

Flexihire Pty Ltd and Department of Main Roads

(S 75/00, 15 June 2001, Information Commissioner)

(This decision has been edited to remove merely procedural information and may have been edited to remove personal or otherwise sensitive information.)

1.-2. These paragraphs deleted.

REASONS FOR DECISION

Background

3. The applicant, Flexihire Pty Ltd, seeks review of the decision by the Department of Main Roads (the Department) to refuse it access, under the FOI Act, to parts of the revenue and expense reports for the individual trading locations of Plant Hire Services Business Group (PHSBG) for the years 1996/1997, 1997/1998 and 1998/1999. PHSBG is a business unit of the Department.

4. On 1 November 1999, solicitors for the applicant lodged with the Department an FOI access application in the following terms:

We require ... the following information:-

1. *The operating expenses of the plant hire division [PHSBG] throughout Queensland for all its locations;*

2. *The income for those same locations;*

3. *What funding arrangements exist from which the division can draw to provide funding should the division be in a loss situation or have any excess of liabilities over income.*

5. On 13 December 1999, the applicant's solicitors clarified its FOI access application in the following terms:

... so that what our client requires is the audited financial statements for the division in each of those locations for the last three financial years. This should show the profit and loss in each area and also the relevant balance sheets.

6. By letter dated 20 January 2000, Mr G J Healey of the Department informed the applicant that he had located 233 documents which fell within the terms of the applicant's FOI access application. Mr Healey decided that all 233 documents were exempt from disclosure to the applicant under s.45(1)(c) of the FOI Act.

7. By letter dated 21 February 2000, the applicant sought internal review of Mr Healey's decision. The internal review was conducted by Mr W J Rodiger of the Department. By letter to the applicant dated 25 February 2000, Mr Rodiger informed the applicant that he had decided to affirm Mr Healey's decision. By letter dated 27 March 2000, the applicant applied to me for review, under Part 5 of the FOI Act, of Mr Rodiger's decision.

External review process

8. Copies of the financial reports in issue were obtained and examined. During the course of the review, the Department withdrew its claim for exemption in respect of parts of the reports. The applicant has been given access to that material and it is no longer in issue in this review. The applicant, in turn, withdrew its application for access to other parts of the reports, and those parts are no longer in issue. As a result of the concessions made by the participants during the course of this review, the matter remaining in issue is confined to the following parts of the financial reports:
 - (a) the information which appears next to the word 'Group'; and
 - (b) the figures contained in the column headed 'YTD Act' which correspond to the entries of 'Revenue Total' and 'Expenses Total' in the column headed 'Rev & Exp Total - No C'.
9. The Department claims that the matter remaining in issue is exempt under s.45(1)(c) of the FOI Act. On 10 October 2000, the Department lodged a written submission, accompanied by a statutory declaration dated 10 October 2000 by Mr Ian James Birch, Director of PHSBG, in support of the Department's case for exemption. The applicant was invited to respond to that material. By letter dated 17 November 2000, the applicant lodged a written submission, and a statutory declaration dated 17 November 2000 by Mr Roger Cleveland Toole, in support of the applicant's case that the matter in issue is not exempt matter under s.45(1)(c) of the FOI Act. The applicant's submission and evidence were provided to the Department and, by letter dated 15 December 2000, the Department lodged a final written submission in reply, together with a statutory declaration dated 13 December 2000 by Mr Noel Weerasingham, Technical Services Manager at PHSBG. A copy of that material was, in turn, provided to the applicant, and submissions closed at that point.
10. In addition to the contents of the matter in issue, I have taken into account the following material in making my decision in this review:
 1. the applicant's FOI access application dated 1 November 1999;
 2. the initial and internal review decisions of the Department dated 20 January 2000 and 25 February 2000, respectively;
 3. the applicant's application for external review dated 27 March 2000;
 4. the written submission on behalf of the Department, and the statutory declaration by Mr Ian James Birch, both dated 10 October 2000;

5. the written submission on behalf of the applicant, and the statutory declaration by Mr Roger Cleveland Toole, both dated 17 November 2000; and
 6. the written submission on behalf of the Department dated 15 December 2000, and the statutory declaration by Mr Noel Lakshman Weerasingham dated 13 December 2000.
11. I should indicate that, at the time the applicant and the Department lodged the above-mentioned submissions and evidence in support of their respective cases in this review, the matter in issue extended to considerably more information than that which now remains in issue (described in paragraph 8 above). As I explained above, both parties made concessions throughout the course of the review, which resulted in a reduction of the matter in issue. Accordingly, in the discussion which follows, I will refer only to those parts of the submissions and evidence which are relevant to the matter remaining in issue, and whether it qualifies for exemption under s.45(1)(c) of the FOI Act.

