

EIGHTH ANNUAL REPORT

OFFICE

of the

**QUEENSLAND
INFORMATION COMMISSIONER**

1 JULY 1999 TO 30 JUNE 2000

PRESENTED TO PARLIAMENT

**BY AUTHORITY
G.A. NICHOLSON, ACTING GOVERNMENT PRINTER, QUEENSLAND - 2000**

CONTENTS

	PAGE
EXECUTIVE SUMMARY	1
CHAPTER 1: Constitution & Functions; Structure & Organisation	4
Part A Constitution & Functions	4
Enabling Legislation; Statutory Powers & Functions.....	4
Financial Structure & Goals	7
Part B Structure & Organisation	8
CHAPTER 2: Overview of Operations During the Reporting Year	9
Goals and Performance in 1999/00.....	11
CHAPTER 3: Developments During the Reporting Period	14
Management Review of the Office of the Information Commissioner.....	14
Who Uses the External Review Processes Available Under Part 5 of the FOI Act?	14
APPENDICES	
1 Applications for external review received in 1999/00, by category (as per s.71 of the FOI Act)	17
2 Applications for external review received in 1999/00, by respondent agency or minister	18
3 Notes on significant issues dealt with in formal decisions published by the Information Commissioner in 1999/00	19
4 Summaries of decisions issued by means of letters to participants, in 1999/00	24

EXECUTIVE SUMMARY

The *Freedom of Information Act 1992 Qld* (the FOI Act) is designed to extend as far as possible the right of the community to have access to information held by Queensland government. Subject to exceptions provided for in the FOI Act every person has a legally enforceable right to be given access to any document of an agency or official document of a Minister. The exceptions provided for in the FOI Act recognise that there are competing public and private interests which may warrant non-disclosure of some government-held information. The FOI Act also provides for mandatory publication by agencies of specified documents and information concerning their operations, and allows individuals to apply for amendment of government-held information which relates to their personal affairs. While decisions in relation to disclosure and amendment are generally made in the first instance by an officer of the agency which has received an application under the FOI Act, Parliament has made provision for independent external review of agency decisions by establishing the Office of the Information Commissioner. The specific categories of decision which the Information Commissioner has the power to investigate and review are set out in s.71 of the FOI Act (those categories are listed in paragraphs 1.3 to 1.5 of this Report).

In 1999/00, my Office achieved a significant increase in its output, with the finalisation of 352 external review applications, as compared to 301 in the previous reporting period (an increase of approximately 17%). This increased output was achieved with an increase in professional staff (from the equivalent of 8.8, to 10.6, full-time staff over the course of the reporting period), made possible by additional temporary funding allocated to assist the Office to make inroads into a substantial accumulated backlog of cases (as to which, see paragraph 2.1 and Table 3 in Chapter 2 of this report).

Table 1 - Applications for review under Part 5 of the FOI Act - 1999/00

Pending at start of reporting period (1/7/99)	207
Opened during the reporting period	327
Completed during the reporting period	352
Pending at end of reporting period (30/6/00)	182

Note 1: a table showing the distribution of applications for review made in 1999/00, across the categories of decision subject to investigation and review by the Information Commissioner (as specified in s.71 of the FOI Act), appears at Appendix 1.

Note 2: a table showing the distribution of new applications for review, according to the identity of the respondent agency or minister, appears at Appendix 2.

In my previous annual reports, I discussed efforts being made to reduce the large backlog of cases accumulated in the first few years of operation of the Office of the Information Commissioner, when the Office was grossly under-resourced to meet the unforeseen high level of demand for its services. For the fourth year in a row, my Office has managed to resolve more cases than were received in the financial year. However, the significant increase in cases resolved was counterbalanced by a substantial increase in the number of new cases received in the financial year (327, up from 291 in 1998/99, an increase of 12%), resulting in a reduction in backlog of some 25 cases (12%). The number of file closures achieved in 1999/00 could have been higher, were it not for the demands on the time of my senior staff in servicing the requirements of the review of the FOI Act being undertaken by the Legal, Constitutional and Administrative Review Committee of the Legislative Assembly, and of the management review of my office undertaken by The Consultancy Bureau Pty Ltd, pursuant to s.108A of the FOI Act. There have also been significant demands on the time of senior staff, during the first three months of the 2000/01 financial year, in arranging for implementation, or trialing, of the recommendations made in The Consultancy Bureau's report. Nevertheless, I am hopeful that in 2000/01 the backlog of older cases can be cleared, and significant improvements can be achieved in the timeliness of resolution of newer cases.

There is cause for optimism in that regard in the performance achieved in 1999/00, a year in which there was a deliberate concentration on resolving the older, more complex cases still on hand. There was, nevertheless, significant improvement in the timeliness of resolution of new cases. The proportion of applications resolved within 3 months rose (from 32% of files opened in 1996/97) to 50% of files opened in 1999/00. Figures for files closed within 6 months also demonstrated a rise, from 55% to 68% (a proportion which will increase because a number of files opened in 1999/00 have been open for less than 6 months). Figures showing the average time for finalisation of cases have also shown significant improvement. With just under 90% of applications received in 1999 resolved by the end of September 2000, the average time for resolution of completed files was 120 days.

The Office of the Information Commissioner has accumulated substantial experience and expertise in the resolution of FOI disputes, having (in the 7½ years from when it commenced operations, up to 30 June 2000) dealt with a total of 1885 applications for review, and resolved 1703. While there have been many recurring areas of dispute, there has been no shortage of novel cases, posing new problems in the interpretation and application of the FOI Act, as citizens seek to make use of it to access government-held information over a wide variety of areas of state and local government administration. My Office continues to accord prime importance to its responsibility to provide authoritative guidance for FOI administrators on the correct interpretation and application of the provisions of the FOI Act, not only by publishing formal decisions of a high standard, but also, in the mediation/negotiation phase of the review process, by explaining to agencies, whether in conference or in correspondence, the basis on which my office considers that an agency may have misunderstood or misapplied the FOI Act in a particular case. With a view to disseminating the Information Commissioner's formal decisions to government agencies and interested members of the public, as quickly and as cheaply as possible, a web-site has been established to provide free access, via the Internet. Summaries of 'letter decisions' also appear on the web-site. The Information Commissioner's web-site address is <http://www.slq.qld.gov.au/infocomm>.

The Office of the Information Commissioner also accords great importance to offering a dispute resolution service that is as informal, and inexpensive for participants (including government agencies), as the issues requiring resolution in a particular case will permit. My Office places emphasis on informal methods of dispute resolution, endeavouring, in all cases, to undertake a preliminary assessment of the documents in issue as quickly as possible, and to negotiate with the participants in the review with a view to achieving settlement, or at least narrowing the range of issues in dispute which must proceed to a formal determination. This approach is intended to serve the aims of the FOI Act by procuring, as quickly as possible, the disclosure of as much information as possible. Procedures are tailored to suit the circumstances of each individual case, with a view to keeping down the costs of participation in the external review process, not only for applicants but also for agencies (and hence for the public purse). The Office of the Information Commissioner consciously tries to reduce or eliminate unnecessary expense and formality for participants, at least so far as the duty to accord procedural fairness, and the complexity of the issues for determination in any particular case, will allow. In 1999/00, 259 (or 74%) of the 352 applications finalised, were resolved without the need

for a formal decision.

Table 2 - Outcome of external reviews completed during 1999/00

No jurisdiction	40
Decision not to review/review further under s.77 of the FOI Act	3
Agency granted further time to deal with application	2
Resolved/Withdrawn following mediation	223
Decision issued - affirming decision under review	41
Decision issued - varying decision under review	30
Decision issued - setting aside decision under review; making decision in substitution	13
TOTAL	352

Of the 223 cases resolved or withdrawn following mediation, 12 involved questions of whether a fee or charge was payable by the applicant. Six involved applications for amendment of documents, with the applicant being successful, in whole or in part, in obtaining an amendment or notation previously refused by an agency, in four of those cases. One hundred and seventy-five external review applications challenging agency decisions to refuse access to documents were resolved by informal means, with 109 (or 62%) resulting in the applicant obtaining access to documents or matter previously withheld. The remaining 30 cases involved 'reverse FOI' applications, by third parties who had been consulted under s.51 of the FOI Act, seeking to overturn decisions of agencies to disclose documents to an initial applicant for access under the FOI Act. Twenty-three of those 30 cases were resolved in a manner that allowed the initial access applicant to obtain access to the information in issue, or at least part of it.

A more detailed overview of operations during the reporting period, and an assessment of performance against established performance criteria, can be found in Chapter 2.

Constitution & Functions; Structure & Organisation

Part A : Constitution & Functions

Enabling Legislation; Statutory Powers and Functions

- 1.1 The *Freedom of Information Act 1992 Qld* (the FOI Act) is designed to extend as far as possible the right of the community to have access to information held by Queensland government. Agencies covered by the FOI Act include State government departments and statutory authorities, and local government authorities. Subject to exceptions provided for in the FOI Act, every person has a legally enforceable right to be given access to any document of an agency or official document of a Minister. The exceptions provided for in the FOI Act recognise that there are competing public and private interests which may warrant non-disclosure of some government-held information. The FOI Act also provides for mandatory publication by agencies of specified documents and information concerning their operations, and allows individuals to apply for amendment of government-held information which relates to their personal affairs.
- 1.2 Decisions in relation to disclosure and amendment are generally made in the first instance by an officer of the agency which has received an application under the FOI Act. If an applicant, or a person who has been consulted in accordance with s.51 of the FOI Act, is unhappy with an agency decision, he or she may seek internal review by an officer of the agency of at least the same seniority as the first decision-maker. After this stage, a person who remains aggrieved by an agency decision can apply for external review by the Information Commissioner.
- 1.3 The Office of Information Commissioner is established by s.61(1) of the FOI Act. That subsection is the first provision in Part 5 of the FOI Act, the title of Part 5 being "External Review of Decisions". Section 71(1) of the FOI Act, sets out agency decisions which the Information Commissioner has jurisdiction to investigate and review:

71. (1) The functions of the Commissioner are to investigate and review decisions of agencies and Ministers of the following kinds—

- (a) decisions under section 20 not to publish statements of affairs or as to whether a statement of affairs complies with Part 2;*
- (b) decisions refusing to grant access to documents in accordance with applications under section 25;*
- (c) decisions deferring providing access to documents;*
- (d) decisions giving access to documents subject to the deletion of exempt matter;*
- (e) decisions as to the amount of charges required to be paid before access to documents is granted, whether or not the charge has already been paid;*

(f) *decisions—*

- (i) *to disclose documents contrary to the views of a person obtained under section 51; and*
- (ii) *to disclose documents if an agency or Minister should have taken, but has not taken, steps to obtain the views of a person under section 51; and*
- (iii) *not to amend information in accordance with applications under section 53.*

1.4 In respect of these categories of decisions, the Information Commissioner is empowered to conduct a complete review of the merits of the decision, and a formal determination by the Information Commissioner in effect substitutes for the decision of the agency or Minister which was under review.

1.5 The Information Commissioner is also empowered by s.71(2) of the FOI Act to investigate and review the grounds for a decision by the Minister for Justice and Attorney-General to issue a certificate under s.36 (Cabinet matter), s.37 (Executive Council matter) or s.42 (matter relating to law enforcement or public safety) of the FOI Act certifying that matter is exempt matter under those respective exemption provisions. Pursuant to s.84 of the FOI Act the Information Commissioner's role in respect of this category of decisions is confined to determining whether reasonable grounds exist for the issue of the Minister's certificate - the Information Commissioner's decision does not substitute for the Minister's decision.

1.6 Section 71(3) of the FOI Act provides that the Information Commissioner has power to do all things that are necessary or convenient to be done for or in connection with the performance of the Information Commissioner's functions. Specific powers conferred on the Information Commissioner under Part 5 of the FOI Act include:

- power to determine the procedure to be followed on a review under Part 5 of the FOI Act (s.72(1)(a));
- power to give directions to participants in a review as to the procedure to be followed on a review under Part 5 of the FOI Act (s.72(2));
- power to extend the time limit for lodging an application for review (s.73(1));
- power to make preliminary inquiries of an applicant, or a respondent agency or Minister, in order to determine whether the Information Commissioner has power or jurisdiction to review the matter to which the application relates, or whether the Commissioner may decide not to review the matter under s.77 of the FOI Act (s.75);
- power to require the production of a document or matter for inspection for the purpose of enabling the Information Commissioner to determine whether the document or matter is exempt, or is an official document of a Minister (s.76(1));
- power to decide not to review, or not to review further, a decision in respect of which the Information Commissioner is satisfied that the application for review is frivolous, vexatious, misconceived or lacking in substance (s.77);
- power to permit third parties to be participants in the review process (s.78);

- power to grant an extension of time to an agency or Minister to deal with an application under the FOI Act, and to grant such an application subject to conditions such as reduction or waiver of charges (s.79(2) and s.79(3));
- power to try to effect a settlement between the participants, or suspend a review to allow the participants to negotiate a settlement (s.80);
- power to require an agency or Minister to provide an additional statement of reasons for a decision under review, where the initial statement of reasons is considered to be inadequate (s.82);
- power, for the purposes of a review, to obtain information from such persons, and make such inquiries, as the Information Commissioner considers appropriate (s.83(2));
- power to permit a participant to be represented by another person when appearing before the Information Commissioner (s.83(4));
- power to give to persons written notices requiring the giving of information in writing, or the production of documents to the Information Commissioner, or requiring a person to attend before the Information Commissioner and answer questions relevant to a review (s.85);
- power to examine witnesses on oath or affirmation (s.86);
- power to refer a question of law arising on a review under Part 5 of the FOI Act to the Supreme Court for decision (s.97).

1.7 Section 88(1) of the FOI Act provides that in the conduct of a review, the Information Commissioner has, in addition to any other power, power to:

- (a) review any decision that has been made by an agency or Minister in relation to the application concerned; and
- (b) decide any matter in relation to the application that could, under the FOI Act, have been decided by an agency or Minister;

and any decision of the Information Commissioner has the same effect as a decision of the agency or Minister. This very broad grant of power is limited by s.88(2) which provides that, if it is established that a document is an exempt document, the Information Commissioner does not have power to direct that access to the document is to be granted. This means that the Information Commissioner is specifically deprived of the discretion possessed by agencies or Ministers under s.28(1) of the FOI Act to permit access to exempt documents or exempt matter.

