

ANNUAL REPORT 2001-02

Information Commissioner

QUEENSLAND



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**Information
Commissioner**
QUEENSLAND

31 October 2002

The Honourable R K Hollis MP
Speaker of the Legislative Assembly
Parliament House
George Street
BRISBANE Q 4000

Dear Mr Speaker

I am pleased to present to Parliament the tenth annual report of the Office of the Information Commissioner, which covers the 2001–02 financial year. This report provides a comprehensive review of our activities and achievements. It reflects our performance against our strategic plan for 2001– 2004 and fulfils statutory reporting requirements.

Yours sincerely,



D J Bevan
Information Commissioner

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Our Mission

Fostering openness and accountability of government in Queensland by promoting lawful, fair and reasonable administration of Freedom of Information legislation

Our Values

Independence

Integrity

Service to the community

Objectivity

Respect for the law

Respect for the rights of
the individual

Our Goals

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Message from the Information Commissioner

I was very honoured to be appointed as the Queensland Ombudsman and Information Commissioner on 17 September 2001. Mr Fred Albiez retired from this Office in August 2001 after a distinguished career in the public sector.

The role of Information Commissioner is a key one in our freedom of information (FOI) system, which is based on the principles that:

- information held by government should be accessible to the community;
- people have a right to know about and to have access to information held by government about them; and
- public scrutiny of government information leads to greater accountability and efficiency.

Ultimately, a good FOI system enhances the democratic process. My role is to independently review decisions of agencies under the *Freedom of Information Act 1992* (the FOI Act) taking into account those principles, while applying the exemptions from disclosure recognised in the Act for the protection of other essential public and private interests.

Since taking up my appointment, I have familiarised myself with the work of the Office of the Information Commissioner and worked with staff to meet the challenges we face in an environment of change, both externally and internally.

I have been impressed by the commitment and dedication shown by my officers to the principles underpinning FOI.

The most significant event for FOI in Queensland during the year was the amendment to the FOI Act in November 2001 that:

- imposed charges for processing applications and altered charges for providing access; and
- specified circumstances in which an agency can refuse to deal with an application because it would substantially and unreasonably divert the agency's resources.

Another significant event was that the Legal, Constitutional and Administrative Review Committee (LCARC) conducted a detailed review of FOI in Queensland and reported to Parliament in December 2001. My Office spent a considerable amount of time making submissions to the review, especially during the previous reporting period. The government's response to LCARC's report, provided outside the reporting period (13 August 2002), foreshadowed a number of further changes to the FOI legislation.

Notwithstanding potential changes to the Office and its role as a result of LCARC's review, we remained firmly focused on our core business — the timely resolution of applications for external review under the FOI legislation. An achievement of particular note is that half of the reviews we conducted this year were finalised within three months of application. This achievement results directly from our continuing focus on informal methods to review matters. Nearly 80 per cent of our reviews were finalised informally this year.

We have continued to give priority to implementing the recommendations of a strategic management review of the Office conducted in June 2000 and to finalising older cases as quickly as possible.



Information Commissioner
David Bevan

In addition to informal resolution methods, we have adopted or continued to employ various strategies to meet our challenges, including:

- reviewing our strategic plan to ensure that there is sufficient emphasis on timely and responsive resolution of external reviews;
- commencing a project to develop a new case and records management system that will allow us to monitor and analyse trends in applications for FOI reviews and the administration of FOI generally;
- expanding our website to provide better access to decisions and publications;
- developing additional information sheets for the community that explain in plain language some of the most common FOI issues;
- publishing detailed guidelines for agency FOI coordinators and other FOI practitioners;
- conducting a survey of applicants for review about our performance that showed 75 per cent of applicants rated their overall satisfaction with our review process as good or very good;
- continuing our practice of appointing our officers as liaison officers for larger public sector agencies to improve communication with those agencies and help us resolve substantial external reviews.

There has been a significant drop in the number of new applications in this period compared with the previous period. This year we received 275 applications, approximately 100 fewer than the previous year.

It appears that the 2000–01 reporting period was an extraordinary year, with a significantly higher number of new applications than in previous years. Therefore, the current number of applications may simply be a return to the patterns experienced in previous years (see Figure 2 on page 14 for further information).

On the other hand, the FOI Act amendments in November 2001, which increased charges and made it easier for agencies to refuse to deal with voluminous applications, may also have contributed to the reduced number of applications. However, it would be premature to draw that conclusion.

The reduction in the number of new applications will allow my officers to focus on reducing the number of older cases on hand and to build upon the work undertaken this year to broaden understanding by agencies and the community of citizens' rights under the FOI Act.

Today's community expects accountability and transparency by government at all levels. FOI offers the community a real opportunity to ensure these expectations are met and enhance participation in our democratic system. My Office will continue to support the integrity of Queensland's FOI regime and promote its benefits.



David Bevan
Information Commissioner

About the Office of the Information Commissioner

HISTORY

The longstanding and widely recognised tradition of independent ombudsmen throughout the world led to the appointment by Parliament of the Queensland Ombudsman to also hold the separate statutory office of Information Commissioner.

Mr Fred Albietz was the first Information Commissioner. He established a separate Office of the Information Commissioner on 10 November 1992 to reinforce the independence of the FOI external review function.

ROLE

The FOI Act confers legally enforceable rights to:

- obtain access to documents held by government agencies and Ministers (subject to the limitations specified in the FOI Act); and
- seek correction of information relating to an individual's personal affairs if the information is inaccurate, incomplete, out of date or misleading.

Those entitlements are subject to limitations to protect essential public and private interests. For example, information about the personal affairs of an identifiable individual will be exempt from disclosure to another person, unless there are public interest considerations favouring disclosure that outweigh the public interest in non-disclosure.

The Information Commissioner's role is to be the independent review tribunal to resolve disputes about government decisions over access to, or amendment of, information under the FOI Act. My staff endeavour to resolve the vast majority of cases informally through mediation, negotiation or conciliation between the parties involved in a dispute. Since the inception of the office, approximately 70–80 per cent of cases have been resolved in that way.

If disputes cannot be resolved informally, participants are given an opportunity to provide evidence and submissions in support of their cases and the Commissioner or a delegate makes a decision in substitution for the agency



We report to Parliament through the Legal, Constitutional and Administrative Review Committee. Back row (L-R): Rachel Nolan MP (Member for Ipswich), Peter Lawlor MP (Member for Southport), Ronan Lee MP (Member for Indooroopilly), Liz Cunningham MP (Member for Gladstone). Front row (L-R): Fiona Simpson MP (Member for Maroochydore, Deputy Chair), Karen Struthers MP (Member for Algeester, Chair), Dorothy Pratt MP (Member for Nanango)

decision under review. In those cases, the Commissioner or delegate acts as an independent statutory tribunal in the same way as the Commonwealth Administrative Appeals Tribunal, the Victorian Civil and Administrative Tribunal, or the New South Wales Administrative Decisions Tribunal.

RESPONSIBILITY TO PARLIAMENT

The Information Commissioner, as an officer of Parliament, is independent from Ministerial control, so the community can be confident that external FOI reviews will be carried out fairly and impartially.

Each year, the Commissioner makes an annual report to Parliament. The Legal, Constitutional and Administrative Review Committee of the Parliament (LCARC) may also require a report on a particular aspect of the Office's performance, but it cannot investigate particular conduct or reconsider or review decisions in relation to a particular investigation.

An independent strategic review of the Office is required to be carried out at least every five years and the report of the review referred to LCARC for its consideration. LCARC is presently monitoring our implementation of recommendations from a strategic review conducted in 2000.

I meet with LCARC twice each year to discuss our budget, annual report, implementation of the review report and other issues.

POWERS

The essential functions of the Office are to:

- review any decision made by an agency or Minister in relation to the application concerned, and decide any matter in relation to the application that could, under the FOI Act, have been decided by the agency or Minister; and
- affirm, vary or set aside the decision under review.

The Commissioner also has power to:

- attempt to effect an informal settlement;
- require production of documents and information from agencies and any other person;
- determine the procedures to be followed in a review and give directions; and
- refuse to review a decision if the application is frivolous, vexatious, misconceived or lacking in substance.

LIMITS ON POWERS

The Commissioner's powers are limited to reviewing the categories of decision specified in s.71 of the FOI Act.

I am not able to make a decision about other forms of access or amendment, or to direct an agency to disclose matter that qualifies for exemption. I am also not able to make decisions about general matters of administration of the Act within agencies.

However, in trying to achieve an informal settlement, my officers are able to raise with agencies possible avenues for resolution outside the Act. If informal settlement cannot be achieved, I must make a decision applying the provisions of the Act.

WHO CAN LODGE AN FOI APPLICATION?

Any person, whether an individual or a corporate entity, can apply for access to documents under the FOI Act. An individual can also apply for amendment of information that relates to his or her personal affairs. Applications are dealt with in the first instance by the agency that possesses or controls the relevant documents.

Applicants who are unhappy with an agency decision may seek internal review within the agency unless the agency's principal officer made the initial decision. People can only apply for external review by the Information Commissioner if:

- they have received a notice of an internal review decision by the agency; or
- the initial decision was made by the agency's principal officer; or
- the prescribed time limit for making the agency decision has expired.

WHAT HAPPENS WHEN AN EXTERNAL REVIEW APPLICATION IS LODGED?

When an external review application is lodged, my officers make preliminary inquiries to establish whether we have jurisdiction to conduct a review and to ascertain whether there are any third parties who need to be consulted about the review.

In most cases, we contact the applicant and the respondent agency to learn about the background to the case and explore whether there is any way to informally settle the dispute or reduce the number of issues in dispute. This may be done by way of a phone call, a letter, or a face-to-face meeting.

In the reporting period, almost 80 per cent of cases were resolved completely in this way and, in most of the rest, the scope of the documents or issues in dispute was considerably reduced.

If informal methods are not successful in completely resolving the dispute, the participants are given the opportunity to lodge submissions and evidence, usually in writing, about issues that could be decided against them. The Commissioner or a delegate then makes a decision.

WHO BECOMES INVOLVED IN EXTERNAL REVIEWS?

External review applicants come from every part of society. Applications are made by:

- politicians;
- journalists;
- citizen's groups;
- public servants;
- businesses;
- people who have made complaints to a government or regulatory body;
- people who have been the subject of complaint to a government or regulatory body;
- people seeking access to their own or a relative's medical records;
- prisoners;

- people who seek documents for use in legal proceedings; and
- people seeking information about a government decision that has affected them.

Some people seek external review, or apply to be a participant in an external review, to object to disclosure of information that an agency has decided to disclose to another person under the Act.

Details of the categories of applicants seeking access to documents in cases finalised during the reporting period are outlined at Appendix 1. These figures do not include applications made by people seeking to amend information.

Of note is the proportion of broad 'public interest applicants'—i.e. politicians, journalists, citizens' groups, and persons seeking information about public health and safety issues—comprising 17 per cent of applicants.

This illustrates the two distinct rationales for FOI legislation in practice: one relating to broad democratic public interest aims; the other focusing more on personal or business interests. While the latter predominates in terms of the number of applications made, the former nevertheless represents a significant proportion of applications. Applications that focus on personal or business interests also frequently involve issues concerning the broader public interest.

Public servants or former public servants represented the largest individual category of applicants this year with 14 per cent of applications coming from this group. Most of these applications arise out of workplace disputes. The comparatively high number of applications in this category is probably due to a high level of awareness by this group of FOI access rights.



Acting Assistant Commissioner Sue Barker discussing a review application with Administrative Review Officer Jim Forbes

Applications by individuals or business organisations seeking information for use in legal proceedings represented nine per cent of all cases. Business people or business organisations seeking information for purposes relating to their business represented 11 per cent of cases.

WHAT DECISIONS ARE DISPUTED IN EXTERNAL REVIEWS?

A disputed decision may have been made by a Minister, a Queensland Government department, another Queensland Government agency, or a local government. A breakdown of the type of decisions disputed in applications received during the reporting period appears at Appendix 2.

In the reporting period, the agencies that had the largest numbers of new external review applications were the Queensland Police Service, with 34 cases, and Queensland Health and its various Health Service Districts, with 30 cases.

Both agencies receive large numbers of initial FOI applications, so it is not surprising that they are involved in a significant number of external reviews. Education Queensland and the Department of Natural Resources and Mines were next, each having 12 new external review applications.

Our last annual report noted a large increase in the number of external review applications involving 'deemed refusals'. These are cases in which an agency has not given a decision within the time prescribed in the FOI Act. There were 119 such cases in 2000-01, compared to 63 in 1999-00. In the current period, the number of deemed refusals fell to 54. Of those applications, our Office was able to negotiate an extension of time for the agency to make its decision in 20 cases.

Of particular concern in the last reporting period was the large number of deemed refusals involving the Department of Corrective Services (41), approximately half of which involved one applicant. It is pleasing to note that the total number of applications received from that Department has fallen from 45 in that period to six in the current period.

A breakdown of the agencies that were respondents to external review applications received in the reporting period appears at Appendix 3.

DISPUTED DECISIONS

Approximately 50 – 60% of applications for external review are from applicants who have been refused access to documents or parts of documents by an agency.

