



## **Decision and Reasons for Decision**

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**Application Number:** 210636

**Applicant:** Mrs Troiani

**Respondent:** Department of Justice and Attorney-General

**Decision Date:** 9 April 2009

**Catchwords:** **FREEDOM OF INFORMATION – Section 28A(1) of the *Freedom of Information Act 1992 (Qld)* - Refusal of Access – whether reasonable basis for agency to be satisfied the document does not exist – court transcript**

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## REASONS FOR DECISION

### Summary

1. In this external review the applicant seeks access to a document the Department of Justice and Attorney-General (**Department**) contends does not exist.
2. Having considered the parties' submissions and evidence, relevant legislation and decisions, I am satisfied that access to the document sought can be refused under section 28A(1) of the *Freedom of Information Act 1992* (Qld) (**FOI Act**) on the basis that the document sought was not created and therefore does not exist.

### Background

3. On 19 March 2001 an application for summary judgment was brought before the Chief Justice, his Honour Paul De Jersey (**Chief Justice**) by the National Australia Bank (**NAB**) against five defendants (**Matter 7759/2000**) including the FOI applicant and her late husband, Mr Troiani.
4. On 22 March 2001 the Chief Justice delivered a decision in Matter 7759/2000.
5. By letter dated 18 June 2008 (**FOI Application**) the applicant sought access to a copy of the transcript for the hearing of the proceedings in Matter 7759/2000 conducted on 19 March 2001 (**Transcript**) through the State Reporting Bureau (**SRB**).
6. By letter dated 26 August 2008 Kaye McKemmish, Manager, Freedom of Information and Privacy Unit of the Department declined to provide access to the Transcript on the basis that it did not exist (**Original Decision**).
7. By letter dated 3 September 2008 the applicant applied for an internal review (**Internal Review Application**) of the Original Decision.
8. By letter dated 29 September 2008, Gary Finger, Acting Executive Director, Legal Services Division of the Department (**Internal Review Decision**) refused access to the transcript under section 28A(1) of the FOI Act on the basis that the Transcript did not exist.
9. On 10 October 2008 the Office of the Information Commissioner (**Office**) received an application for external review of the Internal Review Decision (**External Review Application**).

### Decision under review

10. The decision under review is the Internal Review Decision referred to at paragraph 8 above.

### Steps taken in the external review process

11. By letters dated 22 October 2008 the Office:
  - advised the applicant and the Department that the External Review Application had been accepted
  - asked the Department for further information on the searches for the Transcript conducted to date and on its general record-keeping practices.

12. By letter dated 23 October 2008 the Department provided the Office with a copy of emails from the SRB to the Department dated 20 August 2008 and 16 September 2008 that had been created in the course of dealing with the FOI Application.
13. By letter dated 3 November 2008 the applicant provided submissions to the external review.
14. On 11 November 2008 the SRB, through the Department, provided the Office with submissions to the external review, a callover list, emails from the SRB to the Department regarding searches undertaken to locate the Transcript and a copy of a letter dated 30 July 2004 written to Mr Troiani.
15. On 12 November 2008 the Office made further inquiries with the applicant regarding Mr Troiani's contact with the SRB. The applicant provided some further submissions to the review.
16. By letter dated 17 November 2008 the Acting Information Commissioner provided a preliminary view to the applicant that the Transcript does not exist and that accordingly, the Department's decision under section 28A(1) of the FOI Act could be affirmed. The applicant was asked, if she did not accept the preliminary view, to provide final submissions by 1 December 2008.
17. On 20 November 2008 the applicant sought an extension of time to provide submissions. The Acting Information Commissioner did not agree to this request on the basis that the:
  - matter has been with the Office for some time
  - review concerns a sufficiency of search issue in which the agency has consistently stated that the Transcript does not exist
  - applicant had been given several opportunities to provide further information on the existence of the Transcript
  - Office does not require a sophisticated or involved submission.
18. By letter dated 26 November 2008 the applicant indicated that she did not accept the preliminary view and provided further submissions as well as two Statutory Declarations.
19. On 17 February 2009 the Office made further inquiries with the SRB regarding the SRB's processes in relation to recordings and the searches undertaken to locate the Transcript.
20. By letter dated 20 March 2009 the applicant provided the Office with an extract of a transcript from an unspecified court proceeding which she asserts demonstrates that the Transcript exists.
21. On 7 April 2009 a staff member of this Office made further inquiries with staff of the Queensland Supreme Court in relation to Chambers Matters.
22. In making my decision in this review, I have taken into account the following:
  - FOI Application, Internal Review Application and External Review Application
  - Original Decision and Internal Review Decision