1.8 Section 89 of the FOI Act provides that the Information Commissioner, after conducting a review of a decision (other than a review of a decision of the Minister for Justice and Attorney-General to issue a certificate under ss.36, 37 or 42 of the FOI Act) must make a written decision:

- (a) affirming the decision; or
- (b) varying the decision; or
- (c) setting aside the decision and making a decision in substitution for the decision.

1.9 Section 89(2) provides that the Information Commissioner must include in the decision the reasons for the decision. Section 89(5) provides that the Information Commissioner may arrange to have decisions published. I have made arrangements with the Law Book Company for my formal decisions to be published in the looseleaf service *Queensland Administrative Law*, by Dr Chris Gilbert and Mr William Lane. The decisions are subsequently published in a

bound series of reports entitled the *Queensland Administrative Reports* (QAR). Formal decisions, and summaries of 'letter decisions', can also be accessed on the Information Commissioner's web-site (address: <http://www.slq.qld.gov.au/infocomm>) which is maintained with the generous assistance of the State Library of Queensland.

- 1.10 The Information Commissioner can properly be described as a specialist tribunal. The Information Commissioner has been conferred with powers and functions, and a role in the scheme of the FOI Act, which are comparable to those of the Commonwealth Administrative Appeals Tribunal (the Commonwealth AAT) and the Victorian Civil and Administrative Tribunal (the VCAT) which undertake the function of independent external review authority in the scheme of the *Freedom of Information Act 1982* Cth (the Commonwealth FOI Act) and the *Freedom of Information Act 1982* Vic (the Victorian FOI Act), respectively. Unlike those two bodies, however, which are tribunals of general jurisdiction, the Information Commissioner provides a specialised dispute resolution service confined to disputes under the FOI Act. Moreover, it is clear from Part 5 of the FOI Act and its legislative history that the Queensland Parliament intended that the Information Commissioner provide a speedier, cheaper, more informal and more user-friendly method of dispute resolution than the court system or tribunals, such as the Commonwealth AAT and the VCAT, which adopt court-like procedures. In Chapter 2 of my first Annual Report (1992/93), I traced the evolution of the Information Commissioner model of dispute resolution for FOI cases. That model has been embraced in the freedom of information statutes of Western Australia, South Australia and Tasmania, although in the last two instances the South Australian Ombudsman and the Tasmanian Ombudsman have been given determinative powers in FOI matters, without the creation of a new statutory office of Information Commissioner.
- 1.11 Since one of the professed objects of freedom of information legislation (see s.5(1)(a) of the FOI Act) is to enhance the accountability of the executive branch of government, it is essential to the credibility of the entire scheme of the legislation that the opportunity is provided for aggrieved applicants to have adverse decisions reviewed on their merits by an authority independent of the executive government. The public is not likely to accept the administration of the FOI Act as being credible, fair and just, if the ultimate decision-making power on whether to grant or refuse access to information, which may reflect on the efficacy or propriety of operations of the executive branch of government, were to remain in the hands of officials within the executive branch of government. Many of the exemption provisions in the FOI Act are unavoidably couched in terms which call for the making of value judgments, for example, as to whether, disclosure (of particular documents) would involve a reasonable expectation of prejudice (see s.39, s.40, s.42 of the FOI Act) or a reasonable expectation of a substantial adverse effect (see s.40, s.47(1)(a), s.49 of the FOI Act) or as to where the balance of public interest lies when competing public interests favouring disclosure and non-disclosure are identified and weighed. If the public is to have confidence in the administration of the FOI Act, it requires the assurance that judgments made by agency officials and by Ministers (who are potentially subject to institutional pressures which may cause their judgments to favour the interests of their own organisation or the interests of the government of the day), can be tested by independent review.
- 1.12 Section 61(2) of the FOI Act provides that the Parliamentary Commissioner for Administrative Investigations (the Parliamentary Commissioner), appointed under the *Parliamentary Commissioner Act 1974*, is to be the Information Commissioner (unless another person is appointed as the Information Commissioner by the Governor-in-Council on an address from the Legislative Assembly - this has not occurred). By virtue of my appointment as Parliamentary Commissioner, therefore, I also hold the separate statutory office of Information Commissioner.

Financial Structure & Goals

- 1.13 Although the Office of Information Commissioner and the Office of Parliamentary Commissioner are separate statutory offices, funding is provided for the Office of the

Information Commissioner under the Managing for Outcomes budgeting arrangements for the Office of the Parliamentary Commissioner. The Office of the Information Commissioner also has its corporate services functions of finance, personnel, administration and information technology performed by the Corporate and Research Division of the Office of the Parliamentary Commissioner. The audited financial statements for 1999/00 for both offices will be published in the 26th Annual Report of the Parliamentary Commissioner. In 1999/00, \$940,521 was expended on salaries and related costs (e.g., payroll tax, superannuation contributions) attributable to the Office of the Information Commissioner, while \$445,794 was expended on other costs attributed to the Office of the Information Commissioner. (The method of calculation of other costs was altered in this reporting period, so as to apportion a share of the expenses of the Corporate and Research Division and the Commissioner's Office, in addition to administrative expenses directly referable to the operations of staff of the Office of the Information Commissioner. Comparisons with figures in earlier Annual Reports would need to take that into account.)

- 1.14 The performance output for the offices of Parliamentary Commissioner and Information Commissioner is "*Independent review of complaints and appeals about Government administration*". The suboutput for the Office of the Information Commissioner is "*Independent review by the Information Commissioner of decisions made by Government in the administration of the Freedom of Information Act 1992*". The role of the Information Commissioner is confined to reviewing decisions of specified kinds made under the FOI Act, and the Information Commissioner can exercise determinative powers, i.e., can make decisions which are binding on the participants to a dispute (subject to a participant's right to seek judicial review by the Supreme Court if an error of law in the Information Commissioner's decision can be demonstrated). I have endorsed appropriate goals and performance indicators for the Office of the Information Commissioner which are explained in Chapter 2 of this report.

Part B: Structure & Organisation

- 1.15 The principal place of business of the Office of the Information Commissioner is Level 25, 288 Edward Street, Brisbane, 4000 (telephone (07) 3005 7100).
- 1.16 I, Frederick Norman Albiez, was appointed by the Governor-in-Council on 16 May 1991 to a three year term as Parliamentary Commissioner for Administrative Investigations pursuant to s.5 of the *Parliamentary Commissioner Act 1974*. Since then I have been reappointed on a number of occasions, most recently for a two year term from 16 May 1999 to 15 May 2001. By virtue of that appointment, I also hold office as Information Commissioner pursuant to s.61(2) of the FOI Act.
- 1.17 The permanent staffing structure of the Office of the Information Commissioner, as at 30 June 2000, was as follows:
- 1 Deputy Information Commissioner
 - 2 Assistant Information Commissioners (at level AO8)
 - 2 Senior Administrative Review Officers (at level A07)
 - 3 Administrative Review Officers (at level A06)
 - 1 Executive Officer (at level A04)
 - 1 part-time Research Officer (at level A03)
 - 2 Administrative Assistants (at level A02).

As at 30 June 2000, the permanent staffing structure was supplemented by the following additional temporary staff:

- 1 Senior Administrative Review Officer (at level A07)
- 1 Administrative Review Officer (at level A06).

Overview of Operations During the Reporting Year

- 2.1 In 1999/00, the Office of the Information Commissioner significantly increased its output, with the finalisation of 352 external review applications, as compared to 301 in the previous reporting period (an increase of 17%). This is the seventh consecutive year in which the office has significantly increased its outputs, and the fourth consecutive year in which it has managed to finalise more cases than it received during the year. The history of performance of the office, in terms of numbers of applications dealt with, is set out in Table 3 below. In my 1997/98 Annual Report, I stated that, provided the numbers of new cases received remained relatively steady (as they had done, in the range of 210-230, over the previous four years), a concerted effort by staff over the next two financial years (with the aid of continued temporary funding for the purpose) should see the elimination of the accumulated backlog by the end of that period. However, a substantial increase in the number of new applications for external review received in the last two financial years (the figures for new applications increased from 210 in 1997/98 to 291 in 1998/99, an increase of 38.6%, with a further 12% increase to 327, in 1999/00) has meant that, despite finalising a record number of cases, the backlog remains higher than I hoped for as at 30 June 2000. Nevertheless, efforts will continue to reduce the backlog as quickly as possible.

Table 3 - Applications dealt with by the Office of the Information Commissioner

Reporting period	Applications received	Applications completed	Applications pending	Equivalent full-time professional staff
18/1/93 - 30/6/93	120	27	93	2
1/7/93 - 30/6/94	274	125	242	4
1/7/94 - 30/6/95	223	179	286	6
1/7/95 - 30/6/96	209	203	292	6.3
1/7/96 - 30/6/97	231	246	277	8
1/7/97 - 30/6/98	210	270	217	8.5
1/7/98 - 30/6/99	291	301	207	8.8
1/7/99 - 30/6/00	327	352	182	10.6
Total	1885	1703		

- 2.2 The financial year 1999/00 represents the first full year in which the office has had adequate staffing resources to attempt to clear the backlog of complex, older cases, and attempt to resolve newer cases more quickly. Senior staff were tasked to make a concerted effort to resolve older cases, and considerable progress was made in that regard in the first six months of the reporting period. In the second half of the reporting period, however, considerable demands were made on the time of staff generally, but senior staff in particular, in servicing the requirements of the management review of the office undertaken by The Consultancy Bureau Pty Ltd pursuant to s.108A of the FOI Act, as well as the requirements of the Legal, Constitutional and Administrative Review Committee of the Legislative Assembly (LCARC) for inputs in respect of its wide-ranging review of the FOI Act. Nevertheless, notable improvement was evident in the timeliness of resolution of newer cases received. Approximately 50% of new cases received in 1999/00 were finalised within three months, while 68% were finalised within 6 months (and that proportion will rise because some cases received in the reporting period are still less than 6 months old). Unfortunately, while a significant backlog remains, there will continue to be a proportion of applicants for review who will not have their cases dealt with in the timely manner that the Office aspires to achieve. I have continued to prioritise the case-loads of staff according to the factors

identified in paragraphs 2.15 to 2.16 of my 1993/94 Annual Report. I understand and sympathise with the concerns of applicants, and agencies, to have timely resolution of disputes which proceed to external review. During the reporting period the management strategies I discussed in my 1996/97 Annual Report (at paragraph 2.2) were continued with considerable success. In addition, late in the reporting period, staff commenced work on the process of putting in place the systems, processes and training regimes necessary to implement, or trial, the recommendations made by The Consultancy Bureau. While this has involved (and will involve, since implementation of some recommendations will be a medium to long term process) further diversion of staff time from working on the resolution of cases, the recommendations may produce enhanced efficiencies in the longer term.

Table 4 - Time for resolution of cases completed during 1999/00

Under 1 month	72	12 - 18 months	18
1 - 3 months	79	18 - 24 months	16
3 - 6 months	56	24 - 30 months	10
6 - 9months	34	30 - 36 months	8
9 - 12 months	24	over 36 months	35
		TOTAL	352

2.3 In Chapter 2 of my 1993/94 Annual Report, I referred (at paragraphs 2.2 to 2.6) to the complex nature of some of the legal issues that arise under the FOI Act, and the compounding effect which can occur when there is a large volume of information in issue. Decisions which proceed through to the stage of external review can ordinarily be expected to involve the more difficult issues of principle which are capable of arising under the FOI Act. The purpose of an external review authority is to take a more careful look at the more complex and contentious issues that arise in the administration of the FOI Act, while affording the opportunity (which, due to statutory time constraints, is not ordinarily available at primary, and internal review, decision-making levels) for participants in a review to provide detailed inputs to the decision-making process by way of evidence and/or submissions on the issues for determination. Although it is best, whenever possible, to avoid an unduly legalistic approach to the application of the FOI Act, that is generally not possible with respect to applications for external review that cannot be resolved informally by negotiation, and must proceed to a formal decision by the Information Commissioner. In the usual case, an applicant is asserting a legal right (in accordance with s.21 of the FOI Act) to be given access to requested documents, and the respondent agency is asserting that the matter in issue falls within one of the exceptions to the right of access provided for in the FOI Act, usually one of the exemption provisions in Part 3, Division 2. The participants are entitled to have such a dispute resolved according to law, and I am obliged to resolve it according to proper legal standards and principles, including the duty to accord procedural fairness. A participant who is aggrieved by a formal decision of the Information Commissioner has the right to apply to the Supreme Court for judicial review if the participant considers that a legal error has been made. Moreover, Australian law imposes fairly onerous obligations as to the extent, and substantive content, of the reasons which must be furnished by a tribunal which (like the Information Commissioner pursuant to s.89(2) of the FOI Act) is required to give reasons for decisions: see H. Katzen "Inadequacy of Reasons as a Ground of Appeal", (1993) 1 *Australian Journal of Administrative Law*, p.33.

2.4 In Chapter 4 (pp.24-29) of my 1992/93 Annual Report, I explained the procedural approach that would ordinarily be adopted for the resolution of FOI disputes. That approach has been adhered to during 1999/00. The main emphasis of that approach is on negotiation with the participants to resolve as many issues in dispute as possible. When that process is exhausted, opportunities are given to the participants to lodge evidence and written submissions in support of their respective cases, preparatory to a formal decision. The procedures adopted are intended to keep the costs for participants (including government agencies) as low as possible.

- 2.5 One of the most important functions of my Office is to provide authoritative guidance for FOI administrators on the correct interpretation and application of the provisions of the FOI Act. This is done not only through the publication of formal decisions, but through attempting, in the mediation/negotiation phase of the review process, to explain to agencies, both in conference and in correspondence, the basis on which my Office considers that an agency may have misunderstood or misapplied the FOI Act in a particular case. The quality of formal decisions is, of course, of prime importance in discharging the educative and normative (i.e., standard-setting) role expected of an external review authority. Notes on the significant issues dealt with in each published formal decision given in 1999/00 are set out in Appendix 3 to this report.
- 2.6 Section 23 of the *Public Sector Ethics Act 1994* Qld requires annual reports to include implementation statements giving details of action taken by agencies during the reporting period to comply with provisions of the Act. Copies of the ethics principles and ethics obligations for public officers have been circulated to existing staff, are included in induction materials for new staff, and are posted on the staff noticeboard. Following consultation with staff and associations representing staff, a Code of Conduct for staff was finalised during the reporting period, and forwarded to the Minister for Justice and Attorney-General for approval. The Code of Conduct was approved by the Minister after the end of the reporting period.