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

12. 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.

13. I considered the application of s.45(1) of the FOI Act in some detail in *Re Cannon and Australian Quality Egg Farms Limited* (1994) 1 QAR 491. I stated that s.45(1) is the primary vehicle for reconciling the main objects of the FOI Act (i.e., promoting open and accountable government administration, and fostering informed public participation in the processes of government) with legitimate concerns for the protection from disclosure of commercially sensitive information. Its basic object is to provide a means whereby the general right of access to documents in the possession or control of government agencies can be prevented from causing unwarranted commercial disadvantage to:

- (i) persons carrying on commercial activity who supply information to government, or about whom government collects information; or
 - (ii) agencies which carry on commercial activities.
14. The Department's case under s.45(1)(c) is based on the protection of PHSBG from apprehended prejudice to its commercial operations. PHSBG is a commercial arm of the Department and is in competition with other businesses in Queensland, including the applicant, in the hiring out of plant and machinery. Both the applicant and PHSBG operate from a number of different locations throughout Queensland.
15. The correct approach to the interpretation and application of s.45(1)(c) is explained in *Re Cannon* at pp.516-523, paragraphs 66-88. In summary, matter will be exempt matter under s.45(1)(c) of the FOI Act if:
- (a) the matter in issue 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) disclosure of the matter in issue 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.

Business, professional, commercial or financial affairs

16. The correct approach to the characterisation test required by s.45(1)(c)(i) of the FOI Act is explained in *Re Cannon* at pp.516-520 (paragraphs 67-76). In this case, I am satisfied that the matter in issue is properly to be characterised as information concerning the business, commercial or financial affairs of PHSBG. The applicant has not provided evidence or submissions to dispute that finding.

Could reasonably be expected to

17. 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". That phrase imposes a requirement that there be a reasonably based expectation (that the relevant prejudicial consequences would follow as a result of disclosure of the matter in issue), namely, an expectation for which real and substantial grounds exist. A mere possibility, speculation or conjecture is not enough. In this context, "expect" means to regard as

likely to happen. (See *Re "B" and Brisbane North Regional Health Authority* (1994) 1 QAR 279, at pp.339-341, paragraphs 154-160, and the Federal Court decisions referred to there.)

Adverse effect or prejudice to future supply of information

18. I note that the Department has not argued, under s.45(1)(c)(ii), that disclosure of the matter in issue could reasonably be expected to prejudice the future supply of similar information to the Department by PHSBG. Clearly, business units of government agencies are not in a position to refuse to meet their obligation to compile and submit financial data concerning their commercial operations. Accordingly, the issue for my determination under s.45(1)(c)(ii) is whether disclosure of the matter in issue could reasonably be expected to have an adverse effect on the business, commercial or financial affairs of PHSBG.
19. The common link between the words "business, professional, commercial or financial" in the context of 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 stated:

84. *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.*

Submissions and evidence of the parties

20. In the FOI access application dated 1 November 1999, the applicant's solicitors explained their client's reasons for seeking access to the matter in issue:

Our client, whose business is that of hiring plant and equipment throughout Central Queensland, is concerned at the encroachment of your plant hire division on the private enterprise market. It was our client's understanding that the operations of your division were supposed to be self-sufficient and that a level playing field should exist between your division and businesses with

which they are in opposition such as our client. However, our client has heard rumours that for various reasons, including the numbers of employees of the order of 150 throughout the State and despite the fact that the plant you can acquire is sales tax exempt, the operations of the division are being "propped up" by funding from other sources.