Significant numbers of applications are also made by:

- applicants for access to documents who have not received an agency decision within the time frames specified in the FOI Act (deemed refusal); and
- third parties who object to disclosure of documents which an agency has decided to disclose.

A smaller number of applications relate to decisions imposing fees and charges, and decisions refusing to amend information.

Strategic Plan

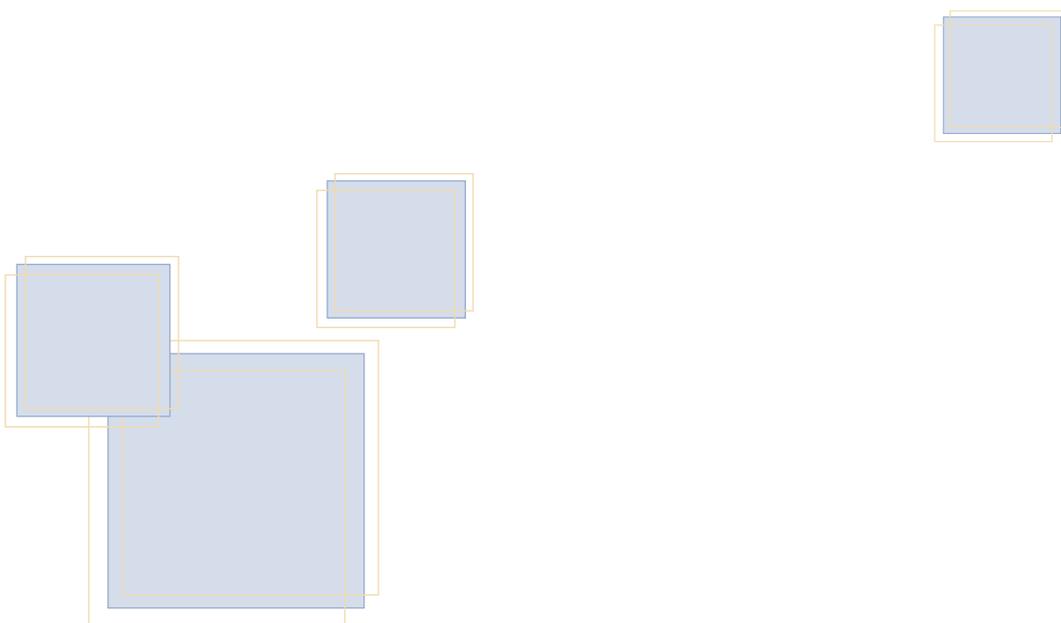
A strategic review of the Office is required at least once every five years. A review report dated June 2000 recommended that the goals and strategies be reviewed to ensure there was sufficient emphasis on timely and responsive resolution of external reviews without compromising the quality of decisions.

On taking up office, I comprehensively reviewed the Strategic Plan with input from senior staff and considered the strategic review report and issues that had been raised in the course of the LCARC review of freedom of information in Queensland.

The outcome of those deliberations was the *Office of the Information Commissioner Strategic Plan 2001–2004*. The plan clarifies our mission and focuses on four strategic goals. The strategic plan:

- stresses the Office's independence and objectivity,
- notes that accountability and transparency are recognised as features underpinning all five policy priorities of the Queensland Government; and
- notes that access to information through FOI is recognised as a key strategy in achieving the Government's priorities.

Strategies were developed to help achieve each of the four goals as well as relevant performance measures. The following pages briefly outline those strategies and discuss our achievements against performance measures during the reporting period.



Goal One

PROVIDE AN EXPERT FORUM FOR REVIEW OF DISPUTES UNDER FOI LEGISLATION

'Investigating and reviewing decisions under FOI legislation in a timely and expert manner.'

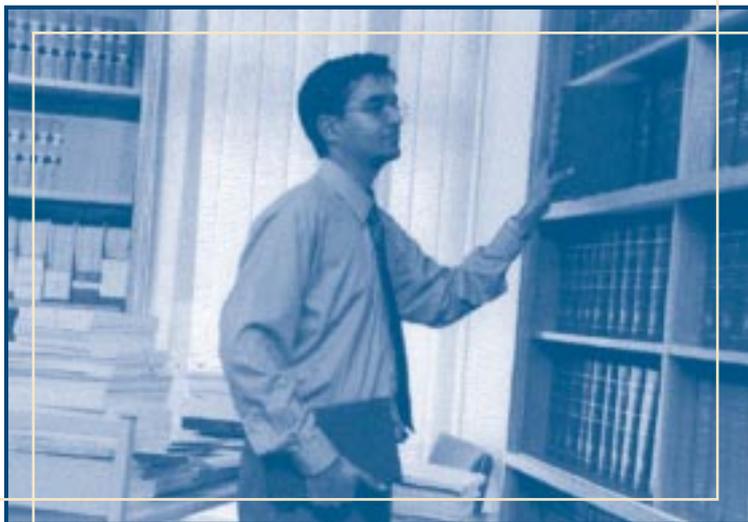
The primary object of the FOI Act is to enhance the accountability of government agencies. For practical purposes, it is necessary for the agencies themselves to make the initial decision as to what information should or should not be disclosed in response to an access application for agency information under the Act.

However, when an agency and an applicant are in dispute over the agency's decision on an application, it is essential that a body independent of the executive government carry out the review of the disputed decision.

The decision-maker must be in a position to make decisions that authoritatively analyse the relevant facts, the relevant provisions of the Act, other legal requirements and prior authorities from Queensland and other jurisdictions to arrive at the correct decision required by law in any given case.

The parties to any dispute are also entitled to a written decision that explains the reasoning adopted in reaching the decision on external review. Our decisions have to be legally sound because they are subject to judicial review.

The Office of the Information Commissioner meets all of these criteria. Providing an effective, independent and expert forum for FOI review is our core business.



Legal Research Assistant Samir Mohammad

Our decisions also provide precedents for decision-makers when interpreting and applying provisions of the Act in future cases. Hundreds of agencies in Queensland are called on to make decisions under the Act from time to time. Some deal with a large quantity of applications each year. Our decisions, which interpret and apply the legislation, provide an authoritative reference point for decision-makers.

Reviews that proceed to the stage of a formal decision often involve complex issues that require submissions and exchange of evidence. Reviews of this type naturally tend to take longer to resolve than those settled informally, but it is in the interests of the participants and the community generally that decisions are made as soon as possible.

Strategies adopted or continued in the reporting period to further this goal include:

- enhancing internal research resources and retrieval of information through information technology solutions;
- training to improve use of search facilities;
- subscribing to an online legal database to improve access to, and searching for, the most up-to-date authorities and articles;
- progressing a new case and records management system to assist in the analysis of data relating to agency FOI decisions and to monitor more complex cases (implementation commenced at the time of reporting); and
- improving timeliness of less complex decisions by delegating decision-making to the Deputy Commissioner and Assistant Commissioners.

QUALITY OF DECISIONS

Our last Annual Report noted an unfinalised challenge to a decision of the Information Commissioner: *Re Santoro and Department of Main Roads; Brisbane City Council*.

The Council discontinued its appeal to the Court of Appeal in this reporting period, so the decision of Wilson J dismissing the application for judicial review stands.

The only decision made during the reporting period that was the subject of an application to the Supreme Court for judicial review was *Re 'TRA' and Royal Brisbane Hospital Health Service District* (see decision summary in Appendix 5 at page 60). That application for judicial review has since been resolved by a consent order dismissing the application.

PERFORMANCE TARGET: QUALITY

Proportion of decisions overturned by the Supreme Court in judicial review proceedings.

Target	1999–00	2000–01	2001–02
<3%	0	0	0

COMMENT:

Each decision of the Commissioner must clearly state the reasoning underlying the decision in case it is challenged by judicial review. This is particularly important given the limited role the Commissioner will usually play in any judicial review.



Administrative Review Officer Jim Forbes, Assistant Commissioner Peter Shoyer and Legal Research Assistant Samir Mohammad

NUMBER OF DECISIONS

In the reporting period, 67 reviews were finalised by a decision on one or more issues that remained in dispute between the participants. The decisions are summarised at Appendices 4 and 5.

Figure 1 sets out the various outcomes for reviews resolved in this period and the previous two periods, including a breakdown of decision types (1–6).

Figure 1: Review outcomes

OUTCOME OF REVIEW	1999–00	2000–01	2001–02
1. Decision affirmed	41	27	30
2. Decision varied	30	20	20
3. Decision set aside	13	6	14
4. Not reviewed because application frivolous, vexatious, misconceived or lacking in substance	3	1	1
5. Commissioner has no jurisdiction	3	2	2
6. Decision to grant agency further time to deal with application	2	0	0
7. Case settled informally	223	289	217
8. No jurisdiction	37	48	32
TOTAL	352	393	316

Goal Two

INFORMAL AND FLEXIBLE RESOLUTION OF DISPUTES

'Fostering timely, informal and inexpensive resolution of FOI applications by promoting flexible approaches to resolution by agencies and members of the community.'

Our primary focus is to attempt an informal dispute resolution that avoids the need to proceed to a formal decision-making process. Experience has shown that such an approach often leads to a speedier and less expensive resolution and provides a greater benefit to the participants than a drawn-out argument over legal issues.

PERFORMANCE TARGET: QUALITY

Proportion of cases received that were resolved informally.

Target	1999-00	2000-01	2001-02
70%	74%	86%	79%

COMMENT:

This result exceeds our target. In fact, negotiation or mediation was attempted in approximately 95 per cent of cases received in the reporting period.

My officers try to establish the real issues in dispute between the parties. These may or may not be issues under the FOI Act. They then attempt to identify options, whether inside or outside the framework of the Act, for reaching agreement between the participants.

If a case cannot be resolved informally, my officers will attempt to ensure the parties agree on the issues in dispute under the Act so that they can focus their attention on presenting relevant evidence and arguments on any issues on which a formal decision is needed.

Through involvement of agency staff in these informal resolution processes, we encourage agencies to adopt a similar approach at the initial decision-making stage.

PERFORMANCE TARGET: QUANTITY

Cases finalised in reporting year.

Target	1999–00	2000–01	2001–02
360	352	393	316

COMMENT:

This result was lower than the target because the high number of applications received in the previous reporting period was not repeated this year, partly because the 2000–01 figures were inflated by multiple applications from two applicants.

Strategies adopted or continued in the reporting period to further this goal include:

- continuing the use of telephone and face-to-face conferences with participants to encourage exploration of the real issues in dispute and possible alternative avenues for resolution;
- supplementing already extensive staff qualifications and training in alternative dispute resolution methods by regular discussion at staff meetings of strategies for informal resolution of cases and formal external training of new staff;
- tailoring external review procedures where possible to encourage participants to take part in the process without feeling it is necessary to engage legal representatives and to otherwise minimise the expense of the process for the participants; and
- continuing our liaison officer program with agencies involved in significant numbers of external reviews to streamline handling of external reviews with agencies and promote discussion of general issues relating to resolving FOI applications.

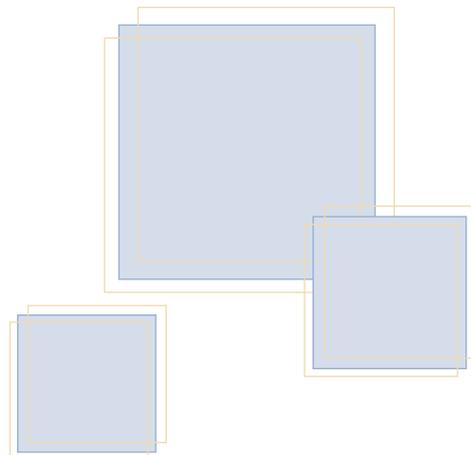
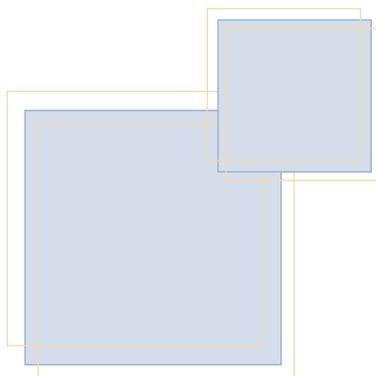


Figure 2 gives an overall picture of the applications received and finalised by the Office since the first application was received. In total, 2536 applications have been received, with 275 applications this reporting period.

The number of applications pending as at 30 June 2002 is the lowest since the first year of operations. This will allow us to focus on a number of priorities identified for the coming year.

Figure 2: Applications dealt with

Reporting period	Applications received	Applications completed	Applications pending at the end of reporting period
18/1/1993 – 30/6/1993	120	27	93
1993 – 94	274	125	242
1994 – 95	223	179	286
1995 – 96	209	203	292
1996 – 97	231	246	277
1997 – 98	210	270	217
1998 – 99	291	301	207
1999 – 00	327	352	182
2000 – 01	376	393	165
2001 – 02	275	316	124
Total	2536	2412	



TIMELINESS

During the reporting period, the average time to finalise completed cases was 31 weeks, with 66 per cent of cases finalised within six months.

A major focus of our work this year has been to finalise older, more complex cases. As noted in the comment, three multiple applicants skewed the results this year. These applications were not dealt with on a first-come, first-served basis, as that would have been unfair to other applicants who have not placed as great a demand on our resources.