Goals & Performance in 1999/00

- 2.7 I have established three general goals for the Office of the Information Commissioner. I have also established key performance indicators to measure the achievements of the Office in meeting the goals. I set out below each goal, together with its relevant performance indicators, before proceeding to evaluate the performance of the Office in the reporting period.

Goal 1

To conduct the investigation and review of decisions subject to review under Part 5 of the FOI Act, with a high standard of professionalism, timeliness and efficiency, in order to establish the correct decision required by the provisions of the FOI Act (or resolve the dispute by informal means) with as much expedition as the requirements of procedural fairness, and the issues for determination in the case, will allow.

Performance Indicators

- achievement in each reporting period of a target number for total cases resolved (the target to be set by the Information Commissioner by reference to actual performance in past reporting periods, expected optimum performance for each available member of professional staff, and expected efficiency/productivity improvements). An additional measure of performance to be noted will be the percentage variation in the number of resolved cases, compared with previous reporting periods.
- proportion of cases completed in the reporting period which were resolved within 12 months of lodgment (and percentage variation in that proportion over previous reporting periods).
- average time for finalisation of cases completed in the reporting period (and percentage variation in that average time over previous reporting periods).

Goal 2

To adopt flexible and informal procedures which ensure that each case proceeds with as little formality and technicality as the issues for determination in the case will allow, so as to -

- promote informal resolution of disputes (or reduction of the number of issues in dispute requiring formal resolution) by negotiation and mediation; and
- avoid or minimise unnecessary expense to participants (including government agencies).

Performance Indicators

- proportion of total cases assessed for investigation and review during the reporting period in which informal dispute resolution methods (i.e. negotiation/mediation) were undertaken.
- proportion of cases resolved informally compared to cases resolved by formal written determination.

Goal 3

To maximise the educative and normative role of the Information Commissioner as independent external review authority under the FOI Act by publishing formal decisions which authoritatively interpret and explain relevant provisions of the FOI Act and correctly illustrate the application of relevant principles in particular cases.

Performance Indicator

- proportion of Information Commissioner's formal decisions that are overturned for legal error by the Supreme Court in judicial review proceedings, as a percentage of the total number of decisions issued by the Information Commissioner in the relevant reporting period.

Performance against Goal 1

- 2.8 During 1999/00, I set my professional staff a goal of resolving an increased target of 320 cases. I am pleased to say that the target was exceeded (with 352 cases resolved), notwithstanding the considerable resources taken up in servicing the requirements of the management review undertaken by The Consultancy Bureau, and the LCARC review of the FOI Act.
- 2.9 Seventy-six percent of cases finalised in 1999/00 were resolved within 12 months of lodgment. I anticipate that this figure can be further increased to at least 90% when the backlog of older, complex cases requiring formal decisions has been eliminated. In fact, 83% of new cases received in 1999 were resolved within 12 months (and that proportion will rise because some new cases received in 1999 are still less than 12 months old). The average time for finalisation of cases completed during the reporting period was 370 days (i.e., approximately 53 weeks). This represents an increase on the average time achieved in 1998/99 (44 weeks), which is attributable to the concerted effort made during the reporting period to resolve the backlog of older, complex cases, and the consequent inflating effect which those cases have had on average closure times. (Generally speaking, those cases involved large numbers of documents, multiple third parties, and complex issues, such that the effort required to produce the formal decisions resolving them, at a time when the office had considerably fewer staff resources, would have meant that an unacceptably high number of less complex cases would have been considerably delayed in their resolution. Accordingly, I chose to prioritise cases in a way that would produce the greatest good for the greatest number of people, in terms of timeliness of resolution of cases, given the resources available to the office at that time.)

- 2.10 I anticipate that performance in terms of average times for finalisation of cases should progressively improve in future years. Indeed, to discount for the inflating effect on average closure times of the complex older cases, a better reflection of more recent performance may be gained from the fact that, with just under 90% of new cases received in 1999 having been resolved by the end of September 2000, the average time for finalisation of those cases was 120 days (i.e., approximately 17 weeks).

Performance against Goal 2

- 2.11 The proportion of total cases assessed for investigation and review during 1999/00 in which informal dispute resolution methods were undertaken was, again, high at 92% (the figure was 90% in 1998/99). A total of 259 cases were resolved informally, compared to 93 cases resolved by formal written decision, making a proportion of 74% resolved by informal methods. This is a slight decrease on the 1998/99 figure of 77%. I can again report that it has been my experience that even if mediation and/or negotiation does not fully resolve a dispute it has, in nearly all cases, resulted in some significant progress towards narrowing and reducing the number of issues which must be the subject of formal determination.

Performance against Goal 3

- 2.12 Since formal decisions represent a most significant part of the work undertaken by my Office during the reporting period, I have recorded, in Appendix 3 to this Report, some notes on what I consider to be the significant issues dealt with in each published formal decision issued in 1999/00. This may be of assistance as a check list or handy guide for FOI administrators. From my examination of agency decisions at primary and internal review level (in those cases which progress to the stage of external review), it is clear that most agencies continue to obtain assistance from my formal decisions, and refer to them to explain and justify to applicants the stance which an agency has taken in a particular case.
- 2.13 The number of cases resolved by formal decision in 1999/00 was 93 (compared to 70 in 1998/99 and 91 in 1997/98). There were no challenges to my decisions made in the form of judicial review applications in the Queensland Supreme Court. Accordingly, in terms of the performance indicator for Goal 3, the proportion of formal decisions overturned for legal error was nil.

Developments During the Reporting Period

- 3.1 This segment of my Annual Report is usually devoted to general observations on the operation of the FOI Act, including comments on policy issues and recommendations for legislative amendment. However, my observations in that regard have been conveyed in some detail in formal submissions to the Legal, Constitutional and Administrative Review Committee of the Legislative Assembly (LCALRC). My submissions have been tabled, and are accessible at LCARC's website: <http://www.parliament.qld.gov.au/committees/LCARC/LCARC%20FOI.htm>, so there is no need to repeat them in this report. I look forward to LCARC's report, and subsequent public and Parliamentary debate on LCARC's recommendations for improvement of freedom of information in Queensland.

Management Review of the Office of the Information Commissioner

- 3.2 During the reporting period, The Consultancy Bureau Pty Ltd was engaged to conduct a management review of my Office, pursuant to s.108A of the FOI Act, with a view to identifying improvements that could be made in terms of economy, efficiency, and effectiveness. The report by The Consultancy Bureau, containing some 25 recommendations, together with my response to the report, was tabled in the Legislative Assembly in June 2000. My staff have prepared an implementation plan and schedule, in respect of the specific recommendations made in the report. Implementation or trialing of many of the recommendations has already commenced, though several recommendations require action or implementation in the medium term or long term. The recommendations will involve some variation to reporting on the performance of my Office, in my next Annual Report, after systems have been put in place to capture more detailed information on performance.

Who Uses the External Review Processes Available Under Part 5 of the FOI Act?

- 3.3 In my previous Annual Report, I provided statistical information about the types of applicants who sought external review, and the kinds of information they were seeking (see Table 6 on page 15 of my 1998/99 Annual Report). I have conducted a similar exercise in respect of external review cases finalised in the current reporting period. Again, the sample chosen was all cases finalised in the reporting year (352), less those which involved applications for amendment of information (11), making a sample of 341. In some of those cases, the dispute at external review level was over fees and charges, but these cases still involved examination of the kind of information which the applicant for access was seeking. Some of the cases were 'reverse FOI' applications, which have been classified according to the identity of the applicant for access (and where relevant, the nature of the information being sought). In order to provide a useful basis for comparison, I have maintained identical applicant categories to those adopted in the previous Annual Report.

Table 5 Profile of access applicants in external review cases finalised in 1999/00

<u>Type of Applicant</u>	<u>No.</u>
Politicians or political staffers	23
Journalists	7
Citizens groups/lobby groups	19
Individuals seeking information about public health and safety issues	5
Public servants (or former public servants) seeking information about workplace disputes e.g., grievance/disciplinary proceeding/termination of employment	34
Sub-categories:	
• Professional employee, e.g., salaried medical practitioner	(7)
• Teacher	(3)
• Police officer or ex-police officer	(2)
• University academic	(3)
Businessmen or business organisations seeking information for purposes related to their business	32
Professionals seeking information about their dealings with a professional regulatory body	4
Individuals seeking information about the treatment of their complaints to a professional regulatory body	10
Individuals seeking information relating to their treatment (or the treatment of a relative) by the QPS, the CJC or the courts (i.e., where the access applicant, or his/her relative, was the subject of investigation)	15
Individuals seeking information about how their complaint to the QPS or CIC was dealt with	10
Prisoners or former prisoners (or relatives thereof) seeking information relating to the prisoner's treatment by prison authorities	12
Individuals seeking access to their own medical records or records of a dependent child	27
Individuals seeking access to the medical records of a deceased relative	4
Individuals seeking information relating to their treatment under the Mental Health Act, or by mental health authorities (e.g., Patient Review Tribunal)	9
Individuals seeking information about the treatment of themselves or a family member by welfare agencies	5
Individuals seeking information related to persons involved with an adopted child	1
Individuals seeking access to information concerning treatment by relevant agencies (e.g., local Council/Department of Families, Youth and Community Care) of a neighbourhood dispute or a family dispute;	37
Including -	
Individuals seeking the identity of a complainant against them	(19)
Individuals seeking information about how a proposed government decision or policy will affect them, or about a government decision or policy which has affected them	60
Sub-category:	
Planning and development decisions	(12)
Individuals or business organisations seeking access to information for use in pending or proposed legal proceedings	19
Individuals seeking information about an individual public servant who has had dealings with them	8
Agency seeking review of another agency's decision	0
TOTAL	341

- 3.4 In my previous Annual Report, I noted the relatively low number of external review applications by politicians/political staffers and journalists compared to the Commonwealth and Victorian jurisdictions. The current period has seen an increase in the number of external review applications made by these groups, and by citizens groups/lobby groups. If the first four categories listed can be taken as representing general public interest applications, the proportion of general public interest applications has risen from 9% of cases finalised in the previous reporting period to 16% of cases finalised in the current reporting period.
- 3.5 The largest category of applicants noted in the previous reporting period comprised public servants or former public servants. This category has reduced significantly in the current period, so that it now comprises approximately 10% of external review applications finalised. In my view, this proportion is probably a more accurate representation of the level of usage of the FOI Act by aggrieved public servants, since the figure for the previous reporting period was considerably inflated by the efforts of one or two individuals making multiple applications.
- 3.6 Businessmen and business organisations again represented a significant proportion of access applicants but that proportion was slightly lower than in the previous reporting period. Both of the categories relating to individuals seeking access to their medical records, and individuals seeking access to information concerning the treatment by agencies of a neighbourhood or family dispute, rose significantly.
- 3.7 Applications by individuals or business organisations seeking information for use in pending or proposed legal proceedings also rose from 3% to 5.5% of all cases. Nevertheless, these low figures continue to run counter to the argument that lawyers (and their clients) seeking cheaper and less formal access to government-held information, as an alternative to court-based disclosure, are disproportionate beneficiaries of the public resources devoted to the administration of the FOI Act (at least in so far as use of the external review mechanism is concerned).
- 3.8 While the table shows an increase in the number of general public interest external review applications, it nevertheless remains clear that the vast majority of users of the external review mechanism are citizens seeking access to documents about matters of personal concern to them.

APPENDIX 1

Applications for external review received in 1999/2000, by category (as per s.71 of the FOI Act)

STATEMENT OF AFFAIRS (PART 2)	
Refusal to publish, or to ensure compliance with Part 2	0
Deemed refusal	0
ACCESS TO DOCUMENTS (PART 3)	
Refusal to grant access	134
Deletion of exempt matter	7
Combination - refusal to grant access/deletion of exempt matter	21
Deemed refusal to grant access	61
Deferred access	0
Charges	13
Combination - refusal to grant access/charges	2
Third party consulted; objects to disclosure	41
Third party not consulted; objects to disclosure	0
AMENDMENT OF RECORDS (PART 4)	
Refusal to amend	2
Deemed refusal to amend	6
ISSUANCE OF CONCLUSIVE CERTIFICATE	
Cabinet matter	0
Executive Council matter	0
Law enforcement/Public safety matter	0
MISCELLANEOUS	
No jurisdiction or misconceived application	40
TOTAL	327

APPENDIX 2

Applications for external received in 1999/2000, by respondent agency or Minister

<u>Ministers</u>	<u>No.</u>	<u>Other agencies</u>	<u>No.</u>
Education	6	Criminal Justice Commission	8
Health	5	Building Services Authority	8
Justice & Attorney General	1	James Cook University	6
		Queensland Law Society	4
		Queensland Rail	4
		WorkCover Queensland	4
<u>Departments</u>		Ombudsman	3
Corrective Services	32	Ergon Energy	2
Police	30	Qld Audit Office	2
Health	22	University of Queensland	2
Education	18	Local Government Assoc. of Qld	2
Families, Youth & Community Care	12	University of Southern Queensland	2
Environmental Protection Agency	10	Qld Electoral Commission	1
Justice & Attorney General	8	Patient Review Tribunals	1
Primary Industries	8	Public Trustee	1
Mines & Energy	6	Qld Building Tribunal	1
Transport	6	Qld Nursing Council	1
Natural Resources	5	Stanwell Corporation Ltd	1
Tourism & Racing	4	University of Central Qld	1
Equity & Fair Trading	3	Public Service Commissioner	1
Premier & Cabinet	2	Cth Dept of Social Security*	1
Emergency Services	2		
State Development	2	<u>Local authorities</u>	
Treasury	2	Gold Coast City Council	10
Aboriginal & TSI Affairs	2	Brisbane City Council	6
Comm & Inf, Local Gov, Plan & Sport	1	Gatton Shire Council	6
Housing	1	Redland Shire Council	4
Public Works	1	Cairns City Council	4
		Burnett Shire Council	3
		Caboolture Shire Council	2
<u>Health agencies</u>		Ipswich City Council	2
District Health Services		Maroochy Shire Council	2
—Royal Brisbane Hospital	5	Warwick Shire Council	2
—Princess Alexandra Hospital	4	Beaudesert Shire Council	1
—West Moreton	4	Clifton Shire Council	1
—Gold Coast	2	Dalrymple Shire Council	1
—Redcliffe-Caboolture	2	Douglas Shire Council	1
—Rockhampton	2	Esk Shire Council	1
—Toowoomba	2	Laidley Shire Council	1
—Townsville	2	Mundubbera Shire Council	1
—Gladstone	1	Tiaro Shire Council	1
—Innisfail	1	Pine Rivers Shire Council	1
—South Burnett	1	Redcliffe City Council	1
—Central West	1	Thuringowa City Council	1
—Sunshine Coast	1	Whitsunday Shire Council	1
Medical Board of Queensland	1		

* This body is not subject to the FOI Act

APPENDIX 3

Notes on significant issues dealt with in formal decisions published by the Information Commissioner in 1999/2000

Re Price and Surveyors Board of Queensland

(Decision No. 99005, (1999) 5 QAR 110)

This case raised an issue as to the proper construction of s.12 of the FOI Act which provides that: "... *parts 3 and 4 [of the FOI Act] do not apply to the [Information] commissioner or documents of the [Information] commissioner*". Clearly, s.12 of the FOI Act intends that citizens shall not have the right to apply to the Information Commissioner for access to documents in the possession or under the control of the Information Commissioner. However, that result could have been achieved by simply providing that Part 3 of the FOI Act does not apply to the Information Commissioner. The question then arises as to what was intended by the further provision that Part 3 of the FOI Act does not apply to documents of the Information Commissioner. I held that the logical construction of those words means that documents authored by the Information Commissioner (or his/her delegates), in the possession or control of another agency, are excluded from the application of Part 3 of the FOI Act by s.12, and hence that the applicant had no right to apply for, or obtain, access to documents of that kind in the hands of the respondent agency in the instant case.