21. During the course of this review, the Department withdrew its claim for exemption in respect of those parts of PHSBG's financial reports which comprise, amongst other information, the 'Revenue and Expenses Total' for each of the individual trading locations of PHSBG. The applicant has therefore been given access to information which discloses whether the various trading locations of PHSBG are operating at a profit or a loss. The applicant has also been given access to parts of the balance sheets and revenue and expense reports for PHSBG as a whole, and has been able to verify a cross accounting entry for the net revenue and expense position of PHSBG as a whole, as the sum of the revenue and expense positions of each of the trading locations of PHSBG.
22. The matter remaining in issue comprises information which would link the individual financial reports to a particular geographical trading location of PHSBG (by reference to a number and a location description), together with the accounting entries for 'Revenue Total' and 'Expenses Total' for those particular trading locations.
23. In its submission dated 10 October 2000, the Department argued:

The information remaining in issue is commercially sensitive i.e., it is information that is not otherwise available in e.g. Annual Reports, Budget papers etc. If disclosed, the Applicant could use the information to its commercial advantage.

The Applicant has a broad and sound knowledge of the hire and rental industry and the locations where Plant Hire Services has its branches located. The Applicant is also looking to expand its business into areas where Plant Hire Services is already located.

24. In his statutory declaration dated 10 October 2000, Mr Birch, Director of PHSBG, explained the commercial operations of the PHSBG and how disclosure of the matter remaining in issue would cause commercial detriment to those commercial operations. Mr Birch stated:

Plant Hire Services ("the unit") is a separate business unit of the Department of Mains Roads ("the Department") and commenced operations on 1 July 1996. The unit provides plant hire and workshop services to four regionally based Main Roads, Road Transport Construction Services (RTCS) units and other government and Local Government clients on a commercial basis.

Plant Hire Services is not publicly funded but must fund itself through income from its commercial operations and is required to make a return on investment on its asset base.

Plant Hire Services is required to operate under the principles of competitive neutrality. Plant Hire Services is charged a competitive neutrality adjustment by the Respondent, i.e., Plant Hire Services meets the full range of fees, taxes and charges borne by private sector counterparts.

...

The applicant in this external review, Flexihire Pty Ltd (Flexihire) is a competitor to Plant Hire Services in the central Queensland area.

In a couple of locations, namely Emerald and Longreach, some customers became dissatisfied with the product and service supplied by Flexihire and switched to Plant Hire Services. Plant Hire Services did not target these customers; rather they approached Plant Hire Services.

...

I am further concerned that Flexihire will use the information to target particular locations in which it is competing with Plant Hire Services. The applicant could use the information in issue to its commercial advantage in expanding its business interests throughout the State. The applicant has had conversations with Plant Hire Services officers with regard to setting up businesses in the same locations as Plant Hire Services, i.e. Roma and Goondiwindi. The applicant already competes with us in Rockhampton, Emerald, Longreach and Yeppoon.

The use of this information by a competitor, such as Flexihire, will place Plant Hire Services in a disadvantaged position in the market. This is clearly contrary to the principles of National Competition Policy and competitive neutrality and would lead to reduced profitability for our business.

25. In essence, the Department's case is that disclosure of the matter in issue which identifies particular geographical trading locations of PHSBG, and which discloses the figures for 'revenue total' and 'expenses total', would give an indication to a competitor of the performance by PHSBG at its particular trading locations, thereby enabling a competitor to 'target' those locations which are performing less profitably.
26. In his statutory declaration dated 17 November 2000, Mr R Toole of the applicant addressed the Department's concerns as follows:

... the director [of PHSBG] refers to the information the applicant is seeking, being "commercially sensitive". In my view, this would only be the case if the

unit was operating in a particular area at a loss or at a very low profit margin. If the unit is making a good profit, it is not "sensitive". If the unit is operating in an area unprofitably against private enterprise in the same area, the unit should cease operation in that area. If operating profitably, the applicant cannot complain. ...

...

... The information the applicant is seeking is whether or not each branch from which the unit operates is operating profitably.

...

... If the unit is not operating profitably, what commercial advantage is there to the applicant knowing that and if it is operating unprofitably, it is in the public interest to cease the operations in that area.