- *National Australia Bank Ltd v Troiani & Ors* [2001] QSC 77 (2 March 2001)<sup>1</sup>
- *National Australia Bank Ltd v Troiani & Anor* [2002] QCA 196 (2 June 2002)<sup>2</sup>
- document titled 'Revised Judgment/Order'
- e-mails from the SRB to the Department dated 20 August 2008 and 16 September 2008
- the applicant's submissions of 3 November 2008, 26 November 2008 (including the Statutory Declarations of Mr Troiani dated 27 May 2005 and another individual dated 24 November 2008) and 20 March 2009
- letter from the Department to Mr Troiani dated 30 July 2004
- e-mail from the Department to the Office dated 11 November 2008 forwarding emails from the SRB
- file note of telephone conversation between a staff member of the Office and the applicant on 12 November 2008
- file notes of telephone conversations between this Office and the SRB on 17 February 2009
- file notes of telephone conversations between this Office and staff of the Queensland Supreme Court on 7 April 2009
- relevant provisions of the FOI Act as referred to in this decision
- decisions of the Information Commissioner as referred to in this decision.

### **Issue in review**

23. The applicant seeks access to a copy of the Transcript. The applicant contends that the Transcript either exists, or has previously existed, but has since been destroyed.
24. The Department maintains that the Transcript does not exist as there is no record that the proceedings in Matter 7759/2000 on 19 March 2001 were recorded.
25. In this review the issue to be determined is whether there are reasonable grounds for the Department to be satisfied that the Transcript does not exist and accordingly, whether access can be refused under section 28A(1) of the FOI Act.

### **Findings**

#### ***Relevant law***

#### **Subsections (1) and (2) of section 28A of the FOI Act**

26. Subsections (1) and (2) of section 28A of the FOI Act provide:

#### ***28A Refusal of access—documents nonexistent or unlocatable***

- (1) *An agency or Minister may refuse access to a document if the agency or Minister is satisfied the document does not exist.*

Example—

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<sup>1</sup> This is the decision in Matter 7759/2000.

<sup>2</sup> This is the decision of the appeal brought by the applicant and Mr Troiani against the decision in *National Australia Bank Ltd v Troiani & Ors* [2001] QSC 77.

*documents that have not been created*

- (2) *An agency or Minister may refuse access to a document if—*
- (a) *the agency or Minister is satisfied the document has been or should be in the agency's or Minister's possession; and*
  - (b) *all reasonable steps have been taken to find the document but the document can not be found.*

Examples—

- *documents that have been lost*
- *documents that have been disposed of under an authority given by the State Archivist.*

27. In *PDE and the University of Queensland*<sup>3</sup> (PDE) the Acting Information Commissioner indicates that:<sup>4</sup>

*Sections 28A(1) and (2) of the FOI Act address two different scenarios faced by agencies and Ministers from time to time in dealing with FOI applications: circumstances where the document sought does not exist and circumstances where a document sought exists (to the extent it has been or should be in the agency's possession) but cannot be located. In the former circumstance, an agency or Minister is required to satisfy itself that the document does not exist. If so satisfied, the agency or Minister is not required by the FOI Act to carry out all reasonable steps to find the document. In the latter circumstance an agency or Minister is required to satisfy itself that the document sought exists (to the extent that it has been or should be in the agency's possession) **and** carry out all reasonable steps to find the document before refusing access.*

