms of the FOI Act to create a new document in order to provide information requested by an access applicant - an agency or Minister is only obliged to locate existing documents in its possession or control, which fall within the terms of a valid access application under s.25 of the FOI Act (and to make the decisions, in respect of any documents thus located, that are required under the provisions of the FOI Act).
7. There is only one exception to that general statement of principle to be found in the FOI Act. It is the one provided for in s.30(1)(e) of the FOI Act, which is, in turn, subject to a significant qualification. Section 30(1)(e) of the FOI Act provides:

30.(1) *Access to a document may be given to a person in one or more of the following forms—*

...

(e) *if—*

(i) *the application relates to information that is not contained in a written document held by the agency; and*

(ii) *the agency could create a written document containing the information using equipment that is usually available to it for retrieving or collating stored information;*

providing a written document so created.

8. Section 30(1)(e)(i) and s.30(1)(e)(ii) set out the two pre-conditions which, if satisfied, will oblige an agency, at the request of an access applicant, to create a document in order to provide information specified in an FOI access application. Firstly, s.30(1)(e) only applies when the access application relates to information that is not contained in a written document held by the agency. The most obvious example of this is the storage of information in a computer database.
9. Secondly, s.30(1)(e)(ii) requires an examination, in the particular circumstances of a given case, of a factual issue as to whether the relevant agency could create a written document, containing the information requested in the FOI access application, using equipment that is usually available to it for retrieving or collating stored information. The term "usually available" imposes a significant qualification on the entitlement of an FOI access applicant to seek specific information from a computer database or other repository of stored information. It means, in effect, that it must be possible to retrieve or collate the information requested by an FOI access applicant using equipment (including computer programs or software) already in place, or otherwise usually available, to undertake the

performance of the agency's functions. In other words, s.30(1)(e) imposes no requirement on an agency to obtain additional equipment or re-program existing equipment, or (for example) write a specific program to enable a database to be interrogated, in order to respond to an FOI access application.

10. In the present case, after negotiation with the applicant and the Authority, the applicant decided to withdraw paragraph (b) of his FOI access application (i.e., he no longer sought information in respect of the Primary Industry Productivity Enhancement Scheme), and agreed to confine his application to the names and addresses of successful applicants for financial assistance under the Scheme, and the dollar amount of financial assistance each received. The Authority agreed to prepare a computer-generated document containing (on one page) the items of information sought by the applicant. There was no single document already in existence, at the time of lodgment of the applicant's FOI access application, which contained all of the information sought by the applicant, and the agreement reached with the participants was a sensible alternative to the prospect of dealing with a great many documents containing (in multiple places) particular items of information sought by the applicant.
11. The computer-generated document contains the Authority's file reference number for each of the successful applicants under the Scheme, together with the trading name and address of each successful applicant, and the amount of financial assistance each received. During the course of my review, the Authority withdrew its claim for exemption in respect of the file reference numbers, and the applicant was given access to that information (which is no longer in issue in this review). It should also be noted that the matter in issue as prepared by the Authority contains the trading name and address of one entity which withdrew its application for assistance under the Scheme. That information does not fall within the refined terms of the applicant's FOI access application, and therefore is not in issue in this review. The review has proceeded on the basis of considering exemption claims made in respect of the remaining items of information contained in the computer-generated document (hereinafter referred to as "the matter in issue").

External review process

12. In accordance with s.78 of the FOI Act, I consulted the various third parties referred to in the matter in issue, in order to advise those parties of my review, and to ascertain whether or not they objected to disclosure of the items of information in issue which concerned them. If they objected to disclosure, the third parties were invited to apply to become participants in my review. Of the 14 third parties with whom I consulted, 12 advised that they objected to disclosure to the applicant of the items of information in issue which concerned them. Of those 12 parties, four applied for, and were granted, status as participants in this review. One third party advised that, while it objected to the disclosure of the amount of financial assistance it received, it did not object to disclosure to the applicant of its trading name and address. Consequently, the Authority withdrew its claim for exemption in relation to that trading name and address, and the applicant was given access to it. The remaining third party did not respond to my consultation letter.
13. On 31 March 1999, I wrote to the Authority to communicate my preliminary view that, with the exception of the residential addresses of some of the third parties (i.e., those addresses which disclosed the name and location of a third party's homestead/property, rather than simply a post office box address), the matter in issue did not qualify for exemption under s.44(1), s.45(1)(c) or s.46(1) of the FOI Act. In the event that it did not accept my

preliminary view, the Authority was invited to lodge written submissions and/or evidence in support of its case for exemption. I provided each of the third party participants with a copy of my letter to the Authority dated 31 March 1999, and I also invited them, in the event that they did not accept my preliminary view, to lodge written submissions and/or evidence in support of their respective cases for exemption.

14. By letter dated 16 April 1999, the Authority's solicitors, Hunt & Hunt, advised that the Authority did not accept my preliminary view and, on 23 April 1999, lodged written submissions in support of the Authority's case for exemption of the matter in issue. Two of the third party participants also lodged written submissions in support of their claims for exemption.
15. The applicant was invited to respond to the submissions lodged by the Authority and the two third party participants. He did so, and his submissions were in turn provided to the Authority and the third party participants for response. The Authority lodged brief submissions in reply (a copy of which was provided to the applicant). No further submissions in reply were received from any of the participants.
16. Accordingly, in addition to the matter in issue itself, I have taken into account the following material in making my decision:
 - the Authority's initial decision dated 30 October 1998, and internal review decision dated 9 November 1998;
 - the applicant's application for external review dated 18 November 1998;
 - written submissions on behalf of the Authority dated 23 April 1999 and 9 June 1999;
 - written submissions on behalf of the applicant dated 20 May 1999; and
 - written submissions on behalf of two of the third party participants dated, respectively, 29 April 1999 and 11 May 1999.