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Analysis and Findings

27. I am satisfied that the applicant and PHSBG are competitors in the business of plant and machinery hire. I consider that disclosure of the matter in issue which identifies the particular geographical trading locations of PHSBG could reasonably be expected to have an adverse effect on PHSBG's business, commercial or financial affairs. That information, when considered in conjunction with the information which has already been disclosed to the applicant during the course of this review, would enable the applicant to link PHSBG's trading results to a particular trading location, and would reveal a level of detail about the results being achieved by PHSBG in particular locations which I consider could advantage a competitor such as the applicant. I accept the submission of PHSBG that disclosure of such information could reasonably be expected to assist a competitor to make more informed decisions about its future competitive commercial operations, to the competitive disadvantage of PHSBG's commercial operations. For example, disclosure of this information could enable the applicant to consider the viability of expanding its operations in locations where PHSBG may be trading less profitably.
28. I am therefore satisfied that disclosure of the information which appears next to the word 'Group' in the financial reports in issue could reasonably be expected to confer a competitive advantage on the applicant, and corresponding commercial disadvantage on PHSBG, that is more than minimal. In terms of s.45(1)(c)(ii) of the FOI Act, I find that disclosure of that matter could reasonably be expected to have an adverse effect on the business, commercial or financial affairs of PHSBG.
29. Taking into account my finding in the preceding paragraph, I am not satisfied, however, that disclosure of the figures contained in the column headed "YTD Act" which correspond to the entries of 'Revenue Total' and 'Expenses Total' in the column headed "Rev & Exp Total - No C", without knowledge of the relevant trading location, could reasonably be expected to have an adverse effect on the business, commercial or

financial affairs of PHSBG. I do not accept that that information reveals any useful level of detail about the operations of a particular trading location of PHSBG, that could reasonably be expected to cause commercial disadvantage to PHSBG.

30. I acknowledge that the figure for 'Rev & Exp Total' (being information which was disclosed to the applicant during the course of this review) does not give any indication of the rate of return for a particular location, and that disclosure of the individual entries, namely, 'Revenue Total' and 'Expenses Total' could enable a competitor to obtain a more accurate picture of the performance by PHSBG at a particular trading location. However, in the absence of information which links the individual financial reports to a particular geographical trading location, I consider that any commercial advantage conferred upon a competitor by disclosure of the figures for 'Revenue Total' and 'Expenses Total' would be minimal. Accordingly, I am not satisfied that disclosure of that information could reasonably be expected to have an adverse effect on the business, commercial or financial affairs of PHSBG under s.45(1)(c)(ii) of the FOI Act.
31. Given that I am not satisfied that the requirements of s.45(1)(c)(ii) of the FOI Act have been met with respect to the matter in issue comprising the figures for 'Revenue Total' and 'Expenses Total' in the column headed "Rev & Exp Total - No C" as contained in the financial reports in issue, I find that that matter does not qualify for exemption from disclosure to the applicant under s.45(1)(c) of the FOI Act.
32. However, as I have found that the matter in issue which comprises the information appearing next to the word 'Group' in the financial reports in issue satisfies the requirements for exemption under s.45(1)(c)(i) and (ii) of the FOI Act, it is necessary for me to consider the application of the public interest balancing test to that information.

Public interest balancing test

33. Satisfaction of the requirements of s.45(1)(c)(i) and s.45(1)(c)(ii) raises a *prima facie* public interest consideration favouring non-disclosure of the information in issue. I must therefore consider whether there are public interest considerations favouring disclosure of the information in question which outweigh the public interest in protecting the business, commercial or financial affairs of PHSBG from a reasonably apprehended adverse effect, so as to warrant a finding that disclosure of that information would, on balance, be in the public interest.

Submissions and evidence of the parties

34. The applicant raised the issue of whether or not the Department and/or PHSBG are complying with the requirements of the Department's own "Commercialisation and Competitive Neutrality Policy Manual" (the CCNP Manual). In its application for external review, the applicant submitted:

The operation of Plant Hire Services is governed by this manual. The stated purpose of which is to ensure that Business Units (BU's) of Main Roads, of which Plant Hire Services is one, are neither advantaged nor disadvantaged in competing for work with private sector operators.

The Company has no objection to this stated purpose and accepts competition in its industry. However, it is concerned that Plant Hire Service[s] may enjoy advantages not available to private enterprise.

...

The Company is concerned that the prices being tendered by Plant Hire Services are well below their competitors which leads to the conclusion that the pricing policy contained in the manual may not be strictly adhered to.

35. In his statutory declaration dated 17 November 2000, Mr Toole said:

... the director [of PHSBG] refers to the fact that the unit must fund itself and make a return on investment on its asset base. ... There is no indication in the figures with which I have been provided that indicates how these assets were acquired in the first instance at what value and if the principles of competitive neutrality were applied.