Priority will be given over the next reporting period to finalising applications over 12 months old.

PERFORMANCE TARGET: TIMELINESS

Proportion of cases finalised in reporting year that were finalised within 3 months, 6 months, 12 months.

	Target	1999-00	2000-01	2001-02
3 months	55%	43%	55%	50%
6 months	70%	59%	71%	66%
12 months	90%	75%	86%	80%

COMMENT:

The finalisation within three months of half of the applications resolved is a sound outcome. Improvements in relation to the other targets can be expected as older cases are dealt with in the next reporting period.

Proportion of open cases at the end of reporting year that are over 12 months old.

Target	1999-00	2000-01	2001-02
20%	32%	31%	39%

COMMENT:

The 39 per cent figure represents 48 applications, 33 of which related to three applicants. Excluding applications relating to those three applicants, a 50 per cent reduction in the number of open cases over 12 months old was achieved during the reporting period.

OUTCOMES OF REVIEWS SETTLED INFORMALLY

Of the 217 cases resolved informally during the reporting period:

- five involved a dispute over fees or charges with the applicant obtaining a better outcome in only one case;
- ten involved applications for amendment of information, with the applicant obtaining an amendment or notation previously refused by the agency in seven cases;
- one hundred and seventy eight involved challenges to an agency's refusal of access to documents, with 103 (or 58 per cent) resulting in the applicant obtaining access to some documents or information previously withheld; and
- the remaining 24 cases involved 'reverse-FOI' applications, by third parties who had been consulted under s.51 of the FOI Act, seeking to overturn decisions by agencies to disclose documents to an applicant for access under the FOI Act; 12 of these were resolved in a manner that allowed the access applicant to obtain access to the information in issue, in whole or in part.



Information Commissioner staff focus on informal approaches to cases.

Goal Three

BETTER UNDERSTANDING BY AGENCIES AND THE COMMUNITY OF FOI LEGISLATION

'Promoting better understanding by agencies and citizens of rights and requirements under FOI legislation.'

Participation in the democratic process is one of the underlying rationales of freedom of information. Therefore, achieving a better understanding by agencies, and by the community generally, of the rights of citizens under the FOI Act is a laudable goal in itself.

PERFORMANCE TARGET: TIMELINESS

Availability of formal decisions on Commissioner's website in a timely manner.

Target	2001-2002
Within seven days	Within seven days

COMMENT:

We have achieved our performance target of posting our formal decisions on our website <http://www.slq.qld.gov.au/infocomm> within seven days. Our formal decisions are also published in the Queensland Administrative Reports and on the Australian Legal Information Institute website at <http://www.austlii.edu.au/>

Better understanding should also lead to a reduction in applications to this Office involving issues that are clearly dealt with in the Act, or that have previously been considered by the Commissioner, thereby allowing us to concentrate our resources on timely resolution of disputes involving new issues that require determination.

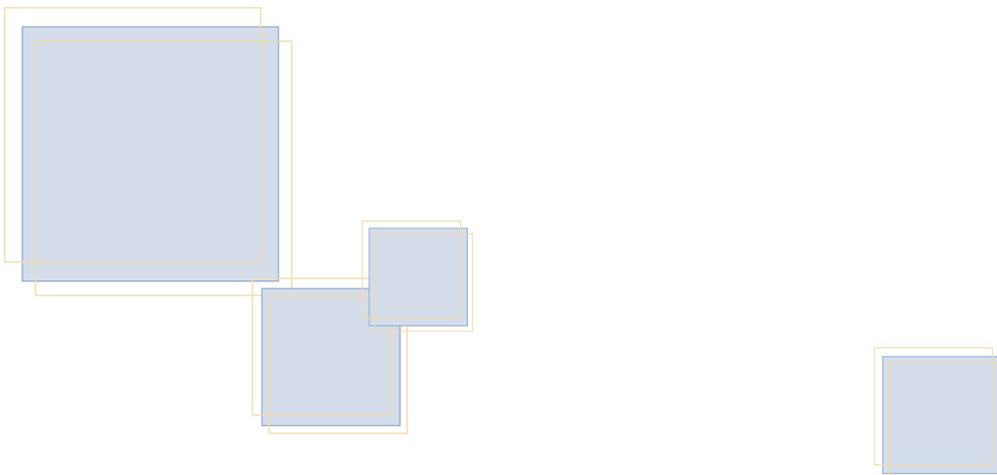
If applicants have access to basic information about their rights under the Act and the processes involved in administering the legislation, they would be more likely to accept properly based agency decisions and limit challenges to specific issues that have not been previously dealt with. Similarly, if agencies have greater access to information about the Act, their decisions are more likely to be soundly based and will be less likely to be challenged.

Strategies adopted or continued in the reporting period to further this goal include:

- expanding and updating our website to contain various publications and links to other FOI sites in Australia and internationally;
- publishing formal Information Commissioner decisions on our website, the Austlii website and in the Queensland Administrative Reports;
- publishing summaries of letter decisions on our website and in the Annual Report (see Appendix 5);
- publishing information sheets explaining our approach to resolving the most commonly encountered kinds of disputes under the Act;
- publishing practitioner guidelines providing detailed guidance on the correct interpretation and application of key provisions of the Act;
- providing a limited telephone advisory service, offering basic information about procedural issues and relevant legislative provisions and decisions; and
- attending monthly meetings of the core FOI Coordinators' group from major government departments and agencies to discuss general issues.

Furthermore, to improve understanding of the Act and establish better mechanisms for informal resolution of disputes, my staff are appointed as liaison officers to approximately 20 agencies that are involved in a substantial number of external review applications. These officers provide a single point of contact for general queries by the agency coordinator. They can also respond to agency concerns about the timing of workloads imposed on the agency in the conduct of external reviews.

Each liaison officer also meets regularly with relevant agency staff. At these meetings, a range of issues is explored and discussions held about ways to improve performance — both of this Office and of the agency concerned.



Goal Four

A PROGRESSIVE, CLIENT-FOCUSED ORGANISATION

'Ensuring the Office exhibits best practice in the performance of its functions and is a progressive and responsive organisation.'

We are committed to providing services with high levels of effectiveness, efficiency and accountability. Much of our work in this area over the past 12 months has focused on ensuring our staff are able to deliver the best possible service.

To gauge the impact of our approaches and to determine areas for improvement, this year we surveyed applicants whose matters were finalised during the reporting period. The results show that applicants were generally positive, although delays experienced during the period due to the backlog of older matters are reflected in a lower satisfaction rate for timeliness of resolution.

Figure 3 below shows results from a representative sample of 17 questions put to applicants. It sets out the percentage of respondents who gave a rating of 1 or 2 (i.e., very good or good) on a five-point scale in relation to the office's performance. Responses were received from 100 applicants for external review. A corresponding survey of agencies will be conducted in 2002–03.

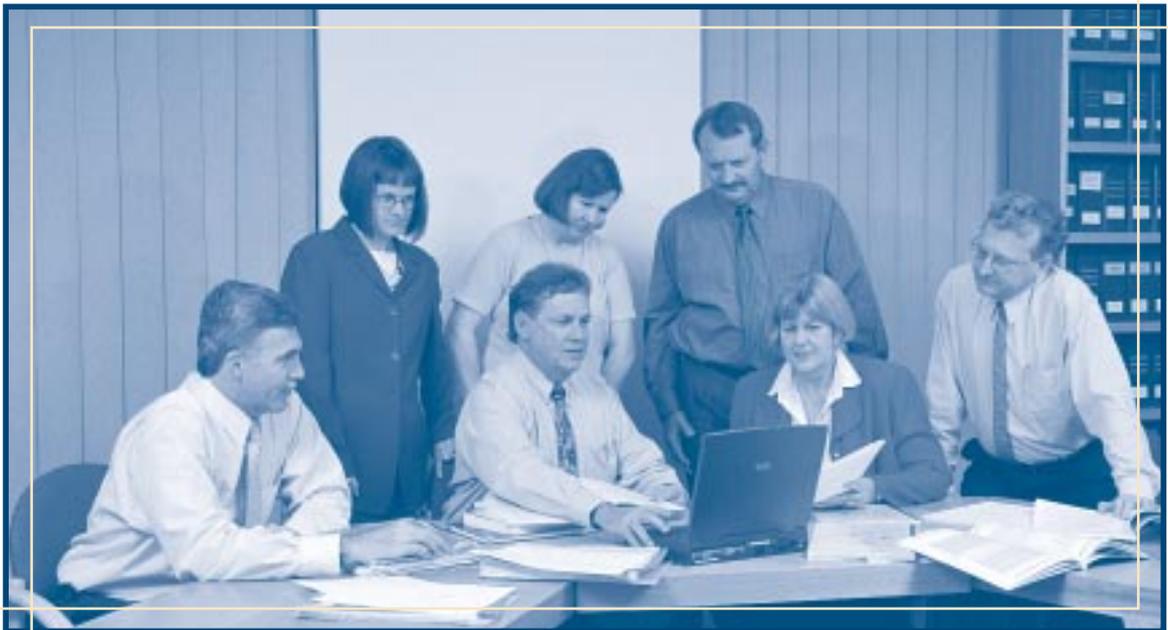
Figure 3: Applicant satisfaction survey

Satisfaction with:	Number of respondents	%
• the way the review was handled overall	100	75
• how well the applicant's questions were answered	95	76
• telephone service overall	95	86
• how easy letters were to understand	97	81
• how easy information sheets were to understand (if an information sheet was provided)	49	80
• how easy decisions were to understand (if a decision was issued)	14	79
• time taken to finalise review	98	49

The Queensland Ombudsman's Corporate Services unit delivers our corporate service functions. The Offices address many issues relevant to the achievement of this goal jointly and a more detailed discussion appears in the Ombudsman's Annual Report.

Strategies adopted or continued in the reporting period to further this goal include:

- progressing a project to implement a new case and record management system to the stage of short-listing tenders;
- initiating a project to produce an improved structure for performance measurement and management;
- developing surveys seeking feedback from applicants and agencies on various aspects of performance;
- ensuring staff clearly understand the Office's goals and management expectations by developing a new strategic plan and holding regular staff meetings;
- identifying training requirements of the offices by a joint committee — training programs were undertaken in information technology and mediation skills, and planning commenced to deliver training in such areas as strategic leadership and management skills, investigative skills and further information technology skills; and
- initiating a project to review the terms and conditions of employment of staff and key human resource policies.



Assistant Commissioner Peter Shoyer (right) is a key member of joint Queensland Ombudsman and Information Commissioner Catalyst Implementation team, which is finalising a new case and records management system for both offices.

OUR STAFF

The approved establishment at 30 June 2002 was:

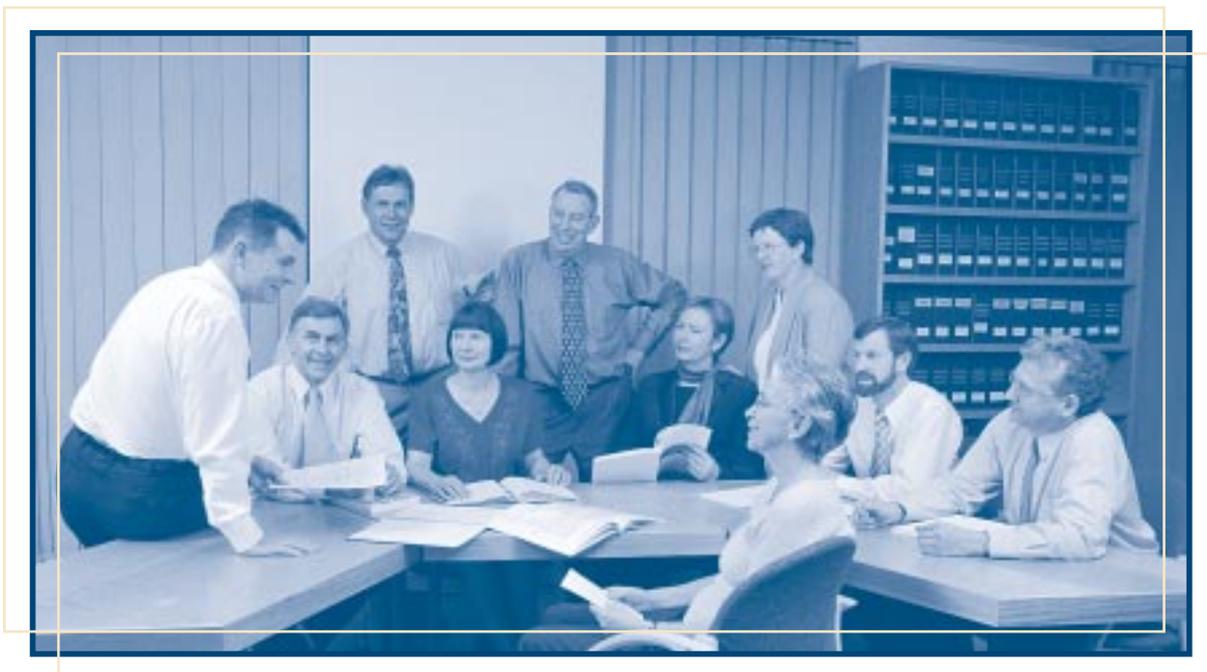
- 1 Deputy Commissioner
- 2 Assistant Commissioners (at level A08)
- 2 Senior Administrative Review Officers (A07)
- 4 Administrative Review Officers (A06)
- 1 Research Officer/Librarian (A05)
- 1 Executive Officer (A04)
- 2 Administrative Assistants (A02).