Application of s.44(1) of the FOI Act

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

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

18. In applying s.44(1) of the FOI Act, it is necessary to first consider whether disclosure of the matter in issue would disclose information that is properly to be characterised as information concerning the personal affairs of a person. If that requirement is satisfied, a *prima facie* public interest favouring non-disclosure is established, and the matter in issue will be exempt, unless there exist public interest considerations favouring disclosure which outweigh all identifiable public interest considerations favouring non-disclosure, so as to warrant a finding that disclosure of the matter in issue would, on balance, be in the public interest.
19. In my reasons for decision in *Re Stewart and Department of Transport* (1993) 1 QAR 227, I identified the various provisions of the FOI Act which employ the term “personal affairs” and discussed in detail the meaning of the phrase “personal affairs of a person”, and relevant variations thereof, in the FOI Act (see pp.256-267, paragraphs 79-114, of *Re Stewart*). In particular, I said that information concerns the “personal affairs of a person” if it concerns the private aspects of a person’s life, and that, while there may be a substantial grey area

within the ambit of the phrase “personal affairs”, that phrase has a well-accepted core meaning which includes:

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

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

20. The Authority and the third parties claim that all of the matter in issue qualifies for exemption under s.44(1) of the FOI Act, on the basis that all of the matter in issue is properly to be characterised as information concerning the personal affairs of the third parties. The matter in issue consists of the trading name and address of, and the dollar amount of financial assistance under the Scheme granted to, each third party. As regards the trading names, four of the third parties are corporations (and, in two cases, the names of the directors of the corporation are also given); one of the third parties is identified by reference to the name of a trust (with the names of individuals associated with the trust also given); and the remaining eight third parties are identified by reference to their individual names. As regards the addresses which are in issue, nine addresses consist of the name of a property/homestead, the relevant town and its postcode; two addresses consist of the name of a property/homestead, a mail service number, the relevant town and its postcode; and there are two post office box addresses. The approved amount of government funding received by each of the third parties (or more precisely, the amount of the first of the three equal annual instalments by which the total grant is paid) appears as a dollar amount beside each name.

Names of the third parties

21. A person's name, in isolation, does not ordinarily constitute information concerning that person's personal affairs. In *Commissioner of Police v the District Court of New South Wales and Perrin* (1993) 31 NSWLR 606, Mahoney JA said (as p.638):

A person's name would not, I think, ordinarily be, as such, part of his personal affairs. It is that by which, not merely privately but generally, he is known.

Likewise, in *State of Queensland v Albietz* [1996] 1 Qd R 215, de Jersey J said (at p.221):

I do not think that the name by which a person is known ordinarily forms part of that person's "personal affairs".

22. However, a person's name almost invariably appears in a document in the context of surrounding information. It is the characterisation of a person's name, in the context of the information which surrounds it, which may give rise to difficulties. Thus, Lockhart J, sitting as a member of a Full Court of the Federal Court of Australia, in *Colakovski v Australian Telecommunications Corporation* (1991) 100 ALR 111, said (at page 119):

There is a real question as to whether the name and telephone number can answer the description of 'information relating to the personal affairs' of that

person under s.41(1). Viewed as an abstract conception I would be inclined to the view that it could not, but such questions are not considered by Courts in the abstract.

23. Thus, while disclosure of a person's name, in the abstract, would not ordinarily be a disclosure of information concerning that person's personal affairs, disclosure of that name in the context in which it appears may disclose information concerning the person's personal affairs (or it may not - there is always a question of the proper characterisation of the matter in issue, in its context, which must be addressed in each particular case).
24. For the reasons explained in *Re Stewart* at pp.237-239 (paragraphs 20-27), and in the Federal Court judgments there cited, I am satisfied that -
- (a) the phrase "personal affairs of a person" (and its relevant variations in the FOI Act) does not include the business or professional affairs of a person; and
 - (b) the word "person" appearing in conjunction with the phrase "personal affairs" refers only to natural persons, not to corporations, and that corporations are not capable of having personal affairs for the purposes of the FOI Act.
25. It follows from (b) above that, in relation to those third parties which are corporations, I am satisfied (for the reasons set out in paragraph 21 of *Re Stewart*) that the matter in issue which comprises the names of corporations cannot properly be characterised as information concerning the "personal affairs of a person". Accordingly, I find that that matter does not qualify for exemption under s.44(1) of the FOI Act.
26. In relation to those third parties who are identified by reference to their individual names, the Authority made the following arguments (in its submission dated 23 April 1999):

The preliminary view that those applicants who applied in their own names did not receive assistance "in their private and personal capacities" is wrong. It is, moreover, based upon a falsely made distinction between the capacities in which assistance may have been received. There was no other legal capacity other than a personal capacity in which assistance was received by those applicants.

*Once matter is categorised as matter concerning personal affairs (which can include matter relating to "family relationships" and "financial obligations"), there is no proper basis for further distinguishing between the "personal" and "business" capacities in which it is provided or received. To do so is to confuse the legislative distinction between matter concerning personal affairs and matter concerning business affairs and to ignore the distinction referred to in paragraph 26 of *Re Stewart*.*

...

The information sought as to name and address is clearly matter properly characterised as "personal" matter and properly to be exempted under section 44(1).

27. In written submissions dated 29 April 1999, one of the third party participants stated:

Arguing over whether names or addresses should be released is simply "splitting hairs", the issue is fundamental....The Freedom of Information Act was instigated to safeguard the rights of the individual, in this case it is being used to interfere with the right to privacy of the very individuals it [purports] to protect. Should this information finally be released, there will be a call from both sides of politics to legislate against such infringements of [an] individual's privacy.

28. In written submissions dated 11 May 1999, one of the third party participants stated:

From a personal perspective I would find the disclosure of this information embarrassing and unfair and believe that it would constitute an invasion of my privacy.

29. Applying the principles referred to in paragraphs 21-24 above, it is clear from the context in which the names of the individual third parties appear that the only information about them that would be revealed by disclosure of their names is the fact that they were recipients of financial assistance under a government grants scheme administered by the Authority. In my opinion, that information cannot be properly characterised as information concerning a private aspect of the lives of those individuals. Rather, it is information concerning their business or commercial affairs. The grant of money was provided to each of the third parties for the purpose of assisting and supporting their farming or rural businesses, i.e., for business rather than personal purposes. Support for this view is afforded by the terms of the Scheme itself; for example, the final paragraph on page 1 of the Scheme's application form (which the Authority provided for my assistance) states:

Under all Schemes of assistance, QRAA is required to ascertain [the] viability of an applicant's enterprise. Our viability test has an obligation to ensure that long term profitable farming enterprises are supported. ... The past performance of your Rural Business will also be taken into account.