... the director refers to the requirement that the unit operate under the principles of competitive neutrality. I dispute that this is what it is doing. A Memorandum of Understanding between Plant Hire Services and Road and Transport Construction Services is annexed and marked "B" which indicates that these principles are being breached. The requirement in paragraph 5 of that Memorandum that a "preferred supplier" status exists between the two entities is one such breach.

36. By way of response, the Department argued:

It should be noted that as the PHS cannot legally contract with the RTCS (they are the same legal entity of the State of Queensland), their trading relationship is established by way of a Memorandum of Understanding. This is normal practice under the principles of competitive neutrality. The establishment of a trading preference in such arrangement is not a breach of competitive neutrality and does not prevent trading with others outside this arrangement.

37. This issue was also addressed by Mr Healey of the Department in his initial decision dated 20 January 2000, where he said:

...

The information at issue is about matters of a business nature and disclosure would not assist the public participation in debate on some matter of public policy and government functioning.

...

The branch is not publicly funded and operates under the principles of competitive neutrality and should not be put in a position where all of its financial details are publicly available, whereas its opposition's, including the applicant's financial details are not available for the world at large to examine.

...

38. The applicant also raised the issue of whether or not PHSBG is operating in a commercially sound manner. In its submission dated 17 November 2000, the applicant argued:

... The applicant is seeking information as to the profitability of each area in which the unit operates and as mentioned above, the staff levels, the value of the plant and the very low profit margin indicates that there must be some areas in which the unit is operating unprofitably. Such a low profit margin indicates either:

- (a) That some areas are operating unprofitably; or*
- (b) That even if all areas are operating profitably, the overall profit margin indicates that the profit in some, if not, all areas is so low as to be not commercially justifiable.*

It cannot be said therefore that there is a level playing field if one branch of the unit's operations is being subsidised by another to the disadvantage of private enterprise.

1. This issue was expanded upon in Mr Toole's statutory declaration dated 17 November 2000:

... If the unit is operating in an area unprofitably against private enterprise in the same area, the unit should cease operation in that area. ... A public company in the same circumstances, would not continue to operate unprofitably because its obligation to its shareholders requires a commercial return on funds invested.

Analysis and Findings

2. In essence, the applicant's case in relation to public interest considerations weighing in favour of disclosure of the matter in issue is twofold:

1. that there is a public interest in scrutinising the actions of both the Department and PHSBG in ensuring compliance with the principles of competitive neutrality (embraced by the Department in its CCNP Manual); and
 2. that there is a public interest in scrutinising the operations of PHSBG, and the results which it achieves, as a commercial unit of a publicly funded government agency.
41. The applicant's case bears some similarities to the position contended for by the applicant in *Re Dalrymple Shire Council and Department of Main Roads* (1998) 4 QAR 474. In that case, the matter in issue comprised unit rates and lump sum amounts in a schedule of items in a tender submitted to the Department by a successful "in-house" bidder (i.e., Road Transport Construction Services (RTCS) - a commercial arm of the Department) for road construction works. In applying the public interest balancing test to the matter in issue in that case, I discussed the concerns raised by the applicant regarding compliance by the Department with National Competition Policy Principles, and the need to create a "level playing field" as between business units of government agencies and other potential private contractors. At paragraphs 54ff of my reasons for decision, I said:

54. ... *Competitive neutrality refers to a number of administrative and legal arrangements aimed at ensuring that all organisations and individuals (including public, private, and not-for-profit service providers) are treated in an equivalent manner in competition for the award of contracts.*

55. *At pp.292-293 of its report [Competitive Tendering and Contracting by Public Sector Agencies (Report No. 48, 24 January 1996, AGPS, Melbourne)], the Industry Commission stated:*

The National Competition Policy Report (commonly called the Hilmer report) developed a range of policy principles aimed at assisting governments to formulate a consistent approach to competition policy issues. With reference to competitive neutrality, the report recommended that "*government businesses should not enjoy any net competitive advantage by virtue of their ownership when competing with other businesses*". ... Indeed, the report noted:

... reforms intended to promote the contracting out of services traditionally supplied by an in-house monopoly provider may be thwarted or undermined if the in-house producer's advantages serve to limit the emergence of effective competition.

...

The concept of competitive neutrality does not require that all firms compete on a completely equal basis. Indeed, differences in size, asset base, staff and management skills and experience may influence the relative competitive advantages and disadvantages of competing firms. However, where organisations are competing in the same market, competitive advantages may arise through the imposition of different regulatory or other requirements. Governments and their agencies operate in environments which may confer on them a number of advantages and disadvantages relative to external suppliers of services. Box C5.2 [on p.294 of the report] lists a range of potential advantages and disadvantages arising from public ownership.