28. In *PDE* the Acting Information Commissioner also considered how an agency was to satisfy itself as to the non-existence of documents sought by an applicant and indicated that to be satisfied that a document does not exist, it is necessary for the agency to rely upon its particular knowledge and experience with respect to various key factors including:

- the administrative arrangements of government
- the agency structure
- the agency's functions and responsibilities (particularly with respect to the legislation for which it has administrative responsibility and the other legal obligations that fall to it)
- the agency's practices and procedures (including but not exclusive to its information management approach)
- other factors reasonably inferred from information supplied by the applicant including:
  - the nature and age of the requested document/s
  - the nature of the government activity the request relates to.

29. To be satisfied under section 28A(2) of the FOI Act that a document can not be found an agency must take all reasonable steps to locate the document. Section 28A(1) is silent on the issue of how an agency is to satisfy itself that a document does not exist. When proper consideration is given to the relevant key factors (as discussed at

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<sup>3</sup> (Unreported, Office of the Information Commissioner, 9 February 2009).

<sup>4</sup> At paragraph 34.

paragraph 28) and a conclusion reached that the document sought does not exist, it may be unnecessary for the agency to conduct searches. However, where searches are used to substantiate a conclusion that the document does not exist, the agency must take all reasonable steps to locate the documents sought.<sup>5</sup>

30. The decision as to whether an agency has taken all reasonable steps to find the document sought must be made on a case by case basis, and where relevant, with reference to:
- the key factors in the FOI and internal review applications including the nature of the document sought
  - the date the document may have been created and the personnel who may have been responsible for creating it
  - the regulatory obligations and/or aspect of service delivery that might be involved
  - departmental approval processes and delegations in relation to the document or service in respect of which document is sought
  - the agency's record keeping practices, including where and in what form the document sought may be stored, multiple locations, and requirements under the *Public Records Act 2002* (Qld) including retention and disposal regimes.
31. Therefore, in applying section 28A(1) of the FOI Act it is first relevant to ask whether there are reasonable grounds for the agency to be satisfied that the document sought does not exist.<sup>6</sup> If, as in this matter, the agency has used searches to substantiate a conclusion that the document sought does not exist, it is also relevant to ask whether the agency has taken all reasonable steps to find the document.<sup>7</sup>

### ***Applicant submissions***

32. Although the applicant has applied for access to the Transcript, her submissions suggest that she is of the view that the Transcript may have been destroyed. On this point, she has made the following statements in correspondence:
- *If there is no transcript available now and I acknowledge that may be the case, then the internal records of the State Reporting Bureau have been destroyed.*<sup>8</sup>
  - *My conclusion therefore from the information that I have received in response to my FOI application is the transcript of the proceedings which was transcribed has since been destroyed.*<sup>9</sup>
  - *If [the Transcript] doesn't exist now then it was in existence on 14.07.04.*<sup>10</sup>
33. In support of her view that the Transcript has previously existed, the applicant relies on her discussions with Mr Troiani and his account of his conversation with SRB staff, which is set out in his Statutory Declaration of 27 May 2005. In summary, this Statutory Declaration indicates that:
- Mr Troiani applied in writing for a copy of the Transcript on 14 July 2004
  - an SRB staff member indicated that he should return the following day to collect the Transcript when it was anticipated that a copy of the Transcript would be available

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<sup>5</sup> PDE at paragraph 49.

<sup>6</sup> PDE at paragraph 43.

<sup>7</sup> PDE at paragraph 47.

<sup>8</sup> In the Internal Review Application.

<sup>9</sup> In the External Review Application.

<sup>10</sup> In the applicant's submissions dated 26 November 2008.