I also decided that letters from third parties responding to consultation letters sent to them by the respondent agency under s.51 of the FOI Act were exempt under s.46(1)(a) of the FOI Act in the particular circumstances of the case.

Re Kupr and Department of Primary Industries

(Decision No. 99006, 27 September 1999, unreported)

The applicant sought access to two referee reports from previous supervisors, which were relied upon to the applicant's detriment in a selection process for employment as a Field Officer with the Queensland Boating and Fisheries Patrol. The respondent agency claimed that the referee reports were exempt matter under s.40(c) and s.46(1) of the FOI Act.

Substantial parts of the two referee reports had been disclosed to the applicant by a member of the interview panel during the selection process, who felt that the applicant should be given the opportunity to respond to adverse comments by the referees. Those parts could no longer be considered confidential information *vis-à-vis* the applicant; however, I considered whether the disclosure of those parts had been in breach of an equitable obligation of confidence imposed on the respondent, such that equity would restrain further disclosure of the information (in written form) in breach of the obligation. (In circumstances where the grant of an equitable remedy would not be futile, a defendant would not ordinarily be permitted to avoid an equitable obligation where the only asserted ground for avoidance arose by virtue of the defendant's own conduct in breach of the equitable obligation.) While it was not clear that an express assurance was given to the referees that their reports would be treated in confidence as against the applicant, I was satisfied that the comments made when the reports were sought were such as to lead both referees to believe that their reports would be treated in confidence. However, in the particular circumstances of the case (whereby the selection panel proposed to lower the applicant's position in the order of merit derived from the selection process, by reference to the adverse comments of referees), I found that the disclosure to the applicant of those parts of the reports was in accordance with the requirements of procedural fairness, and that equity would not restrain disclosure of those parts. Thus, those parts of the referee reports already orally disclosed to the applicant did not qualify for exemption under s.46(1)(a), nor under s.46(1)(b) of the FOI Act.

I found that the small portions of each report that had not been orally disclosed to the applicant retained the necessary quality of confidence to be the subject of an equitable obligation of confidence, and that the requirements of procedural fairness did not necessitate the disclosure of those portions to the applicant. However, as one of the authors of the reports had withdrawn his objection to the

disclosure of his whole report, I found that that report was not subject to a continuing obligation of confidence so as to qualify for exemption under s.46(1)(a) or s.46(1)(b). The undisclosed portions of the other report were, however, exempt under s.46(1)(a) and s.46(1)(b) of the FOI Act.

In relation to the application of s.40(c), I found that the disclosure of the whole of one report and the previously disclosed parts of the other could not reasonably be expected to have a substantial adverse effect on the management or assessment of the respondent's personnel so as to qualify for exemption under s.40(c) of the FOI Act.

Re Kenmatt Projects Ply Ltd and Building Services Authority; Graham (third party)

(Decision No. 99007, 27 September 1999, unreported)

This was a 'reverse FOI' application by a builder who objected to access being given to dispute files held by the respondent concerning the builder and various clients. The builder claimed that those files qualified for exemption under s.45(1)(c) of the FOI Act.

I found that disclosure of the bulk of the matter contained on the dispute files could not reasonably be expected to have an adverse effect on the builder's business affairs, although I accepted that there was some matter, the disclosure of which could reasonably be expected to be of concern to potential customers of the builder. In any event, I found that public interest considerations favouring disclosure (i.e., providing an understanding of how the respondent carries out its licensing and compliance functions in relation to builders under the *Queensland Building Services Authority Act 1991*, and enhancing the accountability of the respondent for the manner in which it resolves disputes, licenses builders and protects consumers) outweighed any such apprehended adverse effects. I also had regard to the fact that the respondent makes publicly available the number of directions for rectification work which are issued against particular builders, and that disclosure of the relevant dispute files would afford a more balanced and detailed account of a particular builder's performance. I found that the matter in issue did not qualify for exemption under s.45(1)(c) of the FOI Act.

Re Pearce and Queensland Rural Adjustment Authority; Various Landholders (third parties)

(Decision No. 99008, 4 November 1999, unreported)

In this case I was required to determine whether the names and addresses of third parties who received financial assistance under the Water Infrastructure Development Incentive Scheme (administered by the respondent authority), and the dollar amount of financial assistance they received, comprised exempt matter under s.44(1), s.45(1)(c) or s.46(1) of the FOI Act.

I found that, in relation to those third parties which were corporations, the matter in issue which comprised the names of the corporations could not properly be characterised as information concerning the "personal affairs of a person", and accordingly, that matter did not qualify for exemption under s.44(1) of the FOI Act. I made the same finding in relation to a third party who was identified by reference to the name of a family trust. In relation to those third parties who were identified by reference to their individual names, I found that the only information that would be revealed by disclosure of their names was the fact that they were recipients of financial assistance under a government grants scheme administered by the respondent, and that that information was properly to be characterised as information concerning the business or commercial affairs of those third parties, rather than information concerning their personal affairs. Accordingly, I found that that matter did not qualify for exemption under s.44(1) of the FOI Act.

In relation to the matter in issue which comprised the addresses of the third parties, I found that in some instances (namely, where the matter in issue comprised the name of a homestead/property and its address, as opposed to a post office box address), while the address comprised information concerning the business affairs of the third party, disclosure of the address, in conjunction with its adjoining name, would incidentally disclose information which concerned the personal affairs of an identifiable third party. I therefore found this matter *prima facie* exempt from disclosure under s.44(1) of the FOI Act.

In considering the application of the public interest balancing test incorporated in s.44(1), I found that the public interest in disclosure of information which would permit scrutiny of the geographical distribution of the funding available under the Scheme would be adequately served by disclosure of the postcodes only.

In relation to the matter in issue which comprised the dollar amount of financial assistance received by the third parties, I found that this matter could not properly be characterised as information concerning the personal affairs of the respective third parties, and that it therefore did not qualify for exemption under s.44(1) of the FOI Act. As to the application of s.45(1)(c), I found that disclosure of the matter in issue could not reasonably be expected to have an adverse effect on the business, commercial or financial affairs of the third parties, or to prejudice the future supply to government of such information. I stated that, 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, there would have been substantial public interest considerations favouring disclosure of the matter in issue (namely, the proper accountability of the respondent for the distribution of public funds) which would have warranted a finding that disclosure of the particular matter in issue would, on balance, be in the public interest.

As to the application of s.46(1) of the FOI Act, I found that there was no express assurance sought or given to the effect that the names and addresses of the third parties would be treated in confidence by the respondent, either as against the applicant, or the world at large. I also found that equity would not bind the respondent with an enforceable obligation of confidence, restraining it from disclosing the matter in issue. I therefore found that the matter in issue did not qualify for exemption under s.46(1)(a) of the FOI Act. As to s.46(1)(b), I found that the matter in issue was not communicated to the respondent in confidence and that disclosure of the matter in issue could not reasonably be expected to prejudice the future supply of such information to government.

Re Webber and Toowoomba City Council; International Generating Company Ltd and Normandy Pacific Energy Limited (third parties)
(Decision No. 99009, 4 November 1999, unreported)

The matter in issue comprised parts of documents relating to an agreement by the respondent to sell waste water to the third parties, who were the developers of the Millmerran power station.

I found that the matter in issue did not qualify for exemption under s.45(1)(b) or s.45(1)(c) of the FOI Act. Quite apart from the fact that, at the time I gave my decision, the Millmerran power station had been given final approval to proceed by the Queensland Government and the third parties could no longer be considered to be in competition with other power station developers for the development of a power station in south-east Queensland, I was not satisfied in any event under s.45(1)(b) of the FOI Act that the matter in issue could be said to have possessed a commercial value which could reasonably be expected to be diminished by its disclosure.

As to s.45(1)(c) of the FOI Act, I was not satisfied 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 or the respondent, particularly given that the power station had received government approval to proceed. For the sake of completeness, I briefly discussed the public interest balancing test incorporated in s.45(1)(c) and noted that, even if the respondent or the third parties had been able to establish that the requirements for exemption under s.45(1)(c)(i) and (ii) were satisfied in respect of the matter in issue, there were strong public interest considerations favouring disclosure of the matter in issue which it would have been necessary to take into account in applying the public interest balancing test incorporated in s.45(1)(c).

Re Ainsworth & Ainsworth Nominees Pty Ltd and Criminal Justice Commission; "A" and "B" (third parties)

(Decision No. 99010, 17 December 1999, unreported)

The matter in issue comprised information pertaining to the applicants held by the respondent in connection with the respondent's report on Gaming Machine Concerns and Regulations (the GM report).

A number of 'sufficiency of search' issues were raised. I found that the respondent had carried out all the searches/inquiries that it could reasonably be expected to make in an effort to locate matter falling within the terms of the applicants' FOI access application, or, alternatively, that the further matter sought by the applicants was not contained in "documents of the agency" (as explained in my decision in *Re Holt & Reeves and Education Queensland* (1998) 4 QAR 310). I made some general observations on 'sufficiency of search' issues and emphasised the need for applicants to explain, and provide evidence to support, their grounds for believing that an agency holds additional responsive documents.

I found, in respect of the matter in issue comprising communications between the respondent and the Parliamentary Criminal Justice Committee relating to the review by the latter of the circumstances surrounding the production of the GM report, that their public disclosure would contravene a standing order of the Legislative Assembly, and hence infringe the privileges of Parliament. Those communications therefore qualified for exemption under s.50(c)(i) of the FOI Act.

I discussed the relationship between s.46(1)(b) and s.38(b) of the FOI Act in relation to intelligence information that had been supplied by law enforcement agencies of another government. I found that the more appropriate exemption for such matter was s.38(b), and that some of the matter in issue was exempt from disclosure under s.38(b).

The respondent claimed that two documents in issue would have qualified for exemption under s.48(1) of the FOI Act in the form which that provision took before its amendment, and that, by virtue of s.20(2) of the *Acts Interpretation Act 1954* Qld, it was entitled to have s.48(1) applied in the form it took at the commencement of my review. I rejected this argument on a number of grounds including that a respondent agency has no relevant right or privilege of the kind which s.20(2) of the *Acts Interpretation Act* is designed to preserve in certain circumstances. I held that the relevant law to be applied was the law which was in force at the time of making my decision, and that the two documents in question did not qualify for exemption under s.48 in its current form.

I found that matter comprising a former residential address of one third party was information concerning that person's personal affairs and was exempt from disclosure under s.44(1) of the FOI Act. However, I found that information concerning the performance by the third parties of their duties of employment as public servants was not information concerning their personal affairs, and did not qualify for exemption under s.44(1). I also decided that matter comprising allegations of wrongdoing on the part of persons and corporations other than the applicants was exempt under s.44(1) and s.45(1)(c) of the FOI Act.

In relation to matter comprising identifying references to one third party, I found that the claim for exemption under s.42(1)(b) of the FOI Act was not established because the identity of that third party had ceased to be confidential *vis-à-vis* the applicants. I also determined that a small amount of matter did not qualify for exemption under s.41(1) of the FOI Act as the respondent was unable to demonstrate that disclosure of that information would be contrary to the public interest.

Re Spilsbury and Brisbane City Council

(Decision No.99011, 21 December 1999, unreported)

The matter in issue comprised parts of a report (prepared by consultants engaged by the respondent) concerning alternative management strategies for Brisbane's wastewater treatment plants.

I found that none of the matter in issue qualified for exemption under s.46(1)(a) of the FOI Act. I considered that a clause in the consultancy agreement entered into by the consultants and the respondent, that vested in the respondent all intellectual property rights in the report, negated the consultants' assertion that a contractual obligation of confidence was owed to them by the respondent. I was also satisfied that this clause, together with the nature of the professional - client relationship that existed between the consultants and the respondent, meant that the matter in issue was not subject to an equitable obligation of confidence.

I also found that the report was not exempt from disclosure under either s.45(1)(b) or s.45(1)(c) of the FOI Act. I did not consider that the report comprised information having a current commercial value. I considered that, in any event, any such commercial value was assigned to the respondent under the consultancy agreement. In relation to the application of s.45(1)(c), I found that none of the necessary elements of that exemption provision were satisfied by the report and, moreover, that there was an overriding public interest in the disclosure of the report. I also found that the report did not qualify for exemption under s.45(3) of the FOI Act.

Re Bultitude and Princess Alexandra Hospital and District Health Service

(Decision No. 1/2000, 20 April 2000, unreported)

The applicant sought access to the medical records of her deceased husband. I found that the medical records were properly to be characterised as information concerning the deceased's personal affairs and were *prima facie* exempt from disclosure under s.44(1) of the FOI Act, subject to the application of the public interest balancing test which is incorporated in s.44(1). I decided that disclosure to the applicant of some of the medical records in issue (those that would assist the applicant to brief an oncologist or carcinogenicist to give an opinion on the aetiology of the cancer suffered by the deceased) would, on balance, be in the public interest, as it would assist the applicant to pursue a legal proceeding in respect of loss consequent upon her husband's death, or to evaluate whether a legal proceeding was available, or worth pursuing.