30. On pages 1 and 2 of the Scheme's Terms and Conditions, I note that the following is stated:

The purpose of the Scheme is to act as a catalyst to encourage investment in new surface water storages by landholders or occupiers of land for irrigation in relation to agricultural purposes that are both commercially and ecologically sustainable. ...

[The Scheme] is designed to assist landholders or occupiers of land enhance the long-term commercial and ecological sustainability of their farm business enterprise. ...

...

Projects will also be assessed on the basis of their economic merits to ensure funds are targeted at the best use of Government funds.

31. In support of their applications for assistance under the Scheme, applicants were asked to provide detailed statements relating to the performance of their rural businesses, as well as details of the partnership/company name/trading name and individual financial statements of each director/shareholder. It is clear that the Scheme was established to provide financial

assistance to rural businesses, and that the receipt of a grant of financial assistance under the Scheme concerns the business affairs of the third parties. Accordingly, I find that the matter in issue which consists of the names of individual third parties is not information which can be properly characterised as matter which, if disclosed, would disclose information concerning the personal affairs of those third parties, and that it therefore does not qualify for exemption under s.44(1) of the FOI Act.

32. In relation to the third party who is identified by reference to the name of a family trust, together with the names of individuals associated with the trust, the Authority made the following arguments (in its submissions dated 23 April 1999):

The preliminary view that the affairs of a trust, as distinct from a company cannot be characterised as "personal affairs of a person" is a wrong extension of the statement in Re Stewart, that "personal affairs" clearly excludes a corporation. This is because a trust, unlike a company, does not have a distinct persona. Affairs of the trust are affairs of the persons acting as trustee, and concern also the beneficiaries. Moreover, the trust referred to in the matter in issue is described as a "Family Trust", thereby further highlighting the "personal" nature of the affairs thereof. There is therefore no proper basis upon which to distinguish the applicants under file reference 34626 from those applicants who applied in their own names.

33. In my view, a trust (including a discretionary family trust) established for business and/or taxation purposes (commonly for distributing income from a business or commercial enterprise) will not ordinarily be capable of having "personal affairs" within the meaning of s.44(1) of the FOI Act. It may, in some instances, be possible to characterise certain information relating to the affairs of a trust as information concerning the personal affairs of an individual (e.g., information as to the distribution of funds to an infant beneficiary). However, there is nothing in the material before me to suggest other than that the family trust in question was brought into existence for the purpose of structuring the relevant family's financial affairs arising from its business of primary production. Disclosure of the name in its surrounding context will disclose information concerning an aspect of the business affairs of the trust. It will not disclose information concerning the personal affairs of any individual. Accordingly, I find that the name of the trust cannot be properly characterised as information concerning the "personal affairs of a person", and that it does not qualify for exemption under s.44(1) of the FOI Act.

Addresses of the third parties

34. In response to the preliminary view which I had conveyed to him, to the effect that the matter in issue which comprised the name of a homestead/property and its address (as opposed to a post office box) qualified for exemption under s.44(1) of the FOI Act, the applicant submitted as follows:

I contend however that:

- a) the inclusion of a property or homestead name is insufficient, in itself, to establish that the address is also the residential address of the applicant; consequently, it cannot be established that the release of an address "would" disclose a residential address;*
- b) residential addresses concern the public and not the private aspects of a person's life;*

- c) *public interest considerations favour disclosure of addresses; and*
- d) *any one of the above considerations is sufficient to stop s.44(1) applying.*

The naming of a rural property cannot be interpreted to mean that the property owner resides on the property. It is quite common, in this generation, to find that the owner lives elsewhere and that a manager or workman resides in the homestead. In some cases the homestead is even rented out. I therefore maintain that while it is not clear that addresses are the residential addresses of the applicants, they cannot be excluded under this section; even if residential addresses are deemed to concern the private aspects of the applicants' lives.

A residential address however concerns the public and not the private aspects of a person's life. It is the link that allows a name to be identified as the name of a particular person. It also establishes the location where an individual resides. These are however public aspects of a person's life; they say nothing about the private life of an individual. Consequently, addresses are included in telephone books, on electoral rolls and on property titles; all of which are readily available to the public. If such information is deemed to be private and confidential then it would hardly appear in such places.

Towns and postcodes do not however relate to a person's life; consequently, they are not able to be exempted by s.44(1) even if property names are captured by the provision. I therefore maintain that the Authority must at least provide this data.

35. In its submissions in response dated 9 June 1999, the Authority said:

The submission that "a residential address concerns the public and not private aspects of a persons life" is wrong. It is not consistent with the principles laid down in Re Stewart.

The argument by analogy to the listing of addresses in telephone books is misleading. An individual may choose to list or not list in a telephone book. Moreover the individual may choose the address to be listed and the extent of disclosure of that address.

Addresses set out in electoral rolls are a different category. In those circumstances residency needs to be established in order to establish the entitlement to vote in a particular electorate.

The submission that addresses are set out in property titles is wrong.

Towns and postcodes do form part of a person's address and are as much a personal affair as any other aspect of a person's address.

36. In *Re Stewart* at p.261 (paragraph 88), I said:

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

37. I am satisfied that each of the addresses in issue is an address used for business purposes by the successful applicants for financial assistance. This is self-evident from the fact that they were the addresses given for contact in respect of dealings relating to an aspect of the conduct of their business affairs, namely, their respective applications for government financial assistance to subsidise the construction of an asset for use in their respective businesses of primary production. Moreover, the addresses listed in respect of applicants for financial assistance which are corporations do not comprise information concerning the personal affairs of a person.

38. However, while I am satisfied that each address in issue comprises information concerning the business affairs of the respective applicants for access, there are several instances where I consider that disclosure of an address, in conjunction with its adjoining name, would incidentally disclose information which concerns the personal affairs of an identifiable individual. I am satisfied that several of the addresses in issue constitute both the business address, and the address of the residential homestead/property, of the individuals whose names adjoin the address. Despite the arguments to the contrary put by the applicant (see paragraph 34 above), I am satisfied, on the balance of probabilities, that disclosure of those addresses which include the name of a homestead/property, and which appear adjacent to the name of an individual or individuals (remembering that I have already found that the names do not qualify for exemption under s.44(1) of the FOI Act), would disclose information concerning the personal affairs of identifiable individuals, i.e., the address at which they choose to reside and make their home. Information concerning an individual's residential address is information the dissemination of which (whether by publication in a telephone directory or otherwise) that individual should be entitled to control. I consider that the addresses in issue which I have described in the third sentence of this paragraph (and which are specifically identified in paragraph 45(b) below) are *prima facie* exempt from disclosure under s.44(1) of the FOI Act, subject to the application of the public interest balancing test incorporated in s.44(1). I find that the remainder of the addresses in issue do not qualify for exemption under s.44(1) of the FOI Act.