- the following day a different SRB staff member informed Mr Troiani that he had 'the tape in his possession' but the tape was blank and that the Chief Justice had requested that the proceedings not be recorded
  - Mr Troiani offered to purchase the blank tape but the SRB staff member declined saying that he would provide a copy the following day
  - Mr Troiani tried to take the tape and a piece of paper held by the SRB staff member but succeeded only in obtaining the piece of paper which comprised a one-page document entitled 'Revised Judgment/Order' that records the progress of an unidentified two-page document through administrative steps including receipt, recording on RECFIND, correction photocopying, distribution and filing for the period 26 March to 30 March 2001
  - the Revised Judgment/Order document confirms that the proceedings in Matter 7759/2000 on 19 March 2001 were recorded and the Transcript was created
  - Mr Troiani has been consistently and repeatedly informed by the SRB subsequently that the audio recording and a consequent transcript does not exist.
34. The applicant also provided a Statutory Declaration of Mr Walker, a person who has assisted the applicant and previously, her husband for a number of years. Mr Walker has sworn, to the best of his recollection, as to the events described in Mr Troiani's Statutory Declaration, as he accompanied Mr Troiani to the SRB in July 2004.
35. In his Statutory Declaration, Mr Walker:
- confirms that Mr Troiani was told by an SRB staff member in July 2004 that the Transcript could not be provided because Chief Justice de Jersey had directed that no taped record of proceedings be recorded and that the tape was blank
  - indicates that when Mr Troiani said to the SRB staff member that the information he was receiving conflicted with previous advice and that he had in his possession a document detailing various stages of internal review, correction and editing by court officers (this is a reference to the Revised Judgment Order), the SRB staff member seemed visibly embarrassed.
36. The applicant indicates in her letter to the Office of 26 November 2008 that she contacted the senior partner of the law firm who were the instructing solicitors for Matter 7759/2000 (**Legal Representative**) who informed her that Matter 7759/2000 was heard in a court room with transcribing facilities available, not in the judge's chambers and he was of the view that the proceedings were being transcribed.
37. In her letter of 3 November 2008 the applicant asks:
- why, if the tape has been destroyed, can't the master tape 'be brought into play'?
  - if the tape was destroyed, who ordered the destruction of the tape?
38. By letter dated 20 March 2009 the applicant provided the Office with an extract from a court transcript, though the proceedings are not identified.

### ***Respondent submissions***

39. In the Original Decision, the Department's decision-maker states:

*I have an email from the State Reporting Bureau dated 20 August 2008 which advises the two (unsuccessful) searches undertaken and the reference to the lack of recording facilities in the chambers of the Chief Justice.*

40. The SRB email referred to at paragraph 39 above provides relevantly that:

*... The file in relation to this matter has been accessed and checked on two occasions by two separate officers and there is no record of a recording on the 19<sup>th</sup> March, 2001 in [Matter 7759/2000], therefore the State Reporting Bureau is unable to supply a transcript.*

*If the matter was heard in judges chambers then there are no recording facilities available to record the matter ...*

41. The Department's decision-maker in the Internal Review Decision refers to information contained in a further email from the SRB, which was provided in response to the Department's email of 9 September 2008. The email provides relevantly that:

...

*The file relating to [Matter 7759/2000] has been accessed from Grace records. The file indicates that there was a chamber matter heard on the 19/3/08<sup>11</sup> which was not recorded.*

*Matters in chambers are not generally recorded. Whether or not chamber matters are recorded is at the discretion of the judge.*

...

42. In response to further inquiries from the Office, the SRB has provided the following information concerning the recording of court proceedings at the relevant time:

- matters heard in court rooms were recorded as a matter of course<sup>12</sup>
- the recordings could be transcribed the same day or upon request according to circumstance and need
- matters heard in judges' chambers were not recorded as a matter of course but were recorded at the direction of the individual judge
- the fact that a proceeding had been recorded, either in court or in judges' chambers, was separately recorded on a manual log
- each court matter has an individual file
- recordings and transcripts (as appropriate) are co-located with the relevant files at all times
- files, recordings/transcripts are archived off-site once the matter has concluded
- the manual logs are stored on-site with SRB.