Re Villanueva and Queensland Nursing Council

(Decision No. 2/2000, 26 April 2000, unreported)

The applicant applied for access to documents in connection with the respondent's investigation of a complaint which the applicant had lodged about the conduct of a midwife who had been involved in the delivery of the applicant's baby at Ipswich General Hospital in 1994. I considered the application to the matter in issue of s.16 and s.48 of the FOI Act (in connection with a claim by the midwife's solicitors that disclosure of the matter in issue was prohibited by s.139 of the *Nursing Act 1992* Qld), as well as the application of s.42(1)(e), s.44(1) and s.46(1)(b) of the FOI Act. I decided that, with the exception of a small amount of matter which I considered could properly be characterised as information concerning the midwife's personal affairs and which was exempt from disclosure under s.44(1) of the FOI Act, the matter in issue did not qualify for exemption under the FOI Act.

I gave, detailed consideration to the claims of the midwife and the various other participants in the review that the information they provided to the respondent during the course of the investigation was communicated in confidence and therefore was exempt from disclosure under s.46(1)(b) of the FOI Act. I decided that, in the particular circumstances of the case, it was not reasonable for those persons to expect that the information that they provided would be kept confidential from the applicant, and that the other requirements for exemption under s.46(1)(b) had not been satisfied. As regards the public interest balancing test incorporated in s.46(1)(b), I found that, subject to any applicable constraints in a particular case (such as the need to respect any applicable obligations or understandings of confidence, or applicable privacy considerations) there is a legitimate public interest in a complainant being given sufficient information to be satisfied that an investigating body has conducted a thorough investigation and reached a fair and realistic decision about whether the available evidence was sufficient to justify any formal action being taken in respect of the complaint.

APPENDIX 4

Summaries of Decisions Issued by Means of Letters to Participants in 1999/2000

Price and Queensland Treasury

(S 101/97, 12 July 1999)

The matter in issue comprised part of a witness statement that had been interposed within an interdepartmental memorandum, apparently due to a photocopying error. The relevant witness statement was found to be exempt under s.43(1) of the FOI Act in *Re Price and Nominal Defendant* (1999) 5 QAR 80 (it was a statement taken by the Nominal Defendant's loss assessors for use in pending or reasonably anticipated litigation between the applicant and the Nominal Defendant). In this case, I found that the matter in issue had come into the possession of the respondent through a photocopying mishap and that it remained confidential *vis-à-vis* the applicant. I found that it still attracted legal professional privilege and therefore was exempt under s.43(1) of the FOI Act.

Timmins and Queensland Health

(S 152/99, 20 July 1999)

The applicant's FOI access application was not framed as a request for access to a document or documents. Rather it attached a document previously obtained by the applicant, and requested certain information relating to the author of the document (who was not identified on the face of the document). Pursuant to s.77(1) of the FOI Act, I decided not to deal further with the applicant's application for review because I was satisfied that it was misconceived and lacking in substance, in that the purported FOI access application was not a valid application for access to a document held by Queensland Health, in accordance with s.25 of the FOI Act.

Stewart and Queensland Police Service

(S 60/99, 28 July 1999)

The issue for determination was whether the applicant was required to pay a \$30.00 application fee in order to obtain access to the documents concerning an incident involving a police officer, the applicant, and the applicant's son. The Deputy Information Commissioner was satisfied that some of the documents in issue contained information which was properly to be characterised as information which solely concerned the applicant's personal affairs; some were properly to be characterised as containing information which solely concerned the personal affairs of the applicant's son; and the remainder were properly to be characterised as containing information which concerned the shared personal affairs of the applicant and his son. The Deputy Information Commissioner held that the fact that one requested document contained no information which could properly be characterised as information concerning the applicant's personal affairs meant that, in accordance with s.6 of the FOI Regulation, a \$30.00 fee was payable in respect of the applicant's FOI access application. The Deputy Information Commissioner observed that even if the applicant's son had made his own FOI access application, an application fee would still have been payable by him, as some of the documents in issue comprised information which solely concerned his father's personal affairs.

Grimley and Department of Mines and Energy

(S 129/98, 2 August 1999)

The applicant sought access to the identities of employers of workers in the electrical industry who had been killed or injured in electrical accidents. (He did not seek access to the names of the employees, or of self-employed contractors, accepting that such information would be exempt under s.44(1) of the FOI Act.) The respondent argued that the names of both employees and employers were exempt under s.44(1) of the FOI Act, as it would be possible to identify the employees by contacting their workplaces. I found that disclosure of the name of an employer would not, of itself, disclose anything about the personal affairs of employees, and that the identities of employers did not qualify for exemption under s.44(1) of the FOI Act.

Renton and Low and Rockhampton City Council

(L 9/99, 2 August 1999)

The applicants sought access to a page dated 24 May 1990 contained in the work diary of an employee of the respondent. During the course of the review, the applicants agreed to refine the scope of their access application in that they did not wish to pursue access to any diary entries which did not concern or refer to them, their property, or the previous owner of that property. The Deputy Information Commissioner examined the page in question and advised the applicants that it contained no information which was relevant to them or their property or the previous owner of the property. However, the applicants then asserted that they required access to the diary entry "uncensored". I held that the applicants were not entitled to obtain access to information which did not fall within the terms of their (refined) FOI access application.

Wickham Gensol (Australia) Pty Ltd and Gold Coast City Council

(L 2/99, 2 August 1999)

In this 'reverse FOI' case, the matter in issue comprised one paragraph of a facsimile transmission sent by the applicant to the respondent concerning a tender for construction of a truck wheel wash device. The applicant claimed that the matter in issue comprised exempt matter under s.45(1)(c) of the FOI Act. I was not satisfied 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 applicant or any other person, or to prejudice the future supply of like information to government.

Coroneos and Medical Board of Queensland

(S 22/99, 3 August 1999)

The matter in issue comprised correspondence from the respondent's solicitors to both the respondent and to an agent of the respondent, conveying legal advice, as well as segments of other documents containing a record or summary of that legal advice. The respondent decided that the matter in issue was exempt from disclosure to the applicant under s.43(1) of the FOI Act. From my examination of the matter in issue, I was satisfied that the correspondence from the respondents solicitors was brought into existence for the sole purpose of providing professional legal advice or assistance to the respondent (or to an agent of the respondent), and that the other segments of matter in issue reproduced, or recorded the substance of, privileged legal advice which the respondent had obtained from its solicitors. I was therefore satisfied that the matter in issue attracted legal professional privilege, and that it qualified for exemption under s.43(1) of the FOI Act.

"GUN" and Department of Justice and Attorney-General

(S 38/99, 3 August 1999)

The matter in issue comprised a Form 14 (or "Information") and a Form 15 (report by a Justice of the Peace) which were issued in respect of the applicant under s.25 of the *Mental Health Act 1974 Qld*. I applied the principles established in *Re "ROSK" and Brisbane North Regional Health Authority* (1996) 3 QAR 393 in finding that the matter in issue was exempt from disclosure under s.42(1)(h) of the FOI Act.

Navaratnam and Griffith University

(S 151/96, 3 August 1999)

In this 'reverse FOI' application, the documents in issue comprised three letters written by the applicant to the Vice-Chancellor of the respondent containing allegations concerning certain fundraising activities undertaken by the FOI access applicant. The applicant objected to the disclosure of the letters on the grounds that they should remain confidential, and that he held concerns for his safety and that of his family should the letters be disclosed.

Applying the principles established in *Re "B" and Brisbane North Regional Health Authority* (1994) 1 QAR 279, I found that the letters were not exempt from disclosure under s.46(1)(a) or s.46(1)(b) of the FOI Act. In respect of the applicant's safety concerns, I decided that, on the basis of the material before me, there was insufficient evidence to establish that disclosure of the letters could reasonably be expected to endanger the life or physical safety of the applicant or other persons. Accordingly, applying the principles stated in my decision in *Re Murphy and Queensland Treasury* (1995) 2 QAR 744, I found that the letters were not exempt under s.42(1)(c) of the FOI Act.

Cudmore and Queensland Police Service

(S 152/98, 16 August 1999)

The applicant sought review of a decision by the respondent that he was required to pay an application fee of \$30.00 for access to documents which conferred authority on two police officers to speak to the media concerning the applicant in 1995. The applicant contended that there must have been a specific authority given to the officers to speak to the media, while the respondent maintained that the officers relied upon the relevant provisions of the respondent's Operational Procedures Manual (OPM), and that the OPM was not a document which concerned the applicant's personal affairs. The OPM is approved by the Commissioner of Police under the *Police Service Administration Act 1990* Qld, and is an operational document which sets out the responsibilities of, and procedures to be followed by, police officers. I found that, regardless of whether any specific authority to speak to the media concerning the applicant did, in fact, exist, there was at least one document in the possession of the respondent (the relevant extract from the OPM) which fell within the terms of the applicant's FOI access application, and which did not concern his personal affairs. The applicant was therefore required to pay a \$30 application fee, and I affirmed the decision under review.

Thatcher and Department of Local Government and Planning

Morgan and Department of Local Government and Planning

(S 97/98 & S 103/98, 16 August 1999)

Both matters involved letters of complaint to the respondent, and to personnel of the Queensland Building Tribunal, concerning extensions made to the neighbouring residential property of the access applicant. The access applicant sought external review of the respondent's decision to refuse her access to parts of those letters and attachments, and the complainant lodged a 'reverse FOI' application objecting to the disclosure by the respondent to the access applicant of any part of the letters and attachments, on the basis that those documents were communicated in confidence.

I found that the letters and attachments were not exempt from disclosure under s.46(1)(a) or s.46(1)(b) of the FOI Act. I considered that if action were to be taken by the respondent in connection with the complaints, the complainant ought reasonably to have expected that the access applicant would have to be consulted about the complaints. I found that some of the information contained in the letters and attachments concerned the personal affairs of the complainant or his family and was *prima facie* exempt under s.44(1) of the FOI Act. However, insofar as that information concerned the access applicant's property, and its disclosure would allow her to more fully understand the deficiencies which the complainant claimed were present in the conduct of the referee who approved the extensions to the property, and allow her to respond in an informed manner to any suggestion that the decision to approve the extensions should be varied in some way, I was satisfied that, on balance, the public interest favoured disclosure to her of that information. There was, however, a small amount of matter, the disclosure of which I was satisfied would not significantly advance the public interest in assisting the access applicant's understanding of the complaints. I therefore found that that matter was exempt under s.44(1) of the FOI Act.

"MAR" and Queensland Health

"MAR" and Department of Corrective Services

(S 160/93 & S 161/93, 16 August 1999)

I applied the principles set out in *Re "S" and Medical Board of Queensland* (1994) 2 QAR 249 concerning the application of s.44(3) of the FOI Act, and found that psychiatric records concerning the applicant should not be given to the applicant but should be given to a qualified medical

practitioner nominated by the applicant and approved by the respondent. Applying the principles set out in *Re Murphy and Queensland Treasury & Others*, I found that a probation report about the applicant was exempt under s.42(1)(c), as its disclosure could reasonably be expected to endanger the physical safety of the applicant or other persons.

Burke and Building Services Authority

(S 160/98, 16 August 1999)

The applicant was a director of a civil earthmoving/construction company which carried out residential development, roadworks and drainage. In March 1998, a supplier ("the third party") which numbered the applicant among its clients, wrote to the Building Industry Credit Bureau (the BICB), seeking its assistance in determining whether a number of its clients (including the applicant) were licensed by the respondent. The BICB forwarded the letter to the respondent which checked its database and discovered that the applicant was not listed. The respondent subsequently wrote to the applicant, requesting him to clarify whether or not his company engaged in work of a kind which required it to be licensed. The applicant was able to satisfy the respondent that his company did not engage in building work of a kind which required a licence, and the respondent took no further action.

The applicant then applied for access to the supplier's letter under the FOI Act. The respondent claimed that the letter was exempt from disclosure under s.42(1)(b), s.42(1)(e) and s.46(1)(b) of the FOI Act. I found that the letter was exempt under s.46(1)(a). It was provided to the BICB, and subsequently to the respondent, for a limited purpose, which imposed upon the respondent an equitable obligation of conscience not to further disclose it to any other party.

"WAT" and Cairns District Health Service

(S 60/97, 16 August 1999)

The applicant sought access to all documents relating to herself in the possession of two doctors employed by the respondent. The respondent was prepared to disclose to the applicant all documents in its possession which fell within the terms of her FOI access application, but sought the views of the Health Rights Commission (HRC) in respect of certain documents. The HRC objected to disclosure on the basis that the documents in question were created in the course of a conciliation between the applicant and the respondent, which was facilitated by the HRC in accordance with the conciliation provisions in the *Health Rights Commission Act 1991* Qld. The HRC claimed that the documents in issue were excluded from the operation of the FOI Act by the provisions of s.11(1)(p), which provides that the FOI Act does not apply to the Health Rights Commissioner or a conciliator appointed under the HRC Act. In the alternative, the HRC argued that the documents in issue were exempt from disclosure under s.46(1) of the FOI Act. In accordance with the principles established in my decisions in *Re A Member of the Legislative Assembly and Queensland Corrective Services Commission* (1997) 4 QAR 99, and *Re McPhillimy and Queensland Treasury* (1996) 3 QAR 287, I found that the documents in issue, being in the possession and control of the respondent rather than the HRC, were not excluded from the application of the FOI Act. I also found that the documents were not confidential from the applicant herself, since they related to a conciliation to which she was a party, and that they therefore did not qualify for exemption from disclosure to the applicant under s.46(1) of the FOI Act.