Approximately 61 per cent of staff were female, as represented at Figure 4.

Temporary staff were also appointed to replace staff who were absent on maternity or paternity leave or secondment, and to assist in reduction of the older, more complex cases.

Our staff come from a variety of backgrounds, with experience in both the Queensland and Commonwealth public sectors, private legal practice and elsewhere in the private sector.

As at 30 June 2002, all case officers and supervisors at A06 level and above held, or had made substantial progress towards obtaining, legal qualifications at undergraduate level or higher. Most also have formal qualifications, or have undertaken training, in alternative dispute resolution methods.



The Information Commissioner's staff have two representatives on the joint Queensland Ombudsman and Information Commissioner's Staff Consultative Committee, Acting Assistant Commissioner Sue Barker (standing, back row) and Assistant Commissioner Peter Shoyer (far right).



Senior Information Technology Systems Officer Bill Duffy provides information technology support for both the Queensland Ombudsman and Information Commissioner staff.

Figure 4. Distribution of staff by gender and classification

Classification	Female	Male	Total
SES2	0	1	1
A08	1	1	2
A07	1	1	2
A06	3.3 ¹	1	4.3
A04	1	0	1
A03	0	0.6	0.6
A02	1	0	1
Total	7.3	4.6	11.9

A Code of Conduct for staff is in place under the *Public Sector Ethics Act 1994*. The Code is available in electronic and hard copy forms and most staff have attended a group training session on the Code's application. New staff are provided a copy of the Code and training about it during their induction.

FINANCIAL STRUCTURE AND CORPORATE SUPPORT

Our financial reporting is combined with reporting for the Queensland Ombudsman, as the two offices operate under the same output: *Independent review of complaints and appeals about government administration*. This output supports all five whole-of-government priorities established by the Queensland Government through the Corporate Governance framework.

The Queensland Ombudsman's Corporate Services Division provides corporate services, including financial, personnel and information technology. Reporting requirements falling within those functions, including financial statements, are included in the Ombudsman's Annual Report.

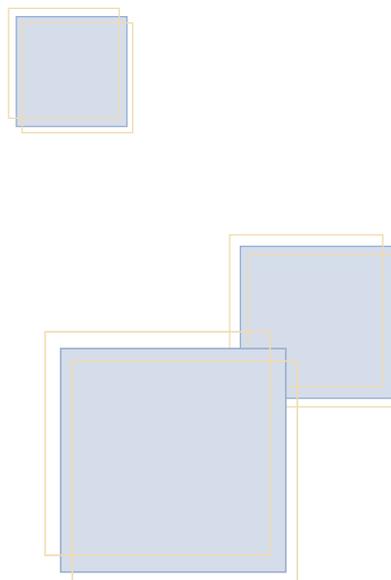
In brief terms, expenditure in the reporting period on staff salaries and related expenditure for the Office of the Information Commissioner was \$966,173. Other expenses attributed to this Office, including an apportionment of the costs of the Corporate Services unit, and the executive office of the Ombudsman and Information Commissioner, amounted to \$444,569.

¹ This figure includes two staff who had been appointed but had not yet taken up their positions as at 30 June 2002.

Our future – Outlook 2002–2003

The reduction in the number of applications pending at 30 June 2002 to its lowest level since the first year of operations has freed resources to allow us to focus on a number of priorities in the coming year, including:

- reducing the number of cases over 12 months old;
- emphasising problem solving and informal resolution approaches;
- improving timeliness of case resolution;
- enhancing our website to improve public access to information about FOI and decisions of the Commissioner;
- publishing further information sheets and practitioner guidelines about the Act and providing assistance to members of the public and FOI practitioners;
- implementing our new case and records management system;
- implementing a new performance planning and review structure;
- developing and implementing a strategic training plan for staff, with emphasis on leadership and management development;
- conducting applicant and agency surveys and reviewing office procedures in light of the survey results; and
- finalising our review of terms and conditions of employment for staff and formalising key human resource management policies.



Significant Issues

The Parliamentary Committee's report on Freedom of Information was one of the most significant events in relation to freedom of information in Queensland during the reporting period². A response by the Minister for Justice and Attorney-General (the 'Government Response') was tabled on 13 August 2002.

The LCARC report contained a comprehensive review of issues concerning freedom of information, and access generally to government-held documents. It was prepared after hearing evidence from various witnesses at public hearings, and considering more than 170 written submissions.

The Government Response adopted a number of proposals to address administrative or procedural issues and indicated that the Department of Justice and Attorney-General (the Department) would consider developing numerous guidelines. However, it rejected most of the proposals for significant improvements put forward by LCARC. I have discussed below a number of issues that I consider remain of substantial concern and require attention.

ADVICE AND ASSISTANCE

LCARC proposed the establishment of an independent FOI monitor to:

- monitor agency compliance with, and administration of, the FOI regime;
- promote awareness of the FOI regime; and
- provide advice and assistance to agencies and members of the community about the FOI regime³.

Although the Government did not agree that a statutory office—the FOI monitor—should be established, it agreed in principle that there are a range of functions in relation to FOI requiring better coordination. However, it went on to point to a number of functions proposed for the FOI monitor that were already being undertaken by the Department or by my Office and indicated the Government would further consider how coordination could be improved.

As indicated in my report, my Office has undertaken some activities to help agencies and members of the community better understand the FOI process. However, it must be understood that our primary role remains the independent review of FOI decisions and, therefore, activities in the area of providing advice have been limited.

The LCARC report made it clear that there are a large number of functions that could be undertaken to improve understanding of FOI, the processes involved in dealing with applications and the performance of agencies in administering the Act.

These functions appear to be carried out very effectively by the Western Australian Information Commissioner without raising any concerns regarding potential conflicts of interest, which was the reason suggested in the Government Response as to why it might not be appropriate for the Queensland Information Commissioner to perform these functions.

Given the level of demand for this type of service, we will continue to provide advice and assistance to agencies and members of the community to the extent that resources permit.

Wherever possible, I will also favourably consider any approaches from the Department of Justice and Attorney-General for assistance in any advice and awareness activities it undertakes.

² Report on Freedom of Information in Queensland, LCARC, Report no. 32, December 2001).

³ LCARC (2001), findings 5-10.

I am not making any proprietorial claim to the advice and awareness role. I am simply saying there are benefits for both the public and public sector agencies in some agency or agencies effectively performing these functions. I encourage the Government to consider this issue as soon as possible and to provide appropriate resourcing to whatever agency is given responsibility for performing these functions.

Such a step will lead to:

- improved administration of the FOI Act by agencies;
- improved understanding by members of the public of their rights under the FOI regime; and
- enhanced access to government.

All of these outcomes are consistent with the Government's Community Engagement initiative and will ultimately enhance our democratic process.

CABINET AND EXECUTIVE COUNCIL EXEMPTIONS

The exemption provisions outlined in sections 36 and 37 of the Act have been the subjects of repeated criticism by my predecessor in previous annual reports⁴. When in Opposition, members of all political parties have criticised the current s.36 and s.37 exemption provisions and have argued on numerous occasions that these provisions had been abused.

The issue was most recently canvassed in our 2000–01 Annual Report in connection with the case involving documents concerning the Goodwill Bridge across the Brisbane River. Thousands of documents, most of them of a technical nature, were put before a Cabinet sub-committee and thereby rendered exempt under s.36(1) of the FOI Act. Disclosure of the great bulk of them was not likely to have revealed anything about the Cabinet process.

During the current reporting period, cases continued to arise that raised concerns about the breadth of the exemption provisions and the readiness of agencies to rely on them.

I was therefore pleased to see that LCARC addressed issues relating to these provisions in its report, recommending substantially altered exemption provisions which would have confined the scope of the exemptions for Cabinet and Executive Council documents within more appropriate limits. LCARC made clear its view that the current provision is too broad⁵:

...the current form of the Cabinet exemption potentially detracts from community confidence in the government's commitment to the Act's objectives of open, accountable and participatory government...

...the committee as a whole agrees that the Cabinet exemption recommended below achieves a more appropriate balance between FOI principles of openness and the need to protect the confidentiality of Cabinet deliberations than the current provision.

⁴ Issues fully canvassed in the 1994–95 annual report at paragraphs 3.4-3.49

⁵ LCARC (2001), pages 192 and 193

LCARC proposed the following wording for the Cabinet exemption:

Matter is exempt if:

- (a) it has been prepared for submission to Cabinet (whether or not it has been so submitted);*
- (b) it was prepared for briefing, or the use of a minister or chief executive in relation to a matter for submission to Cabinet (whether or not it has been so submitted);*
- (c) it is a draft of a matter mentioned in paragraphs (a) or (b);*
- (d) it is, or forms part of, an official record of Cabinet;*
- (e) its disclosure would involve the disclosure of any deliberation or decision of Cabinet, other than matter that has been officially published by government.*

Unfortunately, the Government Response rejected those recommendations and did not address the significant issues raised by LCARC about the exemptions. Specifically, it did not address why documents not initially prepared for the purpose of submission to Cabinet, but subsequently attached or proposed for attachment to a Cabinet submission for information purposes, deserve blanket exemption from disclosure under the FOI Act. This is presently the case irrespective of whether disclosure of their contents would reveal anything about the substance of Cabinet discussions or deliberations, or otherwise be contrary to the public interest.

On that issue, LCARC had stated that:

All Australian jurisdictions which have FOI legislation, except Queensland, have some purposive element in the test to determine whether documents submitted to Cabinet are exempt.

The absence of a purposive test creates the potential for agencies to abuse the exemption by submitting documents to Cabinet merely to avoid disclosure under the Act.

It is worth noting that, even though an exemption in the form proposed by LCARC would be a substantial advance, it would nevertheless be more restrictive than the one under which the Commonwealth government has operated for 20 years.

The Commonwealth Cabinet exemption does not give blanket exemption to documents submitted to Cabinet unless they were prepared for the purpose of submission to Cabinet. Under that regime, only documents that disclose the individual submissions or opinions of Ministers, or the nature and content of their collective deliberations, require blanket protection from disclosure in accordance with the convention of collective ministerial responsibility. Other documents should be individually assessed according to whether or not disclosure of their contents would be contrary to the public interest.

The scope of the current Cabinet and Executive Council exemption provisions in Queensland's FOI Act remains the major source of criticism of our FOI regime.

DISCRETION TO DISCLOSE EXEMPT MATTER

In the course of discussing the Cabinet and Executive Council exemptions, our last annual report highlighted the discretion that agencies have to grant access to matter which may technically qualify for exemption under the Act. It was pointed out that consideration of the exercise of that discretion is as much a part of the FOI decision-making process as consideration of whether or not matter technically qualifies for exemption. It was suggested that this discretion provided a mechanism whereby agency decision-makers could disclose matter which is technically exempt under s.36 and s.37 of the Act, but where disclosure would not be contrary to the underlying rationale of protecting the Cabinet and Executive Council process, or otherwise contrary to the public interest.

Finding number 72 of LCARC's report sought to emphasise the discretion available to decision-makers by recommending that the discretion should be contained in a separate section of the FOI Act. The Government Response did not adopt that recommendation. It did, however, acknowledge that 's. 28 of the Act does not require agencies to claim an exemption where one is available' (page 6).

I reiterate that where matter qualifies for exemption, whether under s.36, s.37 or any other provision, it is incumbent on a decision-maker to consider factors relevant to the exercise of that discretion prior to making a decision.

GOVERNMENT OWNED CORPORATIONS

Another issue that has frequently been raised in previous annual reports of the Information Commissioner is the extent to which government owned corporations (GOCs) should be excluded from the application of the FOI Act⁶.

Arguments supporting exclusion of GOCs from the Act have rested largely on creating a 'level playing field' for GOCs with their private sector competitors. However, the wording of s.11A of the Act does not achieve that result. Rather, it effectively skews the playing field in favour of GOCs by conferring on them a much greater scope of exclusion from the application of the Act than is afforded to private sector business operators. The wording of s.11A not only excludes from the application of the Act documents in the hands of a GOC, but also documents relating to the GOC held by other government agencies (such as a regulatory authority) or Ministers. Documents about a private sector business that are held by a government agency or Minister are not excluded from the application of the Act.

A private sector business may well be able to rely on exemption provisions such as s.45(1) (matter relating to trade secrets or business affairs) or s.46(1) (matter communicated in-confidence) to block access to particular information about its operations that are held by government agencies or Ministers. Such exemptions would also be available to GOCs, if documents relating to them were subject to the Act. However, GOCs do not need to make claims for exemption on a document-by-document basis because they have been conferred with a privileged position compared to their private sector competitors.