43. The SRB also indicates that:

- It is assumed that Chambers Matters (as distinct from matters heard in a judge's chambers) are recorded
- Matter 7759/2000 was one of 15 Chambers Matters listed for 19 March 2001, as evidenced in the Law List for that day (**Law List**)
- SRB staff have located recordings of other Chambers Matters before the Chief Justice on this date

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<sup>11</sup> This is clearly an inadvertent error. The correct reference being 19 March 2001.

<sup>12</sup> In 2001 a recording was made using tape cassettes whereas now matters are recorded digitally.



- Had the proceedings in Matter 7759/2000 on 19 March 2001 been recorded, the recording would have been on audio tape and this tape would have been retained indefinitely
  - SRB staff have examined the relevant manual log and there is no record on the manual log that the proceedings in Matter 7759/2000 on 19 March 2001 were recorded
  - The file for Matter 7759/2000 has been independently recalled from archives on two occasions and searched by two different officers and each time, no audio recording or transcript for the proceedings in Matter 7759/2000 on 19 March 2001 has been located.
44. The SRB also indicates the Chief Justice handed down his decision in Matter 7759/2000 on 22 March 2001. There is a recording of this later hearing. Mr Troiani applied for and has been provided with this transcript.<sup>13</sup>

### ***Inquiries with the Supreme Court***

45. On 6 and 7 April 2009, a staff member of the Office made inquiries with staff of the Queensland Supreme Court. In response to those inquiries, Mr Ken Wells, Executive Officer to the Director of Courts indicated on 7 April 2009 that:
- matters are only occasionally heard in the Chief Justices' chambers
  - there are no recording facilities in the Chief Justices' chambers
  - a matter being heard in the Chief Justices' chambers is to be distinguished from a Chambers Matter which is heard in Court 5 of the Supreme Court Complex
  - Chambers Matters are predominantly relatively simple applications to the Supreme Court.

### ***Appeal Proceedings***

46. Mr and Mrs Troiani appealed the decision in Matter 7759/2000 to the Court of Appeal. A decision in that appeal was handed down in *National Australia Bank Ltd v Troiani & Anor* [2002] QCA 196 (2 June 2002).
47. I note that there is no reference in the decision at paragraph 46 above to the Court of Appeal having been referred to a transcript of the proceedings in Matter 7759/2000 on 19 March 2001.

### ***Application of the law***

**Are there reasonable grounds to be satisfied that the Transcript does not exist?**

***Where did the proceedings in Matter 7759/2000 on 19 March 2001 take place?***

48. It is relevant in this matter to note that there is a distinction between a matter heard in a Judge's chambers and a Chambers Matter, which is heard in a court room.
49. The Law List indicates that the Chief Justice heard Matter 7759/2000 in Court 5 on 19 March 2001. Accordingly, I am satisfied that the proceedings in Matter 7759/2000 on 19 March 2001 did not take place in the Chief Justices' chambers. Instead, as it was a

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<sup>13</sup> This is confirmed by SRB's letter to Mr Troiani dated 30 July 2004.

Chambers Matter, it was heard in Court 5. This finding accords with the Legal Representative's recollection that the matter was heard in a court room.