"TAN" and Criminal Justice Commission

(S 58/96, 16 August 1999)

The applicant sought access to a number of documents relating to the investigation of a complaint of assault made against him in 1993, and to the investigation of a subsequent complaint made by the applicant's father in 1994 about the conduct of the Queensland Police Service (QPS in its investigation of the assault complaint. As a result of concessions made by the applicant, the respondent and a number of third parties, the only matter remaining in issue consisted of segments of records of interviews with two officers of the QPS given during the investigation of the 1994 complaint; a summary of those segments of the interviews in the final report on that investigation; and the service history of one of the officers. I found that the segments of matter from the interviews, as well as the service record of the QPS officer, were not exempt from disclosure under s.46(1). I also found that

none of the matter remaining in issue was exempt under s.40(c), as its disclosure could not reasonably be expected to have a substantial adverse effect on the future management or assessment by the QPS of its personnel. I also found that none of the matter remaining in issue was exempt under s.44(1) of the FOI Act. I was satisfied that the bulk of the matter in question related to the employment affairs of the QPS officers rather than their personal affairs. Furthermore, I was satisfied that the small amount of matter which was properly to be characterised as information concerning the personal affairs of persons other than the applicant was already known to the applicant, and, in addition, that its disclosure was integral to an understanding of some of the other matter in issue

McMahon and Department of Primary Industries

McMahon and Department of Natural Resources

(S 169/96 & S 48/97, 26 August 1999)

In both cases, the applicant sought access to information relating to certain position evaluations, and audits of evaluations, using the JEMS methodology, carried out both internally and externally by a firm of consultants engaged by the respondent agencies.

The main issue for my determination was whether documents in the possession of the consultants were "documents of the agency", as defined by s.7 of the FOI Act, having regard to the principles established in my decision in *Re Price and Nominal Defendant* (1999) 5 QAR 80. I found that there was no express contractual term in any contracts between the consultants and the respondents which gave the respondents a right or entitlement to obtain possession of any working documents created by the consultants in the course of preparing their reports or assessments. I also found that such a term was not necessary to give business efficacy to any such contracts, and hence that there was no implied contractual term of that kind. I found that documents created by the consultants in the course of preparing position evaluations or audits of positions were documents created by the consultants for their own benefit to assist in completing the task they had contracted to undertake, and were not "documents of the agency" for the purposes of the FOI Act.

Steinback and West Moreton District Health Service

(S 50/97, 20 September 1999)

The applicant sought access to the medical records of his deceased mother. I found that the matter in issue was exempt matter under s.44(1) of the FOI Act. I considered that the public interest arguments raised by the applicant were not sufficient to overcome the strong public interest in protecting the privacy of an individual's medical records (as explained in my decision in *Re Summers and Cairns District Health Service* (1997) 3 QAR 479).

"NIA" and Cairns City Council

(L 19/99, 21 October 1999)

The applicant sought access to information that would disclose the identities of persons who had lodged complaints with the respondent about a suspected rat infestation at the applicant's home, and the alleged conduct of an illegal business from his home. Applying the principles stated in *Re McEnery and Medical Board of Queensland* (1994) 1 QAR 349, I decided that the complainants were confidential sources of information, that the information communicated by the complainants related to the enforcement or administration of the law, and that disclosure of the matter in issue would enable the applicant to ascertain the identities of the complainants. I therefore found that the matter in issue was exempt under s.42(1)(b) of the FOI Act. I also decided, applying the principles in *Re Stewart and Department of Transport* (1993) 1 QAR 227, that the fact that the complainants had lodged complaints with the respondent was a matter concerning the complainants' personal affairs. I therefore found that the matter in issue was *prima facie* exempt under s.44(1) of the FOI Act. I was not satisfied that disclosure of the matter in issue would, on balance, be in the public interest.

Laing and Department and Equity and Fair Trading
(S 110/99, 21 October 1999)

The applicant sought access to information that would disclose the identity of a person who had lodged a complaint with the respondent to the effect that the applicant had been acting as an unlicensed motor dealer. Applying the principles stated in *Re McEniery and Medical Board of Queensland*, I decided that the complainant was a confidential source of information, that the information communicated by the complainant related to the enforcement or administration of the law, and that disclosure of the matter in issue would enable the applicant to ascertain the identity of the complainant. I also decided, applying the principles in *Re Stewart and Department of Transport*, that the fact that the complainant lodged a complaint with the respondent was a matter concerning the complainant's personal affairs. I therefore found that the matter in issue was *prima facie* exempt under s.44(l) of the FOI Act. I was not satisfied that disclosure of the matter in issue would, on balance, be in the public interest.

"GRU" and Department of Families, Youth and Community Care
(S 217/93, 27 October 1999)

I found that this application for review was misconceived and lacking in substance, and decided, pursuant to s.77(1) of the FOI Act, not to review the respondent's decision, because the issues which the applicant sought to raise on internal review and external review were unrelated to the scope of his relevant FOI access application.

Dekker and University of Queensland
(S 33/93, 28 October 1999)

The applicant sought access to a number of documents in connection with injuries she sustained while employed by the respondent between the early 1950s and the early 1970s. There were a number of documents, including medical certificates dating back to the 1950s and accident investigation reports dating back to the early 1970s, which the applicant considered should have been among the documents disclosed to her. Applying the principles stated in *Re Shepherd and Department of Housing, Local Government & Planning* (1994) 1 QAR 464, I determined that the documents sought either did not exist as documents in the possession or control of the respondent, or that the efforts the respondent had made to locate the documents were reasonable in all the circumstances of the case. I also found that information comprising home addresses of staff members and former staff members of the respondent who provided statements during an investigation of the complaints made by the applicant to the Parliamentary Commissioner for Administrative Investigations, was exempt matter under s.44(1) of the FOI Act.

"SIN" and Department of Families, Youth and Community Care
(S 119/99, 29 October 1999)

The applicant sought access to the name of her putative father (i.e., the person named by her mother as her natural father) which was recorded following an interview with the applicant's mother by child welfare officers after the applicant's birth. The respondent claimed that the name of the putative father was exempt from disclosure under s.44(l) of the FOI Act. This case was one of a number of cases before me which had substantially similar facts and circumstances to those which I considered in *Re "KBN" and Department of Families, Youth and Community Care* (1998) 4 QAR 422. In this case, the applicant had made clear her desire to contact the person named as her father. I considered that if the information were released and attempts were made to contact the person named, there would be strong potential for harm, especially if that person were deceased and the relatives of that person had no way to verify the claim of paternity. I considered that the privacy interests of the person named as the applicant's father was a factor to be accorded substantial weight in determining where the balance of public interest lay. Following consideration of the public interest arguments raised by this application, and the particular circumstances of the case, I affirmed the respondent's decision that the matter in issue was exempt from disclosure under s.44(1) of the FOI Act.

"JAC" and Queensland Transport
"WEB" and Queensland Transport
(S 13/98 & S 14/98, 29 October 1999)

In the first case, I rejected a number of applications made under s.53 of the FOI Act for amendment of information concerning the applicant's conviction for traffic offences. I found that the information sought to be amended was not inaccurate, incomplete, out-of date or misleading. I also decided not to review further, two applications disputing facts on which a Magistrate's decision to convict the applicant was founded, on the basis that the applications were misconceived and lacking in substance under s.77(1) of the FOI Act.

In the second case, I rejected a number of applications for amendment made under s.53 of the FOI Act by the person who was allegedly driving the car owned by "JAC" at the time of the offences. I decided not to review further one application, on the basis that it was frivolous under s.77(1) of the FOI Act, and found that one application concerned information that did not relate to the personal affairs of the applicant. I otherwise decided that the information sought to be amended was not inaccurate, incomplete, out-of-date or misleading. I expressed the view that an application seeking to amend the factual findings contained in a decision by an FOI decision-maker (as an alternative to the pursuit of rights available to seek review of the merits of the decision under s.52 and Part 5 of the FOI Act) should be regarded as frivolous, vexatious, misconceived or lacking in substance under s.77(1) of the FOI Act.

Simmons and Department of Justice and Attorney-General
(S 192/99, 4 November 1999)

In this review, the sole issue raised by the applicant concerned a 'sufficiency of search' issue. Applying the principles stated in *Re Shepherd*, I determined that there were no reasonable grounds for believing that the documents to which the applicant sought access, existed.

Monks and Logan City Council
(L 9/96, 16 November 1999)

I decided that, in the context in which they appeared, the names of persons who had contributed comments to a consultant engaged by the respondent to make preliminary investigations prior to the production of a draft Development Control Plan would disclose information that concerned those persons' personal affairs. The informal and preliminary nature of the consultation was an important factor in my finding. I commented that the position might well be different where people choose to become involved in a more formal and public, statutory-based submission process. I found that disclosure of the names (the text of the comments had already been disclosed) would not, on balance, be in the public interest, and that they therefore were exempt from disclosure under s.44(1). However, given that their identities would not be disclosed, I found that the suburbs of residence of two persons were not exempt from disclosure under s.44(1).

Egan and Criminal Justice Commission
(S 122/94, 24 November 1999)

I found that copies of a memorandum between counsel assisting the Fitzgerald Commission, and parts of documents recording a legal opinion, were subject to legal professional privilege and therefore exempt under s.43(1). Applying principles discussed in my decision in *Re Hewitt and Queensland Law Society Inc and Legal Ombudsman* (1998) 4 QAR 328, I found that a memorandum from a Legal Officer to the Director of the Official Misconduct Division of the respondent was not subject to legal professional privilege. I decided that a draft letter from the respondent to the Parliamentary Criminal Justice Committee was exempt under s.50(e)(i). I found that a small amount of matter which recorded opinions expressed by a junior officer of the respondent, which could be considered to reflect adversely on third parties, and which had not ultimately been adopted by the respondent, was exempt under s.41(1), but otherwise rejected claims for exemption under that provision.

Price and Nominal Defendant

(S 97/97, 24 November 1999)

I found that the applicant was entitled to obtain access, under s.30(1)(e) of the FOI Act, to a written document which the agency advised could be created by interrogation of a computer database, subject to payment of the reasonable costs that would be incurred by the agency in creating such a document, including the cost of engaging an external technical consultant. I concluded that the agency was otherwise entitled to refuse to deal with parts of the applicant's FOI access application under s.28(2) of the FOI Act. Applying the principles discussed in *Re Price and Nominal Defendant* (1999) 5 QAR 80, I decided that some documents held by the respondent's solicitors were "documents of the agency", as defined in s.7, and so were subject to the application of the FOI Act. However, I found that those documents, and the other matter remaining in issue, qualified for legal professional privilege and were exempt under s.43(1) of the FOI Act, except for a small amount of matter that I determined was exempt under s.44(1) of the FOI Act.

Henderson and Education Queensland

(S 120/99, 24 November 1999)

The matter in issue comprised parts of an internal memorandum which discussed leave arrangements for an employee of the respondent and why that employee required leave. I decided that the matter in issue referred to the employee's personal circumstances and matters of private concern to her, and was therefore *prima facie* exempt from disclosure under s.44(1) of the FOI Act. As regards the public interest balancing test which is incorporated in s.44(1), I acknowledged that there may be a public interest in scrutinising a government agency's handling of employees' requests for paid leave from the performance of public duties. However, I found that any general public interest consideration favouring disclosure was not sufficiently strong, in the particular circumstances of this case, to outweigh the public interest (inherent in the satisfaction of the test for *prima facie* exemption under s.44(1) of the FOI Act) in protecting the privacy of information concerning the employee's personal affairs.

Price and Department of Justice and Attorney-General

(S 29/99, 25 November 1999)

This application involved the Inquiry Legal Representation Office (ILRO) which was established with the respondent to assist citizens to make submissions to the Connolly/Ryan Commission of Inquiry (which was established to examine and investigate certain activities of the Criminal Justice Commission). Citizens wishing to make submissions to the Commission of Inquiry could apply to ILRO for funding, which, if granted, enabled the citizens to engage private solicitors to assist them in preparing their submissions. The applicant applied for, and received, such funding, and engaged Baker Johnson, solicitors, to represent him in making his submissions.

The issue for determination in this review was whether documents in the possession of Baker Johnson in connection with their representation of the applicant before the Connolly/Ryan Inquiry were 'documents of an agency' (i.e., the respondent) as defined by s.7 of the FOI Act. I found that any documents held by Baker Johnson pursuant to the solicitor/client relationship which existed between it and the applicant, were not documents which were under the control of the respondent or to which the respondent was entitled to access. I therefore found that the Baker Johnson documents were not documents of an agency, and that they were not subject to the application of the FOI Act.

"COP" and West Moreton District Health Service

(S 148/99, 30 November 1999)

The applicant sought, under s.73(1)(d) of the FOI Act, an extension of time in which to lodge an application for external review. I decided not to exercise my discretion under s.73(1)(d) to allow the applicant an extension of time, due to the extent of the unexplained delay by the applicant, and my view that, in any event, the matter in issue qualified for exemption under s.44(1) and s.46(1) of the FOI Act.

Atkinson and Environmental Protection Agency

(S 125/98, 30 November 1999)

This 'reverse FOI' application involved designs and specifications of a composting toilet created by the applicant. The applicant objected to the disclosure of the designs and specifications to the access applicant, which was a firm which produced a similar product. The applicant also objected to the disclosure of his address.

I decided that a number of the design features contained in the matter in issue were exempt from disclosure under s.45(1)(b) of the FOI Act, and that the address of the applicant was exempt matter under s.44(1) of the FOI Act.

Doyle and Princess Alexandra Hospital and District Health Service

(S 13/99, 16 December 1999)

The applicant was an employee of the respondent who sought access to a document written by another employee ("the third party") for the purpose of a grievance proceeding. The grievance proceeding did not go ahead after the third party resigned. However, the respondent took other management action against the applicant on the basis of information provided by staff including the third party. In the particular circumstances of this case, I found that the document in issue qualified for exemption from disclosure under s.40(c) and s.44(I) of the FOI Act.

Dekker and University of Queensland

(S 107/94, 16 December 1999)

The applicant sought amendment, under s.53 of the FOI Act, of a statement contained in a letter to her from the Workers' Compensation Board of Queensland. I found that the applicant was not entitled to apply to the respondent for amendment of the letter in issue as she had not obtained that document from the respondent but from the Workers' Compensation Board. I also expressed the view that, in any event the statement contained in the letter was not inaccurate, incomplete, out-of-date or misleading but a statement of fact made by the officer who wrote the letter.

Dekker and University of Queensland

(S 119/94, 16 December 1999)

The applicant applied to the respondent for amendment, under s.53 of the FOI Act, of two "Employer Form 3" forms that were forwarded by the respondent to the Workers' Compensation Board in response to applications for workers' compensation made by the applicant. In relation to one of the Form 3s, the applicant argued that it should have included a reference to the fact that she had reported to the respondent that chemicals had affected her adversely at work. The applicant argued that the other Form 3 incorrectly recorded her date of resignation.