The LCARC report discussed this anomaly and recommended that it be remedied. However, the Government Response rejected that recommendation. Its explanation for doing so was that:

GOCs operate in increasingly competitive environments and many are subject to particularly strong competition such as energy GOCs. The current exclusions for GOCs effectively recognise the environment within which their commercial activities are performed, their performance agreements negotiated and performance monitored. (page 60)

This explanation does not address LCARC's observation and I recommend that more careful consideration be given to the points raised in the LCARC report about this issue and the broader issues concerning the exclusion of documents relating to GOCs.

NEW CHARGES REGIME

One of the terms of reference for LCARC was the appropriateness of, and the need for, the existing regime of fees and charges in respect of access to documents. Shortly before the tabling of the LCARC report in November 2001, the Government introduced a new charging regime for the Act that imposed significant charges for time spent processing applications for access to documents that do not concern the personal affairs of the applicant. LCARC suggested in its report that it should review the charges regime after one year to assess whether the regime was operating fairly and efficiently. It also recommended a number of immediate changes aimed at improving the regime.

⁶ This issue was first addressed at length in the Information Commissioner's 1994–95 Annual Report at paragraphs 3.50–3.73.

The Government Response rejected any immediate changes, but indicated it would monitor the operation of the charging regime to ensure that it meets community expectations.

Officers of agencies who are involved in the administration of the charges regime have highlighted significant procedural deficiencies in the new charging regime. We will assist FOI decision-makers and applicants by interpreting charges provisions in the course of specific external reviews and will cooperate with LCARC and the Government to identify shortcomings of the regime and make suggestions for improvement in the course of any review.

MONITORING FOI COMPLIANCE AND ADMINISTRATION

We sometimes receive complaints from applicants or others involved in the FOI process that agencies have failed to properly process applications either at the initial stage or on internal review. My role of conducting external reviews of agency decisions does not extend to formally monitoring the procedures adopted by agencies in processing applications at first instance or on internal review. When a matter comes before my Office for external review, my officers conduct a fresh review of the issues in order to decide whether the decision made by the relevant agency officer was correct. We do not have to decide whether the procedures followed by the agency in arriving at its decision complied with the Act.

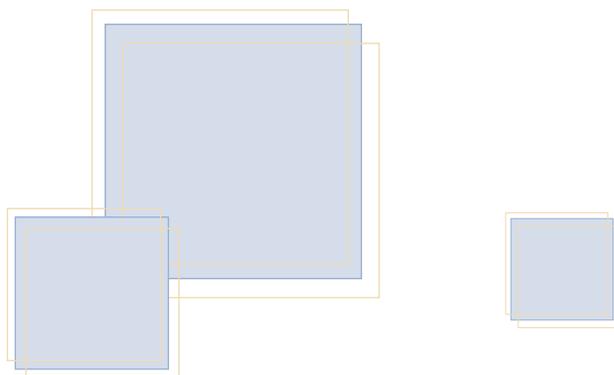
While we frequently try to help parties resolve disputed issues of this nature, we have limited resources and powers to do so and our role is purely an informal one. However, as the LCARC report indicated, there is a need for someone to perform such a monitoring role so the public can be assured the Act is being administered competently and fairly.

SUBSTANTIAL AND UNREASONABLE DIVERSION OF AGENCY RESOURCES

Finally, I should make further mention of the amendments to the Act that extended the grounds on which an agency can refuse to deal with an application because to do so would substantially and unreasonably divert the resources of the agency. The factors to be taken into account in invoking this provision were previously limited to the number and volume of documents and any difficulty which would exist in identifying, locating or collating the documents.

This limitation has now been removed so that essentially any type of work involved in dealing with an application can be taken into account (see s.28(2)(4) of the FOI Act). This will include work involved in examining documents, consulting with third parties, editing documents to delete segments of exempt matter, making copies and notifying a decision.

This provision will no doubt be relied upon more frequently by agencies in refusing to deal with large applications. However, during the reporting period, there was no significant increase in applications to my Office to review decisions made on this basis.



Appendix 1

PROFILE OF ACCESS APPLICANTS — FINALISED EXTERNAL REVIEWS 2001–2002

Type of Applicant	No.
Politicians or political staffers	15
Journalists	10
Citizens' groups/lobby groups	21
Individuals seeking information about public health and safety issues	6
Public servants (or former public servants) seeking information about workplace disputes (e.g., grievance, disciplinary proceeding, termination of employment)	
Sub-categories: <ul style="list-style-type: none"> • Professional employee (e.g. salaried medical practitioner) (11) • Teacher (5) • Police officer or ex-police officer (4) • University academic (7) 	44
Business people or business organisations seeking information for purposes related to their business	34
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	8
Individuals seeking information relating to their treatment (or the treatment of a relative) by the QPS, the Crime and Misconduct Commission (CMC) or the courts (i.e. where the access applicant, or a relative, was the subject of investigation)	16
Individuals seeking information about how their complaint to the QPS or CMC was dealt with	17
Prisoners or former prisoners (or relatives thereof) seeking information relating to the prisoner's treatment by prison authorities	7
Individuals seeking access to their own medical records or records of a dependent child	17
Individuals seeking access to the medical records of a deceased relative	5
Individuals seeking information relating to their treatment under the Mental Health Act, or by mental health authorities (e.g., Patient Review Tribunal)	1
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 or Department of Families, Youth and Community Care) of a neighbourhood dispute or a family dispute.	
Includes individuals seeking the identity of a complainant against them (3)	28
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	
Sub-category: <ul style="list-style-type: none"> • Planning and development decisions (6) 	36
Individuals or business organisations seeking access to information for use in pending or proposed legal proceedings	29
Individuals seeking information about an individual public servant who has had dealings with them	7
TOTAL	306

Appendix 2

APPLICATIONS FOR EXTERNAL REVIEW 2001–2002 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	86
Deletion of exempt matter	33
Combination – refusal to grant access/deletion of exempt matter	26
Deemed refusal to grant access	51
Deferred access	0
Charges	7
Combination – refusal to grant access/charges	1
Third party consulted; objects to disclosure	29
Third party not consulted; objects to disclosure	0

Amendment of records (Part 4)

Refusal to amend	4
Deemed refusal to amend	3

Issuance of conclusive certificate

Cabinet matter	0
Executive Council matter	0
Law enforcement/Public safety matter	0

Miscellaneous

No jurisdiction or misconceived application	35
TOTAL	275

Appendix 4

SUMMARIES OF FORMAL DECISIONS

Coulthart and Princess Alexandra Hospital and Health Service District

(Decision No. 06/2001, 10 August 2001)

The matter in issue in this review comprised a statistical table of adverse outcomes from carotid artery surgery performed by the Hospital's Vascular Surgery Unit (the VSU) over a specified time period. The table was organised in such a manner as to indicate that one of the five surgeons in the VSU had a 'complication rate' higher than that of the other surgeons. The Hospital objected to disclosure on the basis that the statistical table comprised raw data, which had not been adjusted to take account of operative risk factors, such as the severity of carotid artery disease and co-existing conditions in the patients in question. The Hospital submitted that the table could lead to unwarranted conclusions being drawn about the surgical competence of one surgeon, and that this adverse effect on the surgeon's professional affairs warranted an exemption under s.45(1)(c) of the FOI Act.

During the course of the review, it was confirmed that the matter in issue related only to public patients of the Hospital, and that no private patients of any of the individual medical practitioners comprising the VSU were represented in the statistical information in issue. Commissioner Albiez reaffirmed the interpretation he had first stated in *Re Pope and Queensland Health* (1994) 1 QAR 616 to the effect that the words 'professional affairs', in the context of s.45(1)(c) of the FOI Act, were intended to cover the work activities of persons who are admitted to a recognised profession, and who ordinarily offer their professional services to the community at large for a fee (i.e., to the running of a professional practice for the purpose of generating income).

Commissioner Albiez decided that, since the matter in issue concerned the surgeons' treatment of public patients, it was properly to be characterised as information concerning the performance by the surgeons of their duties of employment as government employees, and not as information concerning their professional affairs, according to the meaning which the term 'professional affairs' has in the context of s.45(1)(c) of the FOI Act. He therefore decided that, as disclosure of the matter in issue would not disclose information concerning the business, professional, commercial or financial affairs of a person, the matter in issue did not qualify for exemption under s.45(1)(c) of the FOI Act.

While it was not strictly necessary to do so, because the participants had fully argued the issues, Commissioner Albiez went on to consider the remaining elements of the test for exemption under s.45(1)(c) on the assumption, contrary to his finding, that the term 'professional affairs' extended to the performance of professional services, irrespective of whether the professional is a salaried employee of a government agency or is engaged in running a professional practice on a fee for service basis.

On that assumption, he considered that disclosure of the matter in issue could reasonably be expected to have an adverse effect on the professional affairs of the particular surgeon whose adverse results were highlighted by the manner of presentation of the statistical table. Commissioner Albiez rejected the Hospital's contention that disclosure of the matter in issue could reasonably be expected to prejudice the future supply of such information to government, since it was merely information extracted from patient clinical data about the occurrence of significant adverse events that would necessarily be recorded.

He went on to find that, even accepting that disclosure of the matter in issue could reasonably be expected to have an adverse effect on the professional affairs of one surgeon, disclosure would, on balance, be in the public interest. He recognised a public interest in members of the community having access to information that would allow them to make informed choices about health care providers. However, the Hospital contended that disclosure of raw data, rather than data that had been properly risk-adjusted, would not facilitate informed choices.

Commissioner Albietz expressed the view that there are at least two reasonable bases for treating with scepticism an agency's assertion that information should not be disclosed because it would confuse or mislead the public. The first applies where it is open to a citizen who has been interested enough to seek out certain information, to seek assistance in understanding it. The second applies where it is open to the agency, by the provision of further non-exempt information, to avoid the potential for misleading or confusing the public. He observed that, in the latter situation, it might well be appropriate to discount any weight to be accorded to an agency argument that disclosure of information would confuse or mislead the public. He noted that, in the instant case, the tenor of the Hospital's submissions indicated an acceptance of the proposition that disclosure of risk-adjusted statistical data would be in the public interest, and that it was within the power of the Hospital to arrange for the preparation and disclosure of risk-adjusted statistical data.

Commissioner Albietz decided that disclosure of the matter in issue would, on balance, be in the public interest. He observed that:

- the statistical table provided accurate figures as to the number (and percentage) of adverse surgical outcomes in the relevant period, and this information still had value in assisting interested members of the public to make informed decisions about available surgical treatments and service providers;
- disclosure would enhance the accountability of the Hospital for its monitoring and management of adverse surgical outcomes; and
- while disclosure of 'raw data' might make some surgeons reluctant to perform surgery on high-risk patients because it might affect their complication rates, it may well be as much in the public interest that patients who are in significant danger of death or stroke in any event have access to information about surgeons who are willing to operate on high-risk patients (that being the reason the surgeon claimed for having a higher complication rate).

The Hospital also claimed that the statistical table was exempt under s.45(3), but Commissioner Albietz decided that disclosure of the table would not disclose the purpose or results of 'research', in the sense that word is used in the context of s.45(3), because it merely categorised information extracted from computerised statistical data and patient records, ordinarily kept by the Hospital, and was more akin to performance audit information than to the results of a research project undertaken to discover new facts or principles. He also held that there was no suggestion of an adverse effect on the hospital on whose behalf the purported 'research' had been carried out. Accordingly, the matter in issue did not qualify for exemption under s.45(3) of the FOI Act.

Richardson and Queensland Police Service
Karlos and Queensland Police Service
(Decision No. 07/2001, 13 August 2001)

The applicants brought 'reverse FOI' applications to prevent the disclosure by the Queensland Police Service (the QPS) of a police brief prepared for presentation in the Magistrates Court at the prosecution of Mr Karlos for prostitution-related offences. The contents of the brief had not previously been made public because Mr Karlos had pleaded guilty to the charges. In applying s.44(1) of the FOI Act, Commissioner Albietz was satisfied that the information in the police brief concerned the personal affairs of either Mr Karlos, Mr Richardson (who was referred to in the brief), or both.

The FOI access applicant, a journalist, took part in the external reviews as a third party. All participants contributed submissions identifying a range of public interest considerations claimed to tell for, and against, a finding that disclosure of the matter in issue would, on balance, be in the public interest.

Commissioner Albietz accorded significant weight to the privacy interests of Mr Karlos and Mr Richardson, but ultimately held that the weight of the public interest considerations favouring disclosure warranted a finding that disclosure would, on balance, be in the public interest. Two considerations in particular ultimately carried determinative weight in favour of disclosure:

- accountability of Mr Richardson for his conduct at a time when he was a Minister of the Crown in right of the Commonwealth of Australia; and
- informing public debate about acceptance of gifts or benefits by Ministers.