Public interest balancing test

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

40. In his submissions dated 20 May 1999, the applicant said:

Additionally, as residential addresses appear in telephone books etc there are no public interest considerations favouring non-disclosure of addresses. On the other hand, if addresses are not provided it may not be possible to absolutely identify the recipients of the assistance; an essential component of public accountability. Consequently, public interest considerations of accountability will warrant a finding that disclosure of addresses is in the public interest. After all, the recipients of other Government grants are identified, why should these recipients be treated any differently.

41. The applicant appears to be the principal of, or acting on behalf of, an organisation styled as the Queensland Water Industry Advisory Service. He has expressed concern about whether assistance under the Scheme has been provided to large-scale commercial operations, contrary to comments made on behalf of the Queensland government upon the introduction of the Scheme, to the effect that the Scheme was to be aimed at "run-of-the-mill" farmers who want to develop their land. The applicant therefore seeks access to identifying information about the successful applicants to enable him to ascertain who received assistance, and whether they met the criteria for funding.
42. In my view, there is a strong public interest in enhancing the accountability of the Authority in respect of its administration of the Scheme, which weighs in favour of disclosure of the matter in issue. I consider that the public has an interest in scrutinising the way in which public funds are distributed by way of financial assistance for business enterprises, so as to ensure that they are distributed in such a manner as to serve the public policy purposes that were adjudged as warranting the allocation of public funds for the subsidy of private sector business activity. The applicant has expressed concerns that those public policy purposes may not have been served in the case of the Scheme. I consider that there is a public interest in permitting any interested member of the community to have access to information which will allow scrutiny of the payments made under the Scheme, and whether the announced public policy purposes of the Scheme are being met in practice.
43. Weighing against disclosure is the public interest (inherent in the satisfaction of the test for *prima facie* exemption under s.44(1) of the FOI Act) which tells against disclosure of information concerning the personal affairs of identifiable individuals other than the applicant for access.
44. I accept the applicant's contention that the assessment of whether the administration of the Scheme has been consistent with its stated public policy purposes would be assisted by disclosure of information concerning the geographical distribution of funding made available under the Scheme. That would enable scrutiny of any patterns in the distribution of funds by the Authority to particular rural areas, and could (for instance) be matched against publicly available information concerning areas of the State that have (over previous years) qualified for financial assistance for drought relief, or for major publicly-subsidised irrigation projects. In my view, however, the public interest in disclosure of information which will permit scrutiny of the geographical distribution of the funding available under the Scheme would be adequately served by disclosure of the postcodes only, in those addresses which I have found to be *prima facie* exempt under s.44(1) of the FOI Act. The public interest in accountability and public scrutiny of the administration of the Scheme does not warrant any further disclosure of details of the residential addresses of identifiable

individuals. I do not consider that disclosure of the postcodes alone, without the remainder of the relevant third party addresses, would interfere significantly or unreasonably with the privacy interests of the relevant third parties.

45. In summary, my findings on the application of s.44(1) of the FOI Act to the addresses in issue are:
- (a) the addresses which appear adjacent to the following file reference numbers on the document in issue comprise information concerning the business affairs of the relevant applicants for financial assistance, and their disclosure would not disclose information concerning the personal affairs of an identifiable individual, so they do not qualify for exemption under s.44(1) of the FOI Act: file reference nos. 21022, 24776, 26324;
 - (b) the addresses which appear adjacent to the following file reference numbers on the document in issue would, if disclosed, incidentally disclose information concerning the personal affairs of identifiable individuals, and I find that those addresses are exempt matter under s.44(1) of the FOI Act, except for the postcode in each address, disclosure of which, I find, would, on balance, be in the public interest: file reference nos. 20131, 22256, 34626, 36406, 36631, 38285, 39059, 39321, 39703 and 50251.

Dollar amount of financial assistance received

46. The reasoning set out in paragraphs 29-31 above is also relevant to these items of information. The funding received from the Scheme was for the purposes of assisting the rural businesses operated by the respective third parties, and therefore is properly to be characterised as information concerning their business affairs, and not their personal affairs. I find that the matter in issue which records the amount of financial assistance each third party received under the Scheme cannot properly be characterised as information concerning the personal affairs of the respective third parties, and therefore does not qualify for exemption under s.44(1) of the FOI Act.

Application of s.45(1)(c) of the FOI Act

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

45.(1) Matter is exempt matter if—

...

(c) its disclosure—

(i) would disclose information (other than trade secrets or information mentioned in paragraph (b)) concerning the business, professional, commercial or financial affairs of an agency or another person; and

(ii) could reasonably be expected to have an adverse effect on those affairs or to prejudice the future supply of such information to government;

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

48. I explained the correct approach to the interpretation and application of s.45(1)(c) of the FOI Act in my decision in *Re Cannon and Australian Quality Egg Farms Limited* (1994) 1 QAR 491 at pp.516-523 (paragraphs 66-88). In summary, matter will be exempt under s.45(1)(c) of the FOI Act if:
- (a) it is properly to be characterised as information concerning the business, professional, commercial or financial affairs of an agency or another person (s.45(1)(c)(i)); and
 - (b) its disclosure could reasonably be expected to have either of the prejudicial effects contemplated by s.45(1)(c)(ii), namely:
 - (i) an adverse effect on the business, professional, commercial or financial affairs of the agency or other person, which the information in issue concerns; or
 - (ii) prejudice to the future supply of such information to government;

unless disclosure of the matter in issue would, on balance, be in the public interest.

49. In respect of s.45(1)(c)(i), I am satisfied that the matter in issue is information concerning the business affairs of the respective third parties. Each limb of the test for exemption under s.45(1)(c)(ii) involves consideration of the test imposed by the phrase "could reasonably be expected to". At pp.339-341 (paragraphs 154-160) of *Re "B" and Brisbane North Regional Health Authority* (1994) 1 QAR 279, 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 ed); "Regard as ... likely to happen; ... Believe that it will prove to be the case that ..." (The New Shorter Oxford English Dictionary, 1993).