I found that the applicant was not entitled to apply to the respondent for amendment of the documents in issue as she had not obtained those documents from the respondent but, apparently, from the Workers' Compensation Board. I went on to discuss other reasons why the applicant had no legal entitlement to have the information in those documents amended. In relation to the "report of chemicals" issue, I found that the statement actually recorded in the Form 3 was not inaccurate, incomplete, out-of-date or misleading as there was no evidence that a formal complaint concerning the effects of chemicals on the applicant had been made. In relation to the "date of resignation issue", I found that the date on which a person resigns from their employment is not information that relates to a persons personal affairs but rather, relates to their employment affairs.

"AND" and West Moreton District Health Service

(S 247/99, 12 January 2000)

The applicant sought an extension of time in which to lodge an application for external review under s.73(1)(d) of the FOI Act. I decided not to exercise my discretion under s.73(1)(d) in favour of the applicant, due to the extent of the unexplained delay and my view that the matter in issue clearly qualified for exemption under s.44(1) and s.46(1) of the FOI Act.

Dekker and Department of Justice & Attorney-General

(S 102/95, 14 January 2000)

The applicant sought access to documents comprising correspondence, internal memoranda and filenotes held by the respondent. The documents were generated to assist the Attorney-General in making appropriate responses to the applicant's letters regarding her past claim for workers' compensation and subsequent appeals, and other matters of concern to her. I found that those documents (with the exception of one, to which access was given) attracted legal professional privilege and were exempt under s.43(1) of the FOI Act. I rejected the applicant's claims that the 'improper purpose' exception applied so as to defeat the claim for legal professional privilege. I also rejected her claim that legal professional privilege had been waived by the respondent.

Cudmore and Queensland Police Service

(S 25/99, 18 January 2000)

The applicant sought review of a decision by the respondent that it did not hold any documents which specifically authorised officers of the respondent to speak to the media in connection with the applicant and certain offences which he was alleged to have committed. The respondent maintained that no such documents would ever have existed, as the respondent's Operational Procedures Manual (OPM) contained a general authority for officers to speak to the media in appropriate circumstances. Although the applicant insisted that this authority was insufficient for the making of statements concerning himself, and that there should have been further documentation, I found no evidence that such further documentation was necessary, or that it ever existed. As I found that the authority contained in the OPM constituted a sufficient authority for the statements made to the media concerning the applicant, I affirmed the respondent's decision that it held no further documents which fell within the terms of the applicant's FOI access application.

Dekker and Criminal Justice Commission

(S 105/97, 19 January 2000)

The documents in issue in this review concerned the applicant's complaint to the Parliamentary Criminal Justice Committee about the way in which the respondent had handled her complaint regarding various issues involving the University of Queensland and the Workers' Compensation Board. I applied the principles established in *Re Ainsworth & Ainsworth Nominees Pty Ltd and Criminal Justice Commission* (see Appendix 3) and found that the documents in issue were exempt under s.50(c)(i) of the FOI Act on the basis that public disclosure of those documents without the authority of the Parliamentary Criminal Justice Committee or of Parliament itself, would constitute a breach of parliamentary privilege.

Mathews and Department of Justice & Attorney-General

(S 117/93, 20 January 2000)

The applicant sought access to documents held by the respondent which related to his personal affairs or were in any way associated or connected with him. I considered the application of s.38, s.42(1)(e), s.43(1) and s.44(1) to the various documents in issue. I found that some of the documents qualified for exemption under s.38(b), s.43(1) and s.44(1).

Black and WorkCover Queensland

(S 199/99, 28 January 2000)

The applicant sought review of a 'deemed refusal' by the respondent to provide access to documents from a file which the respondent was unable to locate. The respondent made a number of submissions detailing extensive searches that had been carried out to locate the file, and discussed with staff from my office its general file management procedures. The applicant could not suggest any further searches that should have been conducted by the respondent to locate the file. I determined that, although the file management procedures adopted by the respondent had been found to be wanting in this instance, the search efforts made by the respondent had been reasonable in all of the circumstances of the case.

Cudmore and Queensland Police Service

(S 76/99, 1 February 2000)

The applicant sought access to copies of documents supplied to *People* magazine by the respondent in 1995, which resulted in the publication of an article alleging that the applicant and another person had committed several serious offences in Queensland and New South Wales. The respondent maintained that the information was supplied to the magazine in the course of an interview with the officer in charge of the investigation into the alleged offences, and that no written record was made or kept. I found that there was no evidence that any written record of the interview had ever been made. I also found that the respondent could not be compelled under the FOI Act to create a document containing the information given to the magazine (even if the officer involved could accurately recall what had been said).

Henderson and Queensland Health

Higgins and Queensland Health

(S 178/99 & S 12/99, 1 February 2000)

The access applicant sought access to the employment records of the third party held by the respondent. The respondent decided to disclose a number of documents, in full or in part, to the access applicant. The access applicant applied for review of the respondent's decision to refuse him access to a number of other documents and parts of documents, and the third party applied for review of the respondent's decision to disclose any documents to the access applicant. I found that certain segments of matter (such as dates of birth, academic results, and family information) in the documents in issue concerned the personal affairs of the third party and was exempt from disclosure under s.44(1), and the access applicant abandoned his claim for access to that matter. I found that the matter remaining in issue was not exempt from disclosure, as it primarily concerned the performance by the third party of her duties as an employee of the respondent and therefore concerned her employment affairs rather than her personal affairs.

"SAN" and Gold Coast District Health Service

(S 56/97, 1 February 2000)

The matter in issue comprised documents concerning the applicant's treatment at the Southport Hospital and related outpatient clinics for substance abuse and other health issues, including his participation in the methadone program. I found that the methadone program was "a system or procedure for the protection of persons" and that the relevant documents qualified for exemption under s.42(1)(h) of the FOI Act. I also found that, in the circumstances of this case, applying the principles stated in *Re "S" and Medical Board of Queensland*, certain of the documents should only be disclosed to a specialist psychiatrist, nominated by the applicant and approved by the principal officer of the respondent, in accordance with s.44(3) of the FOI Act.

Quest Community Newspapers and Queensland Police Service

(S 178/94, 8 February 2000)

I found that matter relating to internal disciplinary proceedings against an officer of the respondent (who did not object to disclosure of the matter) concerning the officer's handling of a bail application, was not exempt from disclosure in the particular circumstances of the case. In addition to the officer concerned, two other officers had provided statements for the purposes of the disciplinary proceedings. I found that the information communicated by those officers, consisting merely of a routine description of the circumstances leading up to the bail application, was not exempt under s.46(1) and that their identities were not exempt under s.42(1)(b). While I acknowledged that matter of this type may qualify for exemption in the circumstances of a particular case (as I found in *Re McCann and Queensland Police Service* (1997) 4 QAR 30), in this case I rejected claims under s.40(c), s.41(1) and s.42(1)(e) of the FOI Act. However, I did find that descriptions of injuries of victims, personal details of offenders, and matter that would disclose whether offenders had been charged, granted bail, or convicted as juveniles, were exempt from disclosure under s.44(1) of the FOI Act.

"MAT" and Department of Families, Youth and Community Care

(S 169/99, 16 February 2000)

The applicant sought access to information held on files of the respondent concerning the reporting and subsequent investigation of child abuse allegations. I found that some of the information was exempt from disclosure under s.42(1)(h) of the FOI Act. I found that some of the information recorded in the files concerned the personal affairs of persons other than the applicant and was therefore exempt under s.44(1) of the FOI Act. Other information in issue was properly to be characterised as information concerning the shared personal affairs of the applicant and other members of his family. Applying the principles stated in *Re "B" and Brisbane North Regional Health Authority* (1994) 1 QAR 279 at pp.343-345, I found that any information which was capable of being characterised as information concerning the applicant's personal affairs was inextricably interwoven with information concerning the personal affairs of other individuals, with the result that severance under s.32 was not practicable, and the relevant matter qualified for exemption under s.44(1). In respect of the remainder of the matter in issue, I found that it satisfied the requirements of s.46(1)(a) of the FOI Act and consequently was exempt from disclosure.

Darcy and Queensland Rail

(S 23/00, 17 February 2000)

The applicant purported to apply for review of a decision made by the respondent in which the respondent had refused to accede to a number of requests made by the applicant: The applicant had asked the respondent to provide him with a transcription of handwritten notes that were on a document to which he had been given access, as he was unable to decipher the handwriting. I found that there is nothing in the FOI Act which places an obligation upon an agency to assist an applicant to decipher handwriting contained in a document to which access has been granted. The applicant was welcome to inspect the original, but, unfortunately, the handwriting was simply indecipherable. The applicant had also asked the respondent to advise him who had authored the notes, when, and why the notes were made. I found that those requests were essentially an attempt to use the FOI Act to ask questions of an agency which, according to the principles stated in *Re Hearl and Musgrave Shire Council* (1994) 1 QAR 557, is not a legally enforceable right conferred by s.21 of the FOI Act. Pursuant to s.77(1) of the FOI Act, I decided not to deal further with the applicant's purported application for review on the grounds that it was misconceived and lacking in substance.

Henderson and Department of Communication & Information, Local Government and Planning

(S 45/99, 23 February 2000)

The matter in issue comprised a legal advice from the Acting Crown Solicitor to the Department of Public Works and Housing, and correspondence from the Department of Public Works and Housing to the State Archivist setting out certain legal advice. The respondent had decided that the matter in issue was exempt from disclosure to the applicant under s.43(1) of the FOI Act. The applicant claimed

that s.43(1) of the FOI Act did not apply as there had been an imputed waiver of legal professional privilege by the respondent. I was not satisfied that the disclosure of certain information by the respondent (which indicated its position in respect of a particular legal issue, but involved no disclosure of the content of the legal advice the respondent had received) was an act or omission inconsistent with the respondent maintaining its claim for legal profession privilege, and therefore was not satisfied that disclosure of that information involved a waiver of the privilege. I found that the matter in issue was exempt under s.43(1) of the FOI Act.

Sharples and Queensland Police Service

(S 30/00, 23 February 2000)

The applicant sought review of a deemed refusal of access by the respondent on the basis that the respondent had not processed his FOI access application within the requisite time limits provided for in the FOI Act. The respondent requested an extension of time within which to process the application, as provided for in s.79(2) of the FOI Act. I took into consideration the number of divisions of the respondent which would have to conduct searches to locate documents falling within the terms of the applicant's FOI access application, as well as the number of consultations required pursuant to s.51(1) of the FOI Act, and exercised my discretion to grant the respondent an extension of time under s.79(2) of the FOI Act.

Stubberfield and Redland Shire Council

(L 8/94, 7 March 2000)

The applicant sought review of a refusal of access by the respondent to a number of documents relating to the applicant's property and adjoining land, which the respondent contended were exempt under s.43(1), s.44(l) or s.45(l)(c) of the FOI Act. I found that the identities of third parties who had dealt with the respondent in a private capacity were exempt from disclosure under s.44(l) of the FOI Act, as well as a small amount of matter concerning the personal affairs of those third parties. I also found that the respondent was entitled to refuse access to one document under s.22(a) of the FOI Act, as it was reasonably available for inspection in the Registry of the Planning and Environment Court. I found that the remaining documents in issue (which comprised records of communications between the respondent and its legal advisors) were subject to legal professional privilege and exempt from disclosure under s.43(1) of the FOI Act. I rejected the applicant's contention that the documents in question were created in furtherance of an illegal or improper purpose.

Walkden and Department of State Development

(S 110/98, 7 March 2000)

The applicant requested access to documents held by the respondent relating to the Nelly Bay Harbour development on Magnetic Island, North Queensland. The matter in issue had been narrowed down to one Agreement, which was made between the developer and a number of third parties. The respondent claimed that this document was exempt under s.45(l)(c) of the FOI Act. Submissions were received from several of the third parties who objected to the disclosure of their names and the names of their companies, under s.44(1). I decided that, with the exception of the signatures of individuals contained in the Agreement (which I found to be exempt matter under s.44(1) of the FOI Act), the Agreement did not qualify for exemption under the FOI Act.

Hogan and Queensland Police Service

(S 125/99, 20 March 2000)

This review concerned the application of s.44(1) of the FOI Act. The applicant sought access to documents (audio-taped interviews) relating to an investigation by the respondent involving third parties. I found that the matter in issue concerned the personal affairs of the third parties, in particular the mention of their names in police records, in connection with some alleged wrongdoing. I was unable to identify public interest considerations weighing in favour of disclosure of the matter in issue, sufficient to outweigh the public interest in protecting the privacy of the persons referred to.

"SKE" and Education Queensland

(S 162/98, 20 March 2000)

The applicant sought access to documents concerning the alleged sexual harassment of several students and student teachers at a high school and secondary college in the Brisbane area by a former teacher, whom the applicant alleged had also sexually harassed her. (The applicant had already been given access by the respondent to all documents relating to the investigation of her own complaint of sexual harassment.) In accordance with my findings in *Re "NHL" and University of Queensland* (1997) 3 QAR 436, I found that information about the alleged incidents of sexual harassment was information which concerned the personal affairs of the third parties, and of the former teacher, and was *prima facie* exempt from disclosure under s.44(1). I also found that, on balance, disclosure of that information to the applicant would not be in the public interest, as disclosure of that information could prejudice the ability of the respondent to properly deal with future complaints of sexual harassment.

Australian Meat Exports Pty Ltd and Queensland Livestock and Meat Authority

Australian Meat Exports Pty Ltd and Queensland Abattoir Corporation

Australian Meat Exports Pty Ltd and Queensland Livestock and Meat Authority

(S 81/99; S 96/99 and S 97/99, 21 March 2000)

These reviews all concerned 'sufficiency of search' issues. Applying the principles detailed in my decision in *Re Shepherd*, I found that there were no reasonable grounds to believe that further documents falling within the terms of the relevant access applications, existed in the possession or control of the respondents. Further, I found that the search efforts made by the respondents in an effort to locate any such documents were reasonable in all the circumstances of the respective cases.