Commissioner Albietz relevantly observed:

- *I do not consider that the 'public interest' referred to in the Queensland FOI Act is limited to considerations operating at the level of State or local government. Clearly, the operations of government at a Commonwealth level have a profound effect on Queenslanders, as much as on every other citizen of Australia. The concept of public interest is a broad one, and I see no reason to limit its scope merely because it appears in a Queensland enactment.*
- *In my view, the fact that the QPS was satisfied that the allegations against Mr Richardson (if true) involved no offence on his part under Queensland law, and that the AFP found no evidence to establish an offence under Commonwealth law, does not exhaust the public interest in scrutiny of, and accountability for, the propriety of the alleged conduct of a person who, at the relevant time, held an important position of public trust... Australian electors are entitled to, and do, expect appropriate standards of ethical behaviour from their elected representatives. It is commonly accepted that this extends to activities undertaken away from the actual conduct of the duties of public office, that may affect or compromise a person's ability to faithfully carry out the duties of public office.*
- *... the circumstances in which a public officer accepts a gift or benefit has been recognised as relevant to the performance of public duties and capable of compromising, or appearing to compromise, the integrity of a holder of public office: see, for example, 'Guidelines on Official Conduct of Commonwealth Public Servants' (Public Service Commission, Canberra, 1995); 'A Guide on Key Elements of Ministerial Responsibility' issued by the Prime Minister (Canberra, December 1998) at pages 10-12. The acceptance of a significant gift or benefit may give rise to at least a perception that there was an expectation of, or agreement as to, a quid pro quo in terms of the way the public officer carries out his or her public duties, or, in the case of an office-holder as senior as a Minister of the Crown, deploys the influence that attaches to such a position.*
- *I consider that there is a public interest consideration favouring disclosure of information about a situation in which a Minister is alleged to have been offered a benefit of significant value, in order to allow the public to assess whether the Minister has exercised sound judgment and common sense in deciding whether to accept such a benefit. That the beneficiary of the gift did not intend to, or did not in fact, do anything in return, would not, in my view, significantly detract from the public interest in accountability in respect of the holder of an important position of public trust putting himself or herself in a situation of the kind that Mr Richardson is alleged to have done, as a Minister of the Crown in 1993.*
- *In my view, it cannot be a sufficient counter to the force of this public interest consideration, that Mr Richardson has denied the allegations and they remain untested. A lapse in the standards of propriety or ethical conduct (which does not cross the line into criminal conduct) that electors have a right to expect of their elected representatives holding senior positions of public trust, is not going to be tested in a court of law, but is certainly, in my view, a matter on which the public should be informed, since informed public debate may be one of the few avenues available to moderate or deter unacceptable behaviour by holders of public office that does not cross the line into criminal conduct. Disclosure of the matter in issue would assist interested members of the public to assess the strength of the evidence to substantiate the allegations involving Mr Richardson and Mr Karlos, that the QPS had available to present to a court.*

-
- *I do not accept the contentions put on behalf of Mr Richardson and Mr Karlos to the effect that this public interest consideration does not warrant further public ventilation of the allegations against them, because Mr Richardson no longer holds public office and the allegations have long since ceased to be a matter of public controversy. It is inherent in the concept and purpose of accountability that it involves being called to account for, and take responsibility for, past actions (or inaction), and the existence of meaningful accountability measures is intended to promote and encourage (in part, through a desire to avoid being called to account for unsatisfactory performance or conduct) the more efficient, economical and ethical conduct of government by present and future occupants of public office.*
 - *In my view, disclosure of the matter in issue would also assist to promote more informed public debate about the standards of conduct that the electors have a right to expect from their elected representatives, especially Ministers of the Crown, and whether, for example, a code of conduct should be developed to more explicitly prescribe the standards to be observed, or more specifically proscribe certain behaviours. Fruitful public debate is often fuelled by consideration of specific problem cases, rather than just general principles.*

Barker and World Firefighters Games, Brisbane, 2002

(Decision No. 08/2001, 27 September 2001)

The respondent contended that it was not an agency subject to the application of the FOI Act and that it therefore was not obliged to process the applicant's FOI access application. I reviewed the documentation and circumstances surrounding the establishment of the respondent and decided that it was an agency subject to the application of the FOI Act because it was a body that was established by government for a public purpose under an enactment, within the terms of s.9(1)(a)(ii) of the FOI Act. I further decided that the applicant had made a valid application for access to documents under s.25 of the FOI Act and that the respondent thereby came under a legal obligation, imposed by s.27(2) of the FOI Act, to consider the application and to make one or more of the decisions referred to in s.27(2) of the FOI Act.

Chand and Medical Board of Queensland; Cannon (Third Party)

(Decision No. 09/2001, 30 November 2001)

The matter in issue consisted of a report supplied to the Medical Board by the third party in response to a complaint made by the applicant about the third party's medical treatment of the applicant's husband.

The third party claimed that his entire report was exempt from disclosure under s.46(1)(a) and (b) of the FOI Act (matter communicated in confidence). The Medical Board claimed that only parts of the report were exempt under s.46(1)(b) of the FOI Act.

Deputy Commissioner Sorensen dealt firstly with a preliminary issue as to the identity of the access applicant, finding that Mrs Chand had exercised her power as Attorney for her husband in personal/health matters by instructing solicitors to make the relevant FOI access application (and subsequent applications for internal and external review) on behalf of her husband. Pursuant to s.81 of the *Powers of Attorney Act 1998 Qld*, this meant that, if Dr Sukhi Chand would have been entitled to access the matter in issue under the FOI Act, no objection to disclosure could be taken on the basis that the information was confidential as against Mrs Chand.

With respect to the third party's claim that his report was exempt under s.46(1)(a) of the FOI Act because disclosure by the Board to the applicant would found an action for breach of confidence, the Deputy Information Commissioner made findings that:

- while it may have been reasonable for the third party to expect that the Board would treat his report in confidence as against the rest of the world, his request that his report be treated in confidence as against the complainant was not reasonable, having regard to the functions of the Board and the uses it might properly wish to make of the information contained in the report in discharging its responsibility to deal fairly and properly with the complaint;
- equity would not treat the third party's request for confidentiality in respect of his report as giving rise to a binding obligation of confidence, restraining the Board from disclosing to the complainant those parts of the report which addressed (including giving relevant background information) the particular issues of complaint;
- the only material contained in the report which could properly be considered to be irrelevant or non-responsive to the complaint was that contained in the final paragraph of the report. It was reasonable for the third party to assume that the Board would not need to disclose that information to the complainant in order to explain to her the outcome of the Board's investigation of her complaint, and that information was capable of being the subject of an obligation of confidence, as against the complainant.

Accordingly, the only information contained in the third party's report which satisfied the requirements for exemption under s.46(1)(a) of the FOI Act was that contained in the final paragraph of the report.

As to the application of s.46(1)(b) of the FOI Act to the third party's report, the Deputy Information Commissioner found that:

- parts of the report had already been disclosed to the applicant by the Medical Board and were therefore not confidential information as against the applicant;
- at least as against the applicant (being the person to whose complaint the third party was responding when he wrote his report), the information contained in the report (except for the final paragraph) was not 'communicated in confidence';
- it was not reasonable to expect that disclosure of the third party's report would prejudice the future supply to the Medical Board of information from a substantial number of medical practitioners; rather, it was reasonable to expect that most medical practitioners under investigation by the Board would be willing to cooperate with the investigation, and provide relevant information and exculpatory explanations to the Board.

Accordingly, the Deputy Information Commissioner found that the third party's report did not qualify for exemption under s.46(1)(b) of the FOI Act.

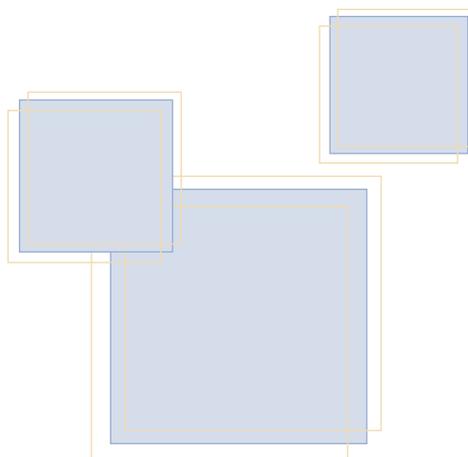
Weekes and Crime Stoppers Queensland Ltd

(Decision No. 01/2002, 26 June 2002)

In this case, I held that Crime Stoppers Queensland is not an agency, as defined in the FOI Act, and hence is not subject to the application of the FOI Act. Evidence supplied by Crime Stoppers Queensland Ltd relating to the circumstances of its establishment clearly demonstrated that it was not:

- a body established by an enactment (within the terms of s.9(1)(a)(i) of the FOI Act);
- a body established by government (within the terms of s.9(1)(a)(ii) of the FOI Act);
- a body created by the Governor in Council or a Minister (within the terms of s.9(1)(b) of the FOI Act); or
- a body declared by regulation to be a public authority for the purposes of the FOI Act (within the terms of s.9(1)(c) of the FOI Act).

The applicant contended that Crime Stoppers Queensland Ltd was an agency by virtue of s.8(2) of the FOI Act because it formed part of the Queensland Police Service, or because it existed mainly for the purpose of enabling the Queensland Police Service to perform its functions. I rejected the applicant's first contention because Crime Stoppers Queensland Ltd was clearly a separate legal entity from the Queensland Police Service. The applicant's second contention depended on reading the word 'enabling' in s.8(2)(b) of the FOI Act as if it effectively meant 'assisting'. I held that, as a matter of statutory construction, this could not be accepted as the meaning intended by Parliament for the language it had chosen to employ in the context of s.8(2)(b) of the FOI Act.



Appendix 5

SUMMARIES OF LETTER DECISIONS

Harris and Criminal Justice Commission

(S 149/94; 27 July 2001)

In this case, Commissioner Albietz dealt with three groups of documents claimed to be exempt, respectively, under s.50(c)(i), s.43(1) and s.41(1) of the FOI Act. The Clerk of the Parliament had issued a certificate under s.9 of the *Parliamentary Papers Act 1992 Qld* certifying that certain documents held by the Criminal Justice Commission (CJC), which were copies of communications to or from the Parliamentary Criminal Justice Committee (PCJC) were 'proceedings in Parliament' as defined in s.3 of the *Parliamentary Papers Act*. The PCJC had not authorised the public disclosure of those documents.

Commissioner Albietz held that the public disclosure of the documents would infringe a Standing Order of the Legislative Assembly, and hence that the documents were exempt under s.50(c)(i) of the FOI Act. He also held that disclosure of a CJC record of an oral communication to the Chair of the PCJC, which was obviously intended to be a confidential communication, would infringe the privileges of Parliament, and hence that it was exempt under s.50(c)(i) of the FOI Act.

The applicant had argued (apparently by analogy with the legal doctrine by which legal professional privilege is denied to communications made in preparation for, or furtherance of, an illegal or improper purpose) that all of these documents had been knowingly created for, or were knowingly used for, an illegal or improper purpose, or involved an abuse of the integrity of Parliamentary processes, and were therefore disqualified from attracting Parliamentary privilege. However, Commissioner Albietz accepted a submission by the PCJC that it would infringe the very essence of Article 9 of the Bill of Rights for any court or tribunal to inquire into whether documents, which qualify as proceedings in Parliament within the terms of s.3 of the *Parliamentary Papers Act*, were knowingly created for, or were knowingly used for, an illegal or improper purpose, or involved an abuse of the integrity of Parliamentary processes. Proceedings in Parliament are not to be impeached or questioned in any place out of Parliament.

Commissioner Albietz upheld claims of legal professional privilege (and hence exemption under s.43(1) of the FOI Act) in respect of four documents. He examined issues relating to implied waiver in respect of some of those documents. Notably, he rejected a contention of waiver through disclosure to the applicant (by staff of the Connolly-Ryan Commission of Inquiry) of segments of a legal opinion, prepared by the CJC's in-house counsel, when it was established that the legal opinion was supplied by the CJC to the Commission of Inquiry under compulsion, and with an express reservation of the CJC's entitlement to privilege. Commissioner Albietz also rejected the applicant's contention that the documents did not attract privilege because they were created in preparation for, or furtherance of, an illegal or improper purpose.

In respect of the group of documents claimed to be exempt under s.41(1) of the FOI Act (the exemption for deliberative process matter), Commissioner Albietz held that much of the matter in issue was merely factual matter, which was ineligible for exemption under s.41(1) by virtue of s.41(2)(b) of the FOI Act. He decided that some segments of matter did qualify for exemption under s.41(1), but that disclosure of the balance would not be contrary to the public interest.

Lindeberg and Criminal Justice Commission

(S 3/99; 9 August 2001)

In his external review application, the applicant asked the Information Commissioner to investigate his contention that the CJC should hold additional documents, responsive to the terms of his FOI access application, which had not been identified and dealt with by the CJC. The Information Commissioner undertook an investigation and informed the applicant of his preliminary view that there were no reasonable grounds for believing that additional responsive documents existed in the possession or control of the CJC. He invited the applicant to lodge written submissions and/or evidence in support of his case that there were reasonable grounds for believing that additional responsive documents existed in the possession or control of the CJC, and specifying what further searches and/or inquiries the applicant contended the CJC should reasonably be required to undertake in an effort to locate the requested documents.

The applicant responded by asking the Information Commissioner to disqualify himself from dealing with this application for review on the ground of 'reasonable apprehension of bias'. In this interim decision, Commissioner Albiez explained his ruling that there were no grounds that might cause a fair-minded observer to have a reasonable apprehension that the Information Commissioner might not bring an impartial and unprejudiced mind to the resolution of the 'sufficiency of search' issues involved in this case. The applicant was given an additional opportunity to lodge written submissions and/or evidence in support of his substantive case on the 'sufficiency of search' issues.