Adverse effect

50. The common link between the words "business, professional, commercial or financial" in s.45(1)(c) is to activities carried on for the purpose of generating income or profits. Thus, an adverse effect under s.45(1)(c) will almost invariably be pecuniary in nature, whether directly or indirectly (see p.520, paragraphs 81-82, of *Re Cannon*). At p.521, paragraph 84, of *Re Cannon*, I said:

In most instances, the question of whether disclosure of information could reasonably be expected to have an adverse effect will turn on whether the information is capable of causing competitive harm to the relevant agency,

corporation or person. Since the effects of disclosure of information under the FOI Act are, with few exceptions, to be evaluated as if disclosure were being made to any person, it is convenient to adopt the yardstick of evaluating the effects of disclosure to a competitor of the agency which, or person whom, the information in issue concerns. (This yardstick is also appropriate when considering the application of s.45(1)(b).) A relevant factor in this regard would be whether the agency or other person enjoys a monopoly position for the supply of particular goods or services in the relevant market (in which case it may be difficult to show that an adverse effect on the relevant business, commercial or financial affairs could reasonably be expected), or whether it operates in a commercially competitive environment in the relevant market.

51. I had expressed to the Authority a preliminary view that I was unable to identify any specific adverse effect that disclosure of the matter in issue could reasonably be expected to have on the business, commercial or financial affairs of the third parties, because the matter in issue did not contain anything of a sensitive commercial nature about any of the third parties. In its written submission dated 23 April 1999, the Authority submitted:

The preliminary view of the [Information Commissioner] draws a distinction between disclosure of name, address and amount of assistance, on the one hand, and disclosure of "sensitive financial information relating to the third parties or their businesses" on the other (page 7). The distinction is superficial. It fails to recognise that disclosure of the name, address and amount of assistance reveals information from which sensitive financial information relating to the third persons and their businesses may be inferred when considered in conjunction with the relevant Scheme guidelines. Such is the case presently before the [Information Commissioner]. In such cases the [Information Commissioner] ought find that disclosure could reasonably be expected to have an adverse effect on those affairs.

52. In a written submission dated 11 May 1999, one of the third party participants said:

I submit that the release of this information in a business context may damage my business and/or reputation or may otherwise have an adverse impact on my business. This comment is made, as there are no controls on the use to which the information can be put by the applicant.

53. In his submissions dated 20 May 1999, the applicant stated:

The only information which is able to be inferred from scheme guidelines about successful applicants is that they meet the eligibility criteria for the scheme. It is therefore inferred that applicants possess: ... [the applicant then reproduced the nine eligibility criteria which are set out in the Scheme's Terms and Conditions]. Such information however is hardly "sensitive financial information".

54. In its submissions dated 9 June 1999, the Authority argued:

The applicant sets out the information which he proposes to infer. The sixth, seventh and eighth bullet points clearly indicate that the applicant proposes to infer financial information relating to such matters as: the availability of funding to complete projects;

*commercial lending approvals where borrowing [is] required;
 availability of sufficient funding to commercially utilise water;
 the presence of a cash flow analysis indicating a particular degree of
 financial viability;
 asset ownership;
 guaranteed working occupation.*

The information is clearly sensitive financial information. The disclosure of material permitting such an inference to be made in respect of identified persons results in the disclosure of financial obligations and information "concerning the business, professional, commercial or financial affairs of those persons".

55. I accept that disclosure of the matter in issue will enable an inference to be drawn that the successful applicants for financial assistance met the eligibility criteria under the Scheme. However, none of the detailed financial information relating to matters such as those listed in the Authority's submission set out at paragraph 54 above, is to be disclosed. I do not accept the Authority's submission that disclosure of the matter in issue would enable sensitive financial information about the third parties to be inferred when considered in conjunction with the relevant Scheme guidelines. The Scheme guidelines set out, in general terms, nine eligibility criteria which applicants for assistance must satisfy in order to qualify for assistance. For example, applicants must possess a detailed plan of the proposed development and evidence that they have sufficient funding to complete the development. Accordingly, the fact that the third parties have been granted assistance would suggest that they satisfied that criterion. However, disclosure of the matter in issue would tell the access applicant nothing about a third party's proposed development, or its financial position. Similarly, another criterion for funding is evidence that the applicants for assistance have sufficient funding to utilise the stored water commercially, including a cash flow analysis demonstrating the financial viability of the project. Again, the fact that the third parties have been granted assistance would suggest that they satisfied that criterion. However, disclosure of the matter in issue would tell the access applicant nothing about a third party's actual funding arrangements or the contents of its cash flow analysis. As I have said, the applicant is not seeking access to the specific documents or evidentiary information which would have been submitted by applicants in order to satisfy the eligibility criteria. In those circumstances, I do not accept that disclosure of the matter in issue, when considered in conjunction with the Scheme guidelines, would enable sensitive financial information about the third parties to be inferred by the access applicant.
56. Neither the Authority, nor any of the third party participants, has been able to formulate a specific adverse effect on the business, commercial or financial affairs of the third parties that could reasonably be expected to follow as a consequence of disclosure of the matter in issue. Based on the material before me, I am unable to identify any specific adverse effect which disclosure of the matter in issue could reasonably be expected to have on the business, commercial or financial affairs of the third parties. The matter in issue discloses only the approved amount of government funding that was received by the third parties. From that (in conjunction with the Scheme guidelines), it is possible to infer the total cost of the water storage asset that each third party has constructed, and that each third party has satisfied the Authority in respect of funding available to complete the project, and to commercially utilise the stored water. The applicant does not seek access to any of the detailed financial information provided by the third parties to the Authority in support of their applications for financial assistance, nor does he seek access to any of the Authority's

files in relation to the processing or approval of the applications. I am not satisfied that disclosure of the matter in issue could reasonably be expected to enable the applicant (or any other person, e.g., a competitor) to take steps which would result in competitive or other harm to the business, commercial or financial affairs of the third parties.

57. Accordingly, I am not satisfied from my examination of the matter in issue, nor from the submissions/evidence before me, that disclosure of the matter in issue could reasonably be expected to have an adverse effect on the business, commercial or financial affairs of the third parties.