"TTI" and Criminal Justice Commission

(S 157/93, 21 March 2000)

The applicant had complained to the Police Complaints Tribunal and subsequently to the respondent, about police involvement in injuries he allegedly received while in police custody in 1989. He sought access to documents which would reveal the identifies of the officers involved, statements of witnesses, and reports of investigating officers. I found that various matter, including the names and personal details of members of the public who had provided information, qualified for exemption under s.44(1). I rejected claims that other matter was exempt under s.41(1), s.42(1)(b), s.44(1) and/or s.46(1)(b). While I indicated that particular witness statements by police officers, and opinions of investigating officers, may qualify for exemption in some circumstances, the matter in issue did not qualify for exemption in the particular circumstances of this case.

Gall Standfield & Smith and Gold Coast City Council

(L 30/98, 22 March 2000)

Applying the principles set out in *Re "B"*, I found that parts of a letter to the respondent relating to allegations of impropriety were communicated on the understanding that they would be treated in confidence, and that they qualified for exemption under s.46(1)(a), but that other parts of the letter (dealing with court proceedings between the author of the letter and the respondent) were not exempt from disclosure.

Hoey and Canegrowers

(S 89/98, 22 March 2000)

This review concerned the application of s.28(2) of the FOI Act. The applicant's refined FOI access application sought access to a large number of documents concerning various activities of the respondent. The respondent provided evidence that some 14,800 folios fell within the terms of the application. I found that the work involved in dealing with the application would substantially and unreasonably divert the resources of the respondent from their use by the respondent in the performance of its functions.

"GUN" and Redcliffe-Caboolture District Health Service

(S 64/99, 27 March 2000)

The matter in issue comprised a Form 14 (or "Information") issued in respect of the applicant under s.25 of the *Mental Health Act 1974* Qld, as well as the parts of the applicant's Health Service records which identified community members who had provided information to the respondent about the applicant's welfare. I applied the principles established in *Re "ROSK" and Brisbane North Regional Health Authority* and found that some of the matter in issue was exempt under s.42(1)(h) of the FOI Act. I found that other matter in issue was exempt under s.42(1)(b), s.44(1), s.46(1)(a) and s.46(1)(b) of the FOI Act.

"MOR" and Department of Families, Youth and Community Care

(S 175/97, 31 March 2000)

The applicant sought access to documents held by the respondent concerning her son. The information sought included documents which identified a person who had notified the respondent of their concerns regarding child abuse and/or neglect. Applying the principles established in *Re McEniery and Medical Board of Queensland*, I found that s.42(1)(b) applied to the matter in issue which identified, or would allow the identification of, the notifier. The information to which access was sought also included some comments made by an officer of the respondent which referred to a lawful method or procedure for dealing with possible contraventions of child welfare law, and I decided that that information satisfied the requirements for exemption under s.42(1)(e) of the FOI Act. Other matter in issue included personal affairs information relating to the applicant's son, and the private telephone number of a doctor who had had contact with the respondent. I decided that that information was exempt from disclosure under s.44(1) of the FOI Act.

"RAL" and Medical Board of Queensland

(S 239/99, 31 March 2000)

The applicant sought access to documents held by the respondent concerning her complaint to the respondent against a medical practitioner. The matter in issue comprised parts of a letter written by another medical practitioner to the respondent, setting out his treatment of the applicant and his comments in relation to the applicant's complaint. He claimed that his letter was exempt under s.41(1) of the FOI Act. I decided that, even if the letter comprised deliberative process matter for the purposes of s.41(1)(a) of the FOI Act (and I was not satisfied in that regard in relation to all of the information contained in the letter), disclosure of the letter would not, on balance, be contrary to the public interest. I therefore decided that the letter was not exempt from disclosure under s.41(1) of the FOI Act.

McMahon and Criminal Justice Commission

(S 36/00, 31 March 2000)

The applicant sought an extension of time in which to lodge an application for external review under s.73(1)(d) of the FOI Act. I decided not to exercise my discretion under s.73(1)(d) to grant the extension, due to the extent of the unexplained delay, and my view that the matter in issue was likely to qualify for exemption under s.41(1) or s.43(1) of the FOI Act.

"GRO" and Queensland Police Service

(S 244/99, 31 March 2000)

This review concerned a 'sufficiency of search' issue. On the material before me, I accepted that it was probable that documents falling within the scope of the applicant's FOI access application were destroyed prior to the access application being made, in accordance with the respondent's *Disposal Schedule*. Applying the principles detailed in my decision in *Re Shepherd*, I found that there were no reasonable grounds to believe that further documents falling within the terms of the relevant access application, existed in the possession or control of the respondent. Further, I found that the search efforts made by the respondent in an effort to locate any such documents were reasonable in all the

circumstances of the case.

Mathews and University of Queensland

(S 233/99, 31 March 2000)

This review concerned a 'sufficiency of search' issue. Applying the principles detailed in my decision in *Re Shepherd*, I found that there were no reasonable grounds to believe that further documents falling within the terms of the relevant access application, existed in the possession or control of the respondent. Further, I found that the search efforts made by the respondent in an effort to locate any such documents were reasonable in all the circumstances of the case.

Devine and Department of Justice

(S 54/99, 31 March 2000)

This review concerned the application of s.11(1)(e) of the FOI Act. The applicant applied to the respondent for access to a number of e-mail communications in the possession of the Coroner that had been provided by an officer of the Queensland Police Service appointed to undertake investigations relevant to a coronial inquest into the death of the applicant's daughter. The e-mail communications, to and from the investigating officer, were routine in nature, and had been provided to the Coroner at a pre-inquest conference. They were not tendered at the inquest. I found that the relevant e-mail communications were received by the Coroner in the performance of his judicial functions and therefore were excluded from the application of the FOI Act by the operation of s.11(1)(e).

Kinder and Barristers' Board of Queensland

(S 93/98, 31 March 2000)

This review concerned the application of s.11(1)(f) of the FOI Act. The applicant applied to the respondent for access to documents relating to the complaint he had made to the respondent concerning the conduct of a barrister. (The respondent had investigated the complaint and recommended that no further action be taken against the barrister.) I found that the respondent is an "office of a court" within the terms of s.11(1)(f) of the FOI Act. I considered that those words not only covered individual office holders, but also extended to offices constituted by a number of persons, such as the respondent I was satisfied that the respondent was established under the Barristers' Admission Rules in order to assist the Supreme Court in certain functions. It had properly assumed the role of investigator to assist the Supreme Court in assessing whether it would be appropriate to bring alleged professional misconduct or unprofessional conduct to the attention of the Supreme Court.

I therefore found that the documents to which the applicant sought access were received or brought into existence by the respondent in the performance of its functions, which related to the judicial functions of the Supreme Court. Accordingly, I found that those documents were excluded from the application of the FOI Act by the operation of s.11(1)(f) of the FOI Act.

Sharples and The Attorney-General and Minister for Justice and Minister for the Arts

(S 44/00, 31 March 2000)

The applicant sought external review of a deemed refusal of access to documents by the respondent. The applicant had submitted an FOI access application, in identical terms, to the Department of Justice and Attorney-General. That FOI application was currently before me on external review. I could see no reason why the applicant should be permitted to proceed with two review applications in which he was seeking access to the same set of documents. Moreover, the requested documents were clearly in the possession of the Department, rather than the Minister's office. In accordance with s.77(1) of the FOI Act, I decided not to deal further with the application for review, on the basis that it was frivolous, vexatious, misconceived or lacking in substance.

Wiles and Building Services Authority

(S 103/99, 31 March 2000)

The applicant sought review of the respondent's decision to refuse him access to documents relating to an investigation conducted by the respondent into various complaints made by the applicant. I decided that some of the documents in issue were subject to legal professional privilege, and therefore exempt under s.43(1) of the FOI Act. Some of the matter in issue comprised bank statements of third parties, and I found that those documents were exempt from disclosure under s.44(1). In relation to correspondence passing between third parties and the respondent in connection with the applicant's complaints, I decided that the bulk of that correspondence was not exempt matter under s.46(1) because it was directly relevant to the applicant's allegations. I considered that the third parties should reasonably have expected that the respondent would need, as a matter of procedural fairness, to disclose to the applicant, details of its investigation and the relevant information it had gathered in response to the applicant's complaints, in order to give the applicant a proper account of the manner in which it had carried out its statutory function to investigate his complaints.

"VOL" and West Moreton District Health Service

(S 33/99, 11 April 2000)

The applicant sought access to his medical records held by the respondent. The applicant suffered from a serious mental illness and had exhibited, during the previous 12 months, an episode of violent behavior that had endangered a person's physical safety. While the matter in issue appeared innocuous, I found, having regard to expert medical opinion provided by the respondent, that disclosure to the applicant of any part of his medical records could reasonably be expected to endanger a person's life or physical safety, and therefore that the matter in issue qualified for exemption under s.42(1)(c) of the FOI Act.

Cudmore and Queensland Police Service

(S 24/99, 11 April 2000)

The applicant sought review of a decision by the respondent that it did not hold any documents which specifically authorised officers of the respondent to fax documents containing information about the applicant to the Department of Human Services (the DHS) in Victoria. The respondent maintained that no such documents would ever have existed, as the respondent's Operational Procedures Manual (OPM) contained general authorities for officers to provide information to other government agencies, for use by those agencies in carrying out their official functions. Although the applicant insisted that a general authority was insufficient, in view of the nature of the information involved, I found no evidence that any specific documentation relevant to the applicant was necessary, or that it ever existed. As I found that the authority contained in the OPM constituted a sufficient authority for the respondent to provide the documents in issue to the DHS, I affirmed the respondent's decision.

Taylor and Queensland Building Tribunal

(S 170/99, 12 April 2000)

The applicant sought review of a decision by the respondent to refuse him access to an 'Agreement for Compromise' entered into between two companies in settlement of legal proceedings between them in the Tribunal. The respondent claimed that the Agreement was exempt under s.46(1) of the FOI Act. The parties to the Agreement claimed that it was exempt under s.44(1), s.45(1)(c), s.46(1)(a) and s.46(1)(b) of the FOI Act.

I found that the companies were not capable of having personal affairs for the purposes of s.44(1), and that, in relation to the directors of the companies, the matter in issue which concerned them was properly characterised as information concerning their business affairs, rather than their personal affairs. I found that the Agreement was not exempt under s.44(1) of the FOI Act. I accepted that there were segments of the Agreement which were properly characterised as information concerning the business, commercial or financial affairs of the companies; however, I was not satisfied that disclosure of the Agreement could reasonably be expected to have an adverse effect on those affairs. I therefore found that the Agreement was not exempt under s.45(1)(c) of the FOI Act.

I was not satisfied that the Agreement was communicated to the respondent in circumstances such as to bind the respondent with an equitable obligation of conscience not to use or disclose the Agreement in a manner not authorised by the parties to the Agreement. I therefore found that the Agreement was not exempt under s.46(1)(a) of the FOI Act. I also found that even if the requirements of s.46(1)(b) were satisfied, disclosure of the Agreement would, on balance, be in the public interest. I therefore found that the Agreement was not exempt under s.46(1)(b) of the FOI Act.

Dimitrijević and Education Queensland

(S 224/99, 31 May 2000)

The applicant applied to the respondent for amendment of its computerised personnel database, to remove certain information which she believed was being used to prevent her from obtaining employment as a teacher. At the applicant's request, the respondent had already added an explanatory comment to the database, but it refused to further amend, or to delete, the disputed information. The Deputy Information Commissioner found that there was no legal requirement under s.53 of the FOI Act for the respondent to amend the disputed information, which related to the applicant's refusal of three offers of teaching contracts, as it did not relate to her personal affairs. The Deputy Information Commissioner also found that even if the disputed information had related to the applicant's personal affairs, it was not inaccurate, incomplete, out-of date or misleading, as the applicant had not accepted the three offers and her reason for doing so was recorded on the database.

Price and Gatton Shire Council

(L 12/99, L 21/99, L 16/00 and L 24/00; 27 June 2000)

These reviews concerned the application of s.28(2) of the FOI Act. The FOI access applications made by the applicant were broad-ranging and of varied scope, but with substantial overlap, as each sought access to all documents related to the applicant, his family or his property and were unlimited as to time. The respondent refused to deal with the initial application under s.28(2) of the FOI Act on the basis that to do so would substantially and unreasonably divert the respondent's resources.

In making his decision in these cases, the Deputy Information Commissioner was mindful of the relative size of the respondent agency and the resources which it has available to carry out its functions. The Deputy Information Commissioner was satisfied that the respondent would have to undertake a substantial diversion of its resources in order to identify and locate all of the documents sought in the broad-ranging FOI access applications made by the applicant. The Deputy Information Commissioner also accepted the evidence of the respondent that the resources required simply to collate the documents, if they could be located, having regard to the number and volume of the documents that were likely to fall within the terms of the access applications, would require a significant input of resources. Accordingly, the Deputy Information Commissioner decided that the applications should not be further dealt with.

Reat and University of Queensland

(S 1/00, 28 June 2000)

In this review, the Deputy Information Commissioner determined that the respondent's management deliberations in general (and in the particular circumstances of this case) were "deliberative processes involved in the functions of government" within the meaning of s.41(1)(a) of the FOI Act. The Deputy Information Commissioner further determined that disclosure of e-mails comprising deliberations concerning certain issues arising in a dispute between the respondent and the applicant in his capacity as a member of staff, would be contrary to the public interest. The matter in issue was therefore found to be exempt matter under s.41(1) of the FOI Act.

"LUC" and Royal Brisbane Hospital District Health Service
(S 204/99, 28 June 2000)

The applicant was a former patient of the Royal Brisbane Hospital who sought details of her file movements through the respondent agency, by way of a "screen dump" from the electronic file tracking system used by the respondent. The respondent was able to provide the applicant with recent information, but advised that its "live" data base was purged monthly and therefore only showed the most recent movements. The applicant contended that some of the information she sought may have been contained on the respondent's backup tapes. The Deputy Information Commissioner found, on the basis of the information provided by the respondent, that it would be a substantial and unreasonable diversion of the respondents resources to require the respondent to utilise a suitable platform to read the backup tapes, and then to search the tapes in order to locate any relevant information. The Deputy Information Commissioner therefore affirmed the respondent's decision, under s.28(2), to refuse to deal further with the applicant's access application.

Barnes and Gatton Shire Council
(L 27/99, 28 June 2000)

The Deputy Information Commissioner found that several folios which fell within the terms of the applicant's FOI access application contained no information which could properly be characterised as information concerning the applicant's personal affairs. Therefore, in accordance with s.6 of the FOI Regulation, a \$30.00 application fee was payable in respect of the applicant's FOI access application.