Gresham and Queensland Principal Club

(S 26/01, 13 August 2001)

The applicant, a member of the Gold Coast Turf Club, had taken his concerns regarding travel and entertainment expenses incurred by committee members to the Queensland Principal Club (the QPC). He was not satisfied with the response he received from the QPC and sought access to two internal memoranda created during the investigation of his complaints. The QPC claimed the documents were exempt under s.41(1) of the FOI Act.

Commissioner Albiez found that the bulk of each of the memoranda comprised purely factual matter that was not eligible for exemption under s.41(1) by virtue of the provision made in 41(2)(b) of the FOI Act. He also decided that disclosure of the balance of the information would not be contrary to the public interest, given the significant weight of the public interest in the accountability of the QPC for its performance of its statutory supervisory and regulatory functions. Commissioner Albiez also rejected the Gold Coast Turf Club's contention that the matter in issue qualified for exemption under the s.40(a) and s.40(b) exemption provisions (prejudice to a test, examination or audit).

Watkins and Department of Equity and Fair Trading

(S 287/00; 16 August 2001)

This was a 'reverse FOI' application in which the applicant sought to prevent the FOI access applicants (the complainants) obtaining access to a letter and annexure provided to the Office of Fair Trading (OFT) by the applicant in response to a complaint against her. The applicant purported to rely on s.46(1) and s.45(1)(c) of the FOI Act. Assistant Information Commissioner Shoyer was not satisfied that the circumstances attending communication to the OFT of the matter in issue were such as to fix the OFT with an equitable obligation of confidence, and found that the matter in issue did not qualify for exemption under s.46(1) of the FOI Act.

He also found that the applicant had not advanced any persuasive argument that disclosure could reasonably be expected to have an adverse effect on the applicant's business, professional, commercial or financial affairs. Even if she had done so, the public interest considerations favouring disclosure to the complainants, in order to afford

them a proper account of the OFT's investigation of their complaint, would have weighed decisively in favour of disclosure under the public interest balancing test incorporated in s.45(1)(c) of the FOI Act.

Reynolds and Parliamentary Commissioner for Administrative Investigations

(S 156/00, 27 August 2001)

The applicant sought access to all documents relating to a complaint to the respondent by two third parties. The third parties were aggrieved that the Redland Shire Council had failed to take any action in response to their complaints about the applicant over a number of years. (The respondent did not undertake a detailed investigation after being informed by the Council that it intended to prosecute the applicant for a breach of town planning regulations.) A large amount of the matter in issue was disclosed to the applicant during the course of the review. Assistant Commissioner Shoyer found that the remaining matter qualified for exemption from disclosure under s.44(1) of the FOI Act (the personal affairs exemption). He also found that one document qualified for exemption under s.43(1) of the FOI Act, as it was a request for legal advice from the Council to its solicitors.

Renton and Queensland Law Society Inc.

(S 97/01, 31 August 2001)

The applicant was in dispute with his former solicitor and sought access to various documents provided to Law Claims (the former insurance arm of the Queensland Law Society) by that solicitor. The documents had been provided to Law Claims pursuant to the solicitor's contractual obligations under his insurance agreement, and a legal duty of confidence was imposed on Law Claims with respect to their use. The Deputy Information Commissioner found that all documents provided to Law Claims as part of the insurance scheme were exempt from disclosure to the applicant under s.46(1)(a) of the FOI Act, applying the principles established in *Re 'B' and Brisbane North Regional Health Authority* (1994) 1 QAR 279. In addition, applying the principles discussed in *Re Price and Nominal Defendant* (1999) 5 QAR 80, he also found that documents on the solicitor's original file, which had been returned to the solicitor, were not 'documents of an agency' (i.e., of the Queensland Law Society) as defined by s.7 of the FOI Act.

The Redland Times and Redland Shire Council

(L 33/01, 4 September 2001)

The matter in issue was a report prepared by external consultants following a management review of the Assessment Services Division of the Council. In the course of the review, the Council withdrew its objection to the disclosure of the report but a Council officer who was referred to in the report made an objection. Assistant Commissioner Shoyer found that no part of the report qualified for exemption under s.41(1), s.44(1), s.45(1) or s.46(1) of the FOI Act.

Webber and Queensland Audit Office

(S 81/00, 13 September 2001)

In this case, Assistant Commissioner Shoyer applied the interpretation of s.39(2) of the FOI Act which had been stated by Commissioner Albietz in *Re Whittaker and Queensland Audit Office* (Information Commissioner Qld, Decision No. 05/2001, 15 June 2001, unreported), and affirmed on judicial review by Moynihan J of the Supreme Court: see *Whittaker v Information Commissioner and Another* [2001] QSC 325. Assistant Commissioner Shoyer found that the disclosure of the matter remaining in issue was prohibited by s.92 of the *Financial Administration and Audit Act 1977*, and that disclosure was not required by a compelling reason in the public interest.

Lindeberg and Criminal Justice Commission

(S 3/99, 12 October 2001)

In this decision, Assistant Information Commissioner Moss ruled on the outstanding substantive issue in the case in which Commissioner Albietz had earlier rejected the applicant's contention of reasonable apprehension of bias (see summary above). Despite being given four opportunities in which to do so, the applicant failed to lodge any material to support a contention that there were reasonable grounds for believing that certain additional documents existed in the possession, or under the control, of the CJC.

Assistant Commissioner Moss reviewed the information and evidence provided by the CJC regarding the various searches and inquiries it had conducted (without success) in an effort to locate the documents sought by the applicant, and on the basis of the material before her, decided that:

- there were no reasonable grounds for believing that additional responsive documents existed in the possession, or under the control, of the CJC, and
- there were no further avenues of search or inquiry which the CJC could reasonably be required to undertake, in an effort to locate additional documents in its possession or control, which fell within the terms of the applicant's FOI access application.

Reynolds and Redland Shire Council

(L 35/00, 25 October 2001)

The applicant sought access to a large number of documents relating to complaints to the Council by various third parties. The third parties had complained to the Council, and to the local Councillor, over a number of years about noise made by the applicant's power tools, and some third parties had alleged that the applicant was running a woodworking business, or other businesses, from his home in a residential area without Council permission. The bulk of the matter in issue was disclosed to the applicant during the course of the review. The Deputy Information Commissioner found that the remaining matter qualified for exemption from disclosure under s.44(1) of the FOI Act, because it would disclose the identities of third parties who had complained about the applicant, or because it was information which solely concerned the personal affairs of those third parties.

Smith and Queensland Police Service

(S 133/00, 9 November 2001)

The applicant sought access to a videotape recording made by the QPS of environmental protesters conducting a demonstration at Port Hinchinbrook in 1999. Noting principles stated by the Information Commissioner to the effect that information which indicates or suggests that an identifiable individual has been involved in some alleged criminal activity or other wrongdoing, or has otherwise been the subject of police investigation, surveillance or intelligence-gathering, is properly to be characterised as information concerning the personal affairs of that individual (see *Re Ainsworth and Criminal Justice Commission* (1999) 5 QAR 284 at paragraph 141), the Deputy Information Commissioner decided that the appearance of the protesters on the videotape was in connection with an investigation or intelligence-gathering exercise by the QPS, and that the contents of the videotape must properly be characterised as information concerning the personal affairs of the relevant individuals, under s.44(1) of the FOI Act.

Applying the public interest balancing test incorporated in s.44(1), the Deputy Information Commissioner stated that he was unaware of any issues about the accountability of the QPS that might be furthered by disclosure of the information contained on the videotape. He further stated that he was unable to discern any other public interest

considerations favouring disclosure of the videotape that might be strong enough to outweigh the public interest in protecting the privacy of individuals who appear in police records as the result of police surveillance or intelligence-gathering exercises. He decided that the videotape was exempt from disclosure under s.44(1) of the FOI Act.

Tregeagle and Gold Coast City Council

(L 34/00, 19 November 2001)

The applicant, who had been the developer of a rural subdivision, sought access to a series of reports, commissioned by the Council from geotechnical engineers, regarding damage to a section of a roadway, and the collapse of a crib wall in the subdivision area. The Council submitted that those reports had been created for the dominant purpose of use in legal proceedings against the applicant, and hence that they attracted legal professional privilege, and exemption under s.43(1) of the FOI Act.

Based on his examination of the contents of the reports, and contemporaneous documentary evidence regarding the commissioning of the reports, the Deputy Information Commissioner decided that the reports were not created for the dominant purpose of use in litigation, and did not therefore qualify for exemption under s.43(1) of the FOI Act. He decided that the reports were created to provide expert opinion to the Council on the extent of the remedial works required to rectify the damage sustained in the subdivision area, and that any contemplated use of the reports in anticipated litigation was, at best, an ancillary purpose. In respect of one of the reports, he commented that, even if the report had attracted legal professional privilege at the time of its creation, the privilege must have been waived shortly thereafter by the Council's intentional and voluntary disclosure of the report to the applicant for the purpose of communicating the extent of the remedial works which the Council required the applicant to undertake.

Evans and Queensland Health

(S 45/01, 20 November 2001)

In this case, Assistant Commissioner Shoyer decided that parts of agreements relating to the co-location of a private healthcare facility with the Gladstone Hospital did not qualify for exemption under s.45(1)(c) of the FOI Act, because he was not satisfied that disclosure could reasonably be expected to have an adverse effect on the business, commercial or financial affairs of Queensland Health or the developer of the private health facility.

McCaffrey and James Cook University

(S 106/99, S 177/99, 20 November 2001)

Review S 106/99 dealt with audits of the School of Law at the University arising from allegations of improper use of University resources. Following disclosure by the University of the bulk of the information concerning the audits, Assistant Commissioner Shoyer found that a small amount of matter in issue (which comprised tentative or provisional opinions of the internal auditor) qualified for exemption under s.41(1) of the FOI Act, but that matter which merely recorded the views of the head of school on expenditure did not qualify for exemption.

In review S 177/99, Assistant Commissioner Shoyer applied principles stated in *Re Pemberton and The University of Queensland* (1994) 2 QAR 293 at paragraph 152 in finding that information concerning performance assessments of a lecturer qualified for exemption under s.41(1) of the FOI Act.

Taylor and Brisbane City Council

(L 1/99, 20 November 2001)

This review raised many issues similar to those dealt with in Commissioner Albietz's decision in *Re Gill and Brisbane City Council* (2001) 6 QAR 45. The applicant sought access to a report by the Corporate Investigation Unit of the Council arising from its investigation of a complaint about non-payment of monumental permit fees at a Council-administered cemetery. The Deputy Information Commissioner found that two statements by Council employees, and a summary of one of those statements, were exempt under s.46(1)(a) of the FOI Act (because they comprised factual matter, and were the subject of express, written promises of confidential treatment), but rejected other exemption claims made by the Council under s.40(a), s.40(b), s.40(c), s.42(1)(b), s.42(1)(e), s.42(1)(h), s.43(1), s.45(1)(b), s.45(1)(c), s.46(1)(a) and s.46(1)(b) of the FOI Act.

Kreltzhaim and Queensland Treasury

(S 157/01, 30 November 2001)

The applicant sought access to all documents relating to an investigation undertaken by the Queensland Office of Gaming Regulation following a complaint by the applicant about a wine trade promotion. The agency had disclosed all responsive documents that concerned the applicant's personal affairs, but informed the applicant that if he wished to access the balance of the responsive documents that did not concern his personal affairs, he was required to pay a \$31 application fee. The applicant sought review by the Information Commissioner of the decision to require payment of a \$31 application fee.

Assistant Commissioner Shoyer examined several documents obtained by the respondent in the course of the investigation of the applicant's complaint, which clearly contained no information about the applicant's personal affairs. On that basis, he affirmed the respondent's decision that a \$31 application fee was payable, in accordance with the terms of s.6(1) of the *Freedom of Information Regulation 1992*.

'MTL' and Department of Families

(S 199/01, 30 November 2001)

The applicant sought review by the Information Commissioner of the Department's decision to refuse him access to the name of the person identified as his father on an Infant Life Protection form completed in 1943, two days after the applicant's birth. The application for review was lodged approximately 15 months beyond the time limit prescribed in the FOI Act, and the applicant sought to have the Information Commissioner exercise the discretion conferred by s.73(1)(d) of the FOI Act to extend the time for lodging the application for review.

Assistant Commissioner Shoyer found the application did not disclose a reasonably arguable case with reasonable prospects of success, because the material facts and relevant public interest considerations were materially indistinguishable from those in *Re 'KBN' and Department of Families, Youth and Community Care* (1998) 4 QAR 422 (which the respondent had applied in refusing access to the matter in issue). He declined to exercise the s.73(1)(d) discretion in favour of granting an extension of time to validate the late application for review.

Sharples and Queensland Police Service

(S 68/01, 7 December 2001)

Assistant Commissioner Shoyer held that it was clear on their face that certain communications to and from the QPS Solicitor were communications between a lawyer and his client employer made for the dominant purpose of either seeking or providing professional legal advice, and were exempt from disclosure under s.43(1) of the FOI Act.