Prejudice to the future supply of information

58. In his internal review decision dated 9 November 1998, Mr Ford, on behalf of the Authority, stated:

I am satisfied that, if the Authority were to disclose this particular information to you [the applicant], it could reasonably be expected to prejudice the future supply of information to the Authority. This in turn would seriously affect the Authority's ability to administer government programs.

59. In its written submissions dated 23 April 1999, the Authority, while not specifically discussing this requirement for exemption under s.45(1)(c), submitted (in the context of its discussion of the public interest balancing test which is incorporated in s.45(1)(c), and which I will discuss below) that disclosure of "commercial information" relating to applications for assistance under the Scheme could seriously impact on the Scheme's attractiveness to the rural sector and thereby limit its effectiveness.

60. In its submissions dated 11 May 1999, one of the third party participants submitted that:

The disclosure of this information would seriously compromise the integrity of dealings with quasi government organisations like QRAA and reduce public confidence in their day to day dealings if personal information were released.

61. I discussed the requirements of s.45(1)(c)(ii) at p.521, paragraph 85, of *Re Cannon*, where I said:

*The second kind of prejudice contemplated by s.45(1)(c)(ii) focuses not on the protection of the legitimate commercial interests of agencies and private sector business undertakings, but on protecting the continued supply to government of information (of the kind referred to in s.45(1)(c)(i)) which it is necessary for the government to have to undertake the functions expected and required of it in the public interest The words "prejudice the future supply of such information" also appear in s.46(1)(b) of the FOI Act, and what I said about those words in *Re "B"* and *Brisbane North Regional Health Authority* (at paragraph 161) is also apposite in the context of s.45(1)(c)(ii):*

Where persons are under an obligation to continue to supply such confidential information (e.g. for government employees, as an incident of their employment; or where there is a statutory power to compel the disclosure of the information) or persons must disclose

information if they wish to obtain some benefit from the government (or they would otherwise be disadvantaged by withholding information) then ordinarily, disclosure could not reasonably be expected to prejudice the future supply of such information. In my opinion, the test is not to be applied by reference to whether the particular [supplier] whose information is being considered for disclosure, could reasonably be expected to refuse to supply such information in the future, but by reference to whether disclosure could reasonably be expected to prejudice future supply of such information from a substantial number of the sources available or likely to be available to an agency.

[my underlining]

62. Since the purpose of the third parties applying to the Authority was to satisfy the Authority that they met the criteria necessary to receive financial assistance from the government under the Scheme, i.e., in order to obtain some benefit from government, I do not consider that disclosure of the matter in issue could reasonably be expected to prejudice the future supply to the Authority of information from a substantial number of other applicants seeking financial assistance from the government. I have difficulty accepting the contention that persons would cease applying to government agencies for financial assistance simply because information of the type which is in issue in this review, was liable to be disclosed. That submission appears to be purely speculative and not based on the actual experience of the Authority or any of the third parties. In addition, I note that the matter in issue comprises only the names and addresses of the successful applicants for financial assistance under the Scheme, and the dollar amount of financial assistance each obtained (as the first of three equal annual instalments). The dollar amount of financial assistance granted under the Scheme was not information supplied to the government. That leaves only the names and addresses, and I find an inherent lack of credibility in the proposition that their disclosure could reasonably be expected to prejudice the future supply of like information to government by inhibiting a substantial number of rural businesses from applying for government financial assistance.
63. Accordingly, on the basis of the material before me, I am not satisfied that disclosure of the matter in issue could reasonably be expected to prejudice the future supply to government of such information.

Public interest balancing test

64. Given that I am not satisfied that the matter in issue satisfies the requirements for exemption under s.45(1)(c)(i) or (ii) of the FOI Act, it is not strictly necessary for me to consider the public interest balancing test which is incorporated in s.45(1)(c) of the FOI Act. I have, in any event, discussed some of the competing public interest considerations above, in the context of the public interest balancing test incorporated in s.44(1). However, as both the Authority and two of the third party participants have lodged submissions which deal with public interest considerations in the context of a claim for exemption under s.45(1)(c), I will make some observations on the public interest balancing test.

65. In its written submission dated 23 April 1999, the Authority referred to the fact that it had sought a view from the Honourable David Hamill MLA, the Treasurer of Queensland, regarding the effects which disclosure of the matter in issue could reasonably be expected to have. It submitted as follows regarding the public interest balancing test:

The Authority administers the Scheme as a representative of Government; it is subject to Financial Administration and Audit Legislation as well as to Ministerial direction. It is accountable through the normal parliamentary processes.

The accountability of the Authority is not enhanced in any quantifiable way through the disclosure to "any interested member of the public" of what is otherwise exempt matter.

There can be no public interest in "enhancing the accountability of the authority in respect of its administration of the Scheme" in the absence of any finding by the [Information Commissioner] that the normal processes of accountability are insufficient. The preliminary finding of the [Information Commissioner] is arbitrary and is not based upon any finding of fact.

...

The Authority, by letter to the Honourable David Hamill, MLA, Treasurer of Queensland and Member for Ipswich, dated 26 February 1999 sought a view from the Honourable Treasurer as to the public interest issues that arise in order that the Authority might suitably assess the correctness of its decision and make such informed submissions to the [Information Commissioner] on the issue of public interest as the circumstances may require.

The Honourable Treasurer replied by letter of 12 April 1999 noting the Authority's concerns that divulgence of commercial information relating to applications for assistance under the Scheme could seriously impact on its attractiveness to the rural sector and, hence, could significantly limit its effectiveness. ... The Honourable Treasurer stated, and the Authority accepts and submits, that -

Given that the key objective of the Scheme is to enhance the long-term commercial and ecological sustainability of farm business enterprises, this outcome would clearly not be in the long-term interests of rural communities or the Queensland economy as a whole.

The Honourable Treasurer further stated, and the authority accepts and submits, that -

In these circumstances ... any actions which are likely to compromise the integrity of the Scheme could not reasonably be considered to be in the public interest.

66. In written submissions dated 11 May 1999, one of the third party participants stated:

I would submit that it is not in the public interest for this information to be disclosed. The FOI legislation was introduced principally to ensure accountability of governments, to ensure fairness in the decision making

process and to ensure privacy and accuracy of government records were maintained. It is argued that these are the public interest considerations that need to be reviewed and weighed against my right to confidentiality with respect to the conduct of my private and business affairs.