***Were the proceedings in Matter 7759/2000 on 19 March 2001 recorded?***

**Revised Judgment/Order Document**

50. For the Transcript to have been brought into existence, the proceedings in Matter 7759/2000 on 19 March 2001 would need to have been recorded.
51. The applicant considers that the document titled Revised Judgment/Order (**Coversheet**), that is, the document taken by Mr Troiani from the SRB staff member on 15 July 2004 proves the proceedings in Matter 7759/2000 on 19 March 2001 were recorded and the Transcript created.
52. I am satisfied that the Coversheet:
- is a front sheet to a Judgement/Order comprising 2 pages
  - records the intention to distribute a copy of the attached document to the Librarian of the Supreme Court and QLR (Queensland Law Reporter)
  - contains an administrative checklist recording the dates on which a number of administrative actions were taken.<sup>14</sup>
53. I accept that Mr Troiani took the Coversheet from the SRB staff member and therefore acknowledge the Coversheet came from the SRB. However, I am satisfied that the Coversheet concerns a revised Judgement/Order and not a transcript. I have reached this conclusion because:
- the Coversheet is titled 'Revised Judgement/Order' which suggests that the attached document is a judgement or an order
  - the Coversheet indicates that the attached document is to be forwarded the Supreme Court Library and the Queensland Law Reporter and I am satisfied that a document recording the outcome of proceedings, such as a judgement or an order would be provided to these organisations, but not a transcript
  - there is nothing in the Coversheet to suggest the existence of any audio recording or transcript of any proceedings
  - the document referred to in the Coversheet comprises 2 pages, however, the Judgement in Matter 7759/2000 was 5 pages in length and it is almost inconceivable, in my view, that a transcript of the proceedings would be only 2 pages in length.

**Extract of transcript from later proceedings**

54. By letter dated 20 March 2009 the applicant provided the Office with an extract from a court transcript (**Extract**). The proceedings are not identified, however, they appear to be later proceedings in the Federal jurisdiction. The applicant contends that the Extract

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<sup>14</sup> These actions include the date the document was received, recorded on RECFIND (a database used by the Queensland Government which tracks the movement and storage of documents in Government agencies), sent to judgment retypes, corrected, number of pages (2), sent to photocopying, photocopied, distributed, revised details entered on RECFIND and sent to AO records for filing.

demonstrates that the Transcript exists. The relevant part of that Extract is reproduced below:

20 MR BELL: What I'm saying is Mr and Mrs Troiani's position is made clear by this comment that I just read in the judgement, and this, regrettably for them, they hadn't filed before this court matters which effectively addressed and allowed a court to deal with the real grievances, the original fraud, as they would say, in the matter, and the Federal Magistrate said:

*This is not a forum that can review those judgements, in my view, in this application.*

HIS HONOUR: Well, that's right.

25 MR BELL: I don't disagree, your Honour. I am just saying that he was aware that there was a body of material that they sought to have aired or litigated but it wasn't presented in a way that he could address. **The problem the Troianis have to overcome right now is that they cannot get a transcript of the original decision of the Supreme Court.**

HIS HONOUR: Why not?

MR BELL: **Because apparently it's disappeared, your Honour. I have been dealing with the transcripts people in the last two weeks, and we have to pin that down, because there is an hour and a half hearing before the Chief Justice and we do not know what happened.**

5 HIS HONOUR: What sort of a hearing? A hearing for what purpose?

MR BELL: It was a hearing at which the principal creditor, Ms Costello's client, the National Bank, was found to be owed a certain amount of money. Now, that was substantially reduced by the order of half in the Court of Appeal later. But despite having the QC there, the - - -

10 HIS HONOUR: Well, the matter has been to the Court of Appeal.

MR BELL: Yes, it has.

HIS HONOUR: Well, it doesn't matter what happened before the Chief Justice then, does it?

**[my emphasis]**

55. The applicant contends that as Mr Bell stated in Court that the Transcript had apparently 'disappeared', this demonstrates that the Transcript exists. I do not agree.
56. It is evident from the Extract that Mr Bell was unable to access the Transcript at the time of the proceedings, which in itself, supports the conclusion that the Transcript does not exist. In addition, there is nothing in the Extract to indicate how Mr Bell formed a view that the Transcript had in fact 'disappeared'. I note that Mr Bell was Mr Troiani's legal representative and Mr Troiani was at the time, clearly of the view that the Transcript had previously existed (as evidenced by his Statutory Declaration). The Extract does not persuade me that the Transcript either exists or has existed and is now destroyed or lost.
57. Mr Troiani and Mr Walker's Statutory Declarations both indicate that on 15 July 2004 Mr Troiani was told that:

- the Chief Justice instructed that the proceedings in Matter 7759/2000 were not to be recorded
  - a tape held at the SRB was blank
  - the Transcript could not be provided to him.
58. The Statutory Declarations provided by the applicant do not point to the existence of a recording of the proceedings in Matter 7759/2000 on 19 March 2001. On the contrary, they support a conclusion that a recording did not exist on 15 July 2004.
59. In its letter of 30 July 2004, the Department confirmed that the transcript from 22 March 2001 was the only transcript available in relation to Matter 7759/2000.
60. I accept that Mr Troiani applied in writing for a copy of the Transcript on 14 July 2004 and that an SRB staff member told him that he anticipated that the Transcript would be available for collection the next day. However, I do not accept that the SRB staff member's statement confirms that a recording of the proceedings on 19 March 2001 was in existence at that time. The SRB indicates that once an order is placed, the file must be recalled from archives. In my view, it is reasonable to expect that an SRB staff member may say that they anticipate that a Transcript would be made available on the basis that most matters are recorded and a Transcript can be made available. Such a statement does not however, confirm the existence of a recording of the proceedings in Matter 7759/2000 on 19 March 2001.
61. The possible existence of a blank tape on the file, as set out in the applicant's submissions, does not, in my view, point to a conclusion that the proceedings were recorded and the recording destroyed, as asserted by the applicant.
62. As the proceedings in Matter 7759/2000 on 19 March 2001 were heard in a court room, it is reasonable to expect that in accordance with usual practise, they would have been recorded.
63. I accept the Department's submissions that:
- if proceedings are recorded, an entry is made in the manual log and the tape of the recording is placed on the file for the specific matter
  - if a recording of the proceedings in Matter 7759/2000 on 19 March 2001 or the Transcript existed they would be maintained on the relevant files
  - the SRB has searched the manual log and no entry was found for a recording in relation to Matter 7759/2000 on 19 March 2001
  - the SRB has identified, recalled from archives and searched the relevant files for Matter 7759/2000 on two occasions in response to this FOI Application and there is neither an audio tape nor a transcript for the proceedings on 19 March 2001 on the file.
64. As there is no entry in the manual log and neither a tape of the proceedings in Matter 7759/2000 on 19 March 2001 nor the Transcript is held on the relevant file, in the absence of evidence to the contrary, I am satisfied that the proceedings in Matter 7759/2000 on 19 March 2001 were not recorded.

***Has the Department taken all reasonable steps to locate the Transcript?***

65. I am satisfied that the answer to this question is yes.

66. Taking into account the SRB's procedures in relation to the recording of proceedings, taking all reasonable steps to locate the Transcript would, in my view, require the SRB to search the:
- manual log for an entry in relation to Matter 7759/2000
  - file for Matter 7759/2000 for the Transcript.
67. As indicated at paragraph 62 above, I am satisfied that the SRB has carried out the searches described in paragraph 66 above and has been unable to locate the Transcript.

## **Conclusion**

68. In this external review I find that:
- the proceedings in Matter 7759/2000 on 19 March 2001 were not recorded
  - the Transcript was not created
  - the Department has taken all reasonable steps to locate the Transcript
  - there are reasonable grounds for the Department to be satisfied that the Transcript does not exist
  - access to the Transcript can be refused under section 28A(1) of the FOI Act.

## **DECISION**

69. I affirm the decision under review by finding that the Department was entitled to refuse access to the document sought in the FOI Application under section 28A(1) of the FOI Act on the basis that the document sought does not exist.
70. I have made this decision as a delegate of the Information Commissioner, under section 90 of the *Freedom of Information Act 1992* (Qld).

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**S Jefferies**  
**Acting Assistant Commissioner**

**Date: 9 April 2009**