...

59. *The Department may well have documents which record steps taken to ensure organisational separation of RTCS (Central) from other aspects of its operations, and to ensure that all relevant costs are taken into account in the running of RTCS (Central) and the formulation of tenders. However, I am not satisfied that disclosure of the unit rates in issue will shed light on any matters relevant to the steps taken by the Department to ensure compliance with the principle of competitive neutrality. I therefore do not consider that disclosure of the unit rates in issue would enhance the accountability of the Department in that regard.*
42. Similarly, in this case, I am not satisfied that the concerns raised by the applicant regarding compliance by the Department with the principles of competitive neutrality, warrant the disclosure of the information in issue which links PHSBG's financial reports to its particular geographical trading locations. Disclosure of this information would not enable the applicant to evaluate whether or not the Department is complying with the requirements of the CCNP Manual. Nor would it enable the applicant to understand whether principles of competitive neutrality are being applied to the acquisition and valuing of PHSBG assets, or whether the Memorandum of Understanding between PHSBG and RTCS constitutes a breach of the principles of competitive neutrality.
43. I am therefore not satisfied that disclosure of the matter in issue will advance the first public interest consideration favouring disclosure contended for by the applicant, i.e., ensuring compliance by the Department and PHSBG with the principles of competitive neutrality.
44. Turning to the public interest in scrutinising the business operations of PHSBG as a business unit of the Department, the applicant submitted:

Paragraph 65 of the Commissioner's judgement in the Dalrymple case deals with the public interest test. The Commissioner there said:

"... there is a public interest in enhancing the accountability of the respondent in respect of the operations of RTCS (Central), including (as the applicant has pointed out) in the public being able to confirm that RTCS (Central) is operating in a commercially sound manner, and not performing in a way that is liable to require its operations to be subsidised by public funds."

The above quoted statement in relation to the public interest reflects exactly the applicant's view and supports the proposition that disclosure of the information the application is seeking is in the public interest.

45. However, I went on to indicate at paragraph 65 of *Re Dalrymple Shire Council*, that I was not satisfied that disclosure of the particular matter in issue in that case would assist the applicant's stated concerns, and that I was not satisfied that the applicant in that case needed any more information than had already been disclosed to it, to be able to pursue its stated concerns.
46. In this case, the applicant has been given access to information which discloses whether or not PHSBG's various trading locations are operating profitably. To that extent, the applicant's application for access to *'information as to the profitability of each area in which the unit operates'* has been satisfied. Similarly, the applicant's concern as to whether *'one branch of the unit's operations is being subsidised by another'* has, at least on a crude accounting level, been addressed.
47. As regards the applicant's concern that the Department is "propping up", from other funds available to it, locations which are not trading profitably, there is nothing contained in the matter in issue which sheds light on this issue. I acknowledge that there is a public interest in scrutinising the performance of PHSBG so as to ensure that it is operating in a commercially sound manner, and making commercially sound decisions about its various areas of operation. I consider that that interest has been served by disclosure to the applicant of PHSBG's operating results. However, as in *Re Dalrymple Shire Council*, I am not satisfied that disclosure of information which would reveal the particular trading locations of PHSBG and enable the applicant to link PHSBG's financial results to its particular trading locations, will assist the applicant to establish whether or not PHSBG is "operating viably in a commercial market without subsidization".
48. Accordingly, I am not satisfied that there are public interest considerations favouring disclosure to the applicant of information which would identify the particular trading locations of PHSBG, which are sufficiently strong to outweigh the public interest in protecting the business affairs of PHSBG from a reasonably apprehended adverse effect, so as to warrant a finding that disclosure of that information would, on balance, be in the public interest. I therefore find that the information which appears beside the heading "Group" in the financial reports in issue is exempt matter under s.45(1)(c) of the FOI Act.

DECISION

49. For the reasons set out above, I decide to vary the decision under review (being the decision made by Mr W J Rodiger on behalf of the Department of Main Roads on 25 February 2000) by finding that the matter in issue specified in paragraph 8(a) above is exempt matter under s.45(1)(c) of the FOI Act, but that the balance of the matter in issue does not qualify for exemption from disclosure to the applicant under the FOI Act.