The disclosure of this personal information will not assist in determining whether the government has been properly accountable in this matter. This can be determined by an applicant assessing information of a more general nature in relation to the scheme under consideration and details of the assessment criteria - as opposed to personal information that relates to me.

As mentioned above it is in the public interest to ensure that there is fairness in the decision making process. This public interest consideration must be weighed against my right to have my personal and/or business affairs withheld from disclosure. The justification for disclosure is directed to ensuring that people can determine [the] basis on which such decisions have been made - so that they can ensure they have been treated fairly. Firstly, I am unaware whether the applicant was an applicant under the scheme. Secondly, the information under consideration does not advance the prospects of determining whether the basis for the decision was fair or not. It simply shows the result. The applicant may be entitled to attempt to access documents that show the basis on which decisions were reached - but in my submission this does not entitle a person to information on specific individuals (including their names and amount paid) and certainly is not justification for simply releasing information about a result of an application to QRAA - such as the one made in this instance.

In view of the foregoing I submit that the applicant cannot show that it is in the public interest for the information to be made available.

67. In his submissions in reply dated 20 May 1999, the applicant stated as follows regarding the public interest balancing test:

It is contended that:

- a) the Authority is accountable through normal parliamentary processes; and that*
- b) the accountability of the Authority is not enhanced in any quantifiable way through such disclosure.*

This is not however the view of the legislators, as the Authority is bound by the Freedom of Information Act, which is about public accountability.

68. In respect of the Authority's submissions regarding the views of the Treasurer, the Honourable David Hamill MLA, the applicant submitted as follows:

...

Mr Hamill was however responding to a letter from the Authority [which referred] to the disclosure of "private and confidential business affairs". Mr Hamill was clearly referring to commercial information in this context.

It is however quite clear that the information sought is neither "private and confidential business affairs" nor "commercial information".

69. While I have given due consideration to the views expressed by the Treasurer, it is clear that his remarks were predicated on the assumption (gained from the information communicated to him by the Authority) that sensitive commercial information relating to applications for assistance under the Scheme (such as the detailed financial information that an applicant must submit to satisfy the Authority that it meets the eligibility criteria) might be disclosed under the FOI Act. I have already made clear my view that disclosure of the matter in issue will not disclose sensitive commercial information regarding the business or financial affairs of the third parties (see paragraph 55 above), nor impact on the attractiveness of the Scheme to the rural sector and hence limit the Scheme's effectiveness (see paragraph 62 above).

Moreover, I consider that the third parties ought to have appreciated that they were accepting public funds under the Scheme, and that the Authority is properly accountable to the community for the distribution of those public funds, at least to the extent of the public having a right to know who received the funds and the amount of funding received.

70. I acknowledge that there are other processes of accountability in place in relation to the Authority's administration of the Scheme. However, I do not consider that that lessens, to any significant extent, the public interest in enhancing the accountability of the Authority for its administration of the Scheme, by way of providing the public with information which enables interested members of the community to scrutinise the payments made under the Scheme, and to assess whether the public policy purposes that were adjudged as warranting the allocation of public funds to the Scheme are being met in practice. I consider that disclosure of the matter in issue would enhance those public interest considerations. It is apposite in that regard to restate the view I expressed in *Re The Director-General, Department of Families, Youth and Community Care and Department of Education and Ors* (1997) 3 QAR 459 at p. 464 (paragraph 19(a)):

I do not accept that the existence of other accountability mechanisms can be used as a basis for any significant diminution of the public interest in disclosure of information under the FOI Act in order to promote the accountability of government agencies. The FOI Act was intended to enhance the accountability of government (among other key objects) by allowing any interested member of the community to obtain access to information held by government (subject to the exceptions and exemptions provided for in the FOI Act itself). The FOI Act was not introduced to act as an accountability measure of last resort, when other avenues of accountability are inadequate. The FOI Act gives a right to members of the community which is in addition to, and not an alternative for, other existing rights. Indeed, applications are frequently made under the FOI Act to enable members of the community to arm themselves with the information necessary to afford a meaningful opportunity to pursue some of the other accountability mechanisms referred to by the applicant.

71. Accordingly, even if I had been satisfied that the matter in issue met the requirements for exemption under s.45(1)(c)(i) and (ii) of the FOI Act, I consider that there would have been substantial public interest considerations favouring disclosure which would have warranted a finding that disclosure of the particular matter in issue would, on balance, be in the public interest.

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

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

46.(1) Matter is exempt if—

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

Application of s.46(1)(a) to the matter in issue

73. I discussed the requirements to establish exemption under s.46(1)(a) in *Re "B"*. 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. In this case, the putative plaintiffs would be the third parties.

74. There is no material before me which suggests that the third parties might be entitled to rely on a contractual obligation of confidence. 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 identify specifically 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).

75. If I find that any one of the above criteria is not established in respect of the matter in issue, the matter in issue will not qualify for exemption under s.46(1)(a) of the FOI Act.
76. With respect to the first criterion for exemption under s.46(1)(a), I am satisfied that the information claimed to be confidential can be identified with specificity, i.e., the name and address of the third parties, and the amount of financial assistance each received under the Scheme.
77. With respect to the second criterion for exemption under s.46(1)(a), I am satisfied that the matter in issue is confidential information, i.e., it possesses the "necessary quality of confidence". It is neither trivial nor useless information, and it is not generally known.
78. With respect to the third criterion for exemption, however, I am not satisfied that the matter in issue was communicated in such circumstances as to bind the recipient (the Authority) with an equitable obligation of conscience not to use that information in a manner not authorised by the third parties. Whether a legally enforceable duty of confidence is owed depends on an evaluation of the whole of the relevant circumstances including (but not limited to) the nature of the relationship between the parties, the nature and sensitivity of the information, and the circumstances relating to its communication, such as those referred to by a Full Court of the Federal Court of Australia in *Smith Kline and French Laboratories (Aust) Limited and Ors v Secretary, Department of Community Services and Health* (1991) 28 FCR 291 at pp.302-3: see *Re "B"* at pp.314-316.
79. I note that most of the third parties, when consulted regarding disclosure of the matter in issue, objected on the basis that they contended that any information they supplied to the Authority was supplied in confidence. In a submission dated 29 April 1999, one of the third party participants said:
- It is a fundamental fact of life that the majority of rural business people consider that any dealings they have with the Queensland Rural Adjustment Authority will remain confidential, and any break down in this confidentiality, will have a devastating effect on the ability of the authority to carry out its prescribed task. This is clearly not in the public interest.*
80. I have reviewed the Scheme's "Terms and Conditions". I note that they provide, in part, that:
- Successful applicants will be required to provide annual financial statements to QRAA for three years from the date of the first payment. Subsequent payments will be contingent on receipt of this information which is required to allow monitoring for the 1999 review of the Scheme. Information collected for this purpose will be classified as "commercial-in-confidence".*
81. I accept, therefore, that the third parties received an express assurance that any financial statements which they provided to the Authority in support of their applications would be treated in confidence by the Authority. However, as I have pointed out above, none of the matter in issue consists of financial information supplied to the Authority by the third parties. Rather, the only matter in issue which was communicated by the third parties to the Authority consists of their names and addresses. There is no material before me to suggest that any express assurance was sought or given to the effect that the names and addresses of applicants under the Scheme would be treated in confidence by the Authority, either as against the applicant, or the world at large.

82. As there is nothing before me to suggest that the third parties received an express assurance that the matter in issue would be kept confidential by the Authority, it is necessary for me to consider whether, having regard to all the relevant circumstances attending the communication of the names and addresses of the third parties, that information was received by the Authority in such circumstances as to fix it with a binding equitable obligation of confidence. In that regard, I refer to my comments in *Re "B"* at p.319 (paragraph 93).

Thus, when a confider purports to impart confidential information to a government agency, account must be taken of the uses to which the government agency must reasonably be expected to put that information, in order to discharge its functions.

83. In its submissions dated 23 April 1999, the Authority submitted that:

The preliminary view suggested by the [Information Commissioner], that parties who apply to the government for financial assistance for their businesses, cannot reasonably expect that their identities will be kept confidential, fails to recognise that disclosure of the name, address and amount of assistance discloses information from which sensitive financial information relating to the third persons and their businesses may be inferred when considered in conjunction with relevant scheme guidelines and so compromises the confidentiality according to which such sensitive information is held.

84. I refer to my finding in paragraph 55 above regarding the Authority's submission that disclosure of the matter in issue discloses information from which sensitive financial information about the third parties and their businesses may be inferred (when considered in conjunction with the Scheme's guidelines). Moreover, I have difficulty accepting that parties who apply to the government for financial assistance for the conduct of a business, can reasonably expect that their identities, as successful applicants, will be kept confidential.

As I have explained above with respect to s.45(1)(c) of the FOI Act, the Authority must be properly accountable to the public for its distribution of public funds. I consider that such accountability should reasonably be expected to include disclosure of the identities of parties who are successful in obtaining financial assistance from public funds to assist their conduct of private sector business operations, the amount of financial assistance each obtains, and the relevant funding criteria which the Authority applied in deciding that those parties qualified for financial assistance from public funds. The touchstone in assessing whether criterion (c) to found an action in equity for breach of confidence (see paragraph 74 above) has been satisfied, lies in determining what conscientious conduct requires of an agency in its treatment of information claimed to have been communicated in confidence. Having regard to the obligations of the Authority with respect to appropriate levels of accountability to the public for its administration of the Scheme, I am not satisfied that equity would bind the Authority with an enforceable obligation of confidence, restraining it from disclosure of the particular matter in issue.

85. I find that the third criterion to found an action in equity for breach of confidence is not satisfied with respect to the matter in issue, and that the matter in issue therefore does not qualify for exemption from disclosure under s.46(1)(a) of the FOI Act.

Application of s.46(1)(b) to the matter in issue

86. The elements of the test for exemption under s.46(1)(b) of the FOI Act were explained in *Re "B"* at pp.337-341; paragraphs 144-161. In order to satisfy the test for *prima facie* exemption under s.46(1)(b), three cumulative requirements must be established:

- (i) the matter in issue must consist of information of a confidential nature;
- (ii) that was communicated in confidence; and
- (iii) the disclosure of which could reasonably be expected to prejudice the future supply of such information.

If the *prima facie* ground of exemption is established, it must then be determined whether the *prima facie* ground is displaced by the weight of identifiable public interest considerations which favour the disclosure of the particular information in issue.

87. In relation to the second requirement of s.46(1)(b), I discussed the meaning of the phrase "communicated in confidence" at pp.338-339 (paragraph 152) of *Re "B"* as follows:

I consider that the phrase "communicated in confidence" is used in this context to convey a requirement that there be mutual expectations that the information is to be treated in confidence. One is looking then for evidence of any express consensus between the confider and confidant as to preserving the confidentiality of the information imparted; or alternatively for evidence to be found in an analysis of all the relevant circumstances that would justify a finding that there was a common implicit understanding as to preserving the confidentiality of the information imparted.

88. For the reasons given above in my discussion of the requirements to establish criterion (c) for exemption under s.46(1)(a) of the FOI Act, I am not satisfied that any of the matter in issue was communicated in confidence so as to satisfy the second requirement for exemption under s.46(1)(b) (and I note that the information as to the dollar amount of financial assistance received by each third party was not information communicated by the third parties to the Authority). In respect of the third requirement for exemption under s.46(1)(b), I am not satisfied, for the same reasons given at paragraphs 61-62 above, that disclosure of the matter in issue could reasonably be expected to prejudice the future supply of such information. Further, in respect of the public interest balancing test which is incorporated in s.46(1)(b), I refer to my discussion at paragraphs 69-71 above.

89. I therefore find that the matter in issue does not qualify for exemption under s.46(1)(b) of the FOI Act.

Conclusion

90. I set aside the decision under review (being the decision made on behalf of the respondent by Mr A N J Ford on 9 November 1998). In substitution for it, I decide that the matter in issue does not qualify for exemption under the FOI Act, except for the following information which I find is exempt matter under s.44(1) of the FOI Act—

- the addresses of the homesteads/properties (but not the postcodes which form part of those addresses) appearing adjacent to the following file reference numbers recorded in the document in issue 20131; 22256; 34626; 36406; 36631; 38285; 39059; 39321; 39703; and 50251.

F N ALBIETZ
INFORMATION COMMISSIONER