He also found that a copy of a transcript of evidence given to a parliamentary committee, and correspondence to the QPS from that parliamentary committee, were exempt matter under s.50(c)(i) of the FOI Act. He rejected the applicant's contention that the transcript was not exempt from disclosure to him, as the committee had previously disclosed it to him. The words 'public disclosure' in s.50(c)(i) were contrasted with the unqualified word "disclosure" as used in other exemption provisions in the FOI Act, in support of the finding that the parliamentary committee's prior disclosure to the applicant of the transcript of evidence was not relevant to the application of s.50(c)(i) in this instance.

The applicant's arguments on the constitutional validity of successive Queensland Parliaments were rejected in accordance with the Queensland Court of Appeal's decision in *Sharples v Arnison & Ors* [2001] QCA 518.

Kennedy and Building Services Authority

(S 119/01, 7 December 2001)

This was a 'reverse FOI' application by Mr Kennedy, an accredited building certifier, who objected to a decision by the Building Services Authority (BSA) to disclose documents relating to a complaint to the BSA about Mr Kennedy's conduct in incorrectly approving plans for extensions to the residence of the access applicant.

The access applicant had commenced proceedings against Mr Kennedy in the Magistrates Court to recover expenses allegedly incurred as a result of Mr Kennedy's mistake. Mr Kennedy contended that the documents in issue were exempt under s.42(1)(d) of the FOI Act because their disclosure could reasonably be expected to prejudice the impartial adjudication of the case in the Magistrates Court.

The Deputy Information Commissioner observed that disclosure of the documents in issue under the FOI Act could not reasonably be expected to prejudice the impartial adjudication of the case any more than would their disclosure under the curial procedures that were clearly available to the access applicant to compel the production of the documents under the Uniform Civil Procedure Rules. If the documents in issue were disclosed under the FOI Act, the access applicant might seek to make use of them in the Magistrates Court hearing. However, he held that there was no reasonable basis for expecting that the presiding magistrate would not rule impartially on any objection to the documents being admitted into evidence. Nor, assuming the documents were admitted into evidence, was there any reasonable basis for expecting that the presiding magistrate would not impartially assess their value as probative evidence, in light of the totality of the evidence put before the magistrate, including any evidence put on behalf of Mr Kennedy. Accordingly, the Deputy Information Commissioner found that the documents in issue did not qualify for exemption under s.42(1)(d) of the FOI Act.

'TCD' and Department of Primary Industries

(S 72/95, 19 December 2001)

When the applicant was formerly employed by the Department of Primary Industries (the DPI), a complaint of sexual harassment was made against him by a female employee. After an internal investigation, the Director-General informed the applicant that the allegations against him had not been substantiated and that no action would be taken. The applicant sought access, under the FOI Act, to all documents relating to him in the DPI's possession, and the DPI refused access to information collected by the investigators of the complaint of sexual harassment against the applicant.

The DPI contended that the bulk of the matter in issue was exempt under s.46(1) of the FOI Act (as matter communicated in confidence) and/or under s.40(c) because its disclosure could reasonably be expected to prejudice the DPI's ability to manage both its grievance processes and the staff employed at the applicant's former workplace. However, because the applicant had been an employee of the DPI at the time of the complaint and investigation, he had a statutory entitlement (under s.46(1) of the *Public Service Management and Employment Regulation 1988 Qld*) to be shown any document containing information about his work performance which was adverse to his interests. This would have precluded the formation of any understanding or obligation of confidence in respect of information that the DPI had a statutory obligation to disclose to the applicant.

The Deputy Information Commissioner considered the proper construction of s.46 of the PSME Regulation, and decided that only a small amount of the matter in issue concerned the applicant's work performance. He found that the matter in issue which concerned the applicant's work performance, and which could be considered adverse to the applicant, did not qualify for exemption from disclosure, but that the balance of the matter in issue did qualify for exemption under one or more of s.44(1), s.40(c) or s.46(1)(a) of the FOI Act. He found that information was provided by third parties to the investigators pursuant to a conditional understanding of confidence, and that, because the allegations against the applicant were not substantiated and no action was taken against him, the conditions that would have permitted disclosure to the applicant were not triggered. The Deputy Information Commissioner also found that a number of documents qualified for exemption from disclosure under s.43(1) of the FOI Act, as they contained legal advice from, or requests for legal advice to, the DPI's legal branch.

Rynne and Department of Primary Industries

(S 192/98, 11 January 2002)

The applicant was subject to disciplinary action following a complaint about his conduct in 1997. The applicant was provided with a full copy of the report of the DPI's investigation, but was not given access to staff complaints, or records of interviews conducted by the investigators. The applicant sought access, under the FOI Act, to all documents relating to the investigation, but during the course of the review abandoned his claim for access to the identities of staff members interviewed, to information concerning the personal affairs of third parties, and to documents requesting or containing legal advice.

The Deputy Information Commissioner found that two documents qualified for exemption from disclosure under s.44(1) of the FOI Act, as they concerned the personal affairs of a third party, but that the balance of the matter remaining in issue was not exempt from disclosure to the applicant. He found that the information in the documents remaining in issue had not been communicated in confidence for the purposes of s.46(1)(b) of the FOI Act. The DPI employees who gave statements wanted action taken to curtail the applicant's alleged vexatious conduct, and it was not reasonable for them to expect that they could ventilate specific concerns about the applicant's behaviour, in the context of a disciplinary investigation, on the basis that the information they supplied would be kept secret from the applicant.

'LSN' and Department of Main Roads

(S 42/00, 21 January 2002)

The applicant had lodged a grievance in 1999 about the way in which the Department had dealt with a complaint of sexual harassment made against him by a female employee of the Department. An external consultant investigated his grievance and submitted a report, but the applicant was dissatisfied with the findings. The applicant was not provided with a copy of the report, and applied under the FOI Act for all documents relating to his grievance, and to the original complaint against him. The Department contended that the matter in issue was exempt from disclosure under s.44(1) (personal affairs) or s.40(c) of the FOI Act (prejudice to the management of its staff)

Assistant Commissioner Shoyer decided that a small amount of the matter in issue qualified for exemption from disclosure to the applicant under s.44(1) of the FOI Act, and that the balance qualified for exemption under s.40(c). The grievance investigator had assured the third party witnesses that their identities, and the information they supplied, would be treated in confidence as far as possible, given that it might become necessary to put some information to the applicant for response, and that it would be necessary to give the applicant an account of the outcome of the investigation. Assistant Commissioner Shoyer held that the nature and sensitivity of the information supplied by the third party witnesses, and their apprehension over the applicant's abusive or intimidating behaviour following the initial complaint against him, supported a finding that there was a mutual understanding that the information supplied by the third party witnesses would be treated in confidence so far as possible, given the purposes for which the information was provided.

Assistant Commissioner Shoyer was satisfied that the applicant had been given sufficient information to have a proper account of the investigation of his grievance and its outcome, and noted the Department's duty of care to protect its employees from foreseeable risks of abusive or intimidating behaviour, in holding that the balance of the matter in issue was exempt under s.40(c) of the FOI Act.

Kyle and Queensland Police Service

(S 254/01: 31 January 2002)

The applicant sought access to QPS records of a traffic accident that occurred in 1978. Assistant Commissioner Shoyer was satisfied that the QPS had conducted sufficient searches for the documents which, on the balance of probabilities, no longer existed.

'LMN' and Education Queensland

(S 122/01, 31 January 2002)

The applicant was a secondary school teacher who sought access to various documents, including forms submitted to the Board of Senior Secondary School Studies, students' subject results, and names of parents and students who had complained about or commented on his teaching. Assistant Commissioner Shoyer (applying the principles set out in *Re Byrne and Gold Coast City Council* (1994) 1 QAR 477), was satisfied that the identities of parents and students who had made complaints, or cooperated with an investigation in their personal capacity, comprised information which concerned their personal affairs, and was *prima facie* exempt under s.44(1) of the FOI Act. He also found that information relating to a student's performance or behaviour at school was information concerning the student's personal affairs, and was *prima facie* exempt under s.44(1) of the FOI Act. Because the class lists were in alphabetical order and the classes were so small (comprising just 1, 4 and 8 students), Assistant Commissioner Shoyer was not satisfied that deleting names would sufficiently protect the privacy interests of the students. He was not satisfied that any of the public interest arguments claimed by the applicant to favour disclosure outweighed the public interest in protecting the privacy interests of the students and parents who made complaints. He decided that the matter in issue was exempt matter under s.44(1) of the FOI Act.

McLeod and Caloundra City Council

(L 26/01, 31 January 2002)

The applicant was a former employee of the Council who sought access to two paragraphs in a letter written to the Council by solicitors acting on behalf of another employee. The two paragraphs contained comments allegedly made about the applicant by a third employee. The solicitors who wrote the letter objected to its disclosure on the ground of legal professional privilege. However, the letter was clearly a communication between parties to a dispute, rather than a privileged communication, and Assistant Commissioner Shoyer held that it was not exempt under s.43(1) of the FOI Act. The solicitors also sought to rely on s.44(1) of the FOI Act. However, the matter in issue merely concerned the performance by a Council employee of his duties of employment, and could not be properly characterised as information concerning the employee's 'personal affairs' (see *Re Pope and Queensland Health* (1994) 1 QAR 616).

The third employee objected to disclosure on the basis that the matter in issue was exempt under s.40(c) and s.40(d) of the FOI Act. Assistant Commissioner Shoyer was not satisfied that disclosure of the matter in issue could reasonably be expected to have a substantial adverse effect on the management or assessment by Council of its personnel, or on the Council's conduct of industrial relations.

Assistant Commissioner Shoyer also considered the application of s.46(1) of the FOI Act. However, he was not satisfied that disclosure of the matter in issue would found an action for breach of confidence (s.46(1)(a)), nor was it information of a confidential nature that was communicated in confidence (s.46(1)(b)).

Price and Gatton Shire Council

(L 4 & 5/01, 1 February 2002)

These applications substantially mirrored previous applications made by the applicant for the same documents, that had been dealt with in a decision by the Deputy Information Commissioner dated 27 June 2000. The applicant did not seek to narrow the scope of his access application, which was wide ranging and sought access to many categories of documents. Assistant Commissioner Shoyer upheld the Council's refusal to deal with the access application under s.28(2) of the FOI Act, on the basis that dealing with the access application would substantially and unreasonably divert the resources of the Council from the performance of its functions.

Scholz and Department of Public Works and Housing

(S 7/01, 5 February 2002)

The applicant was a journalist who sought information concerning instances of misconduct within the State Government Protective Security Service, and how that misconduct was dealt with. The applicant made it clear that he did not wish to access any identifying matter in respect of any party concerned. He also indicated that he would accept information of a statistical nature. The only responsive documents held by the Department of Public Works and Housing (PW&H) were the records of complaints, memoranda and correspondence relating to three officers. PW&H declined to resolve the matter by creating a statistical document (which it was not obliged to do under the terms of the FOI Act) and maintained that the responsive documents comprised exempt matter (even after they had been anonymised) under s.40(c) and s.44(1) of the FOI Act. Assistant Commissioner Shoyer decided that no substantial adverse effect on the management or assessment by the Department of its personnel could reasonably be expected to follow from disclosure of the anonymised documents, and that, in their edited form, they did not comprise information concerning the personal affairs of identifiable individuals. He also commented that, on balance, the weight of public interest considerations favoured disclosure of the anonymised documents.

Grehan and Department of Employment and Training

(S 203/00, 8 February 2002)

The applicant sought review of the 'sufficiency of search' by the Department of Employment and Training (DET) for documents that he believed should be in the possession of the student counsellor on one of its TAFE campuses. The applicant contended that the documents must exist, to support statements made by the counsellor to officers who investigated complaints about the applicant by staff and students at that campus. (The applicant had already been provided with a number of documents relating to the investigation, including several documents which were located on internal review, rather than in the initial response to his access application.) Files held by the counsellor were inspected, and the counsellor provided information, supported by a statutory declaration, on her record-keeping practices and the reasons why she did not have records of certain matters. The applicant also provided a statutory declaration and submissions. Assistant Commissioner Shoyer decided that the applicant's arguments did not establish reasonable grounds for believing that additional responsive documents should exist in the Department's possession or control. He observed that the location of additional documents on internal review was not evidence that DET or the counsellor had deliberately attempted to withhold documents from the applicant.

'WLN' and Queensland Police Service

(S 319/00, 21 February 2002)

The applicant sought access to a tape recorded interview with her son in relation to allegations of sexual abuse, and a Crime Report relating to allegations of stalking and burglary. Although much of the matter in issue concerned the applicant, the bulk of the matter in issue also concerned the personal affairs of the applicant's son, or of the complainant in the stalking and burglary matter, and hence was *prima facie* exempt from disclosure to the applicant under s.44(1) of the FOI Act, subject to the application of the public interest balancing test incorporated in s.44(1). In that regard, it was necessary to weigh the public interest considerations for and against disclosure.

Assistant Commissioner Shoyer recognised the public interest in enhancing the accountability of the QPS for the way in which it investigates alleged offences, and whether the decision to conduct such investigations was properly based. He also recognised the public interest in people who are the subject of adverse comments in agency files having access to that information.

The QPS had interviewed the applicant in relation to the allegations of stalking and burglary, and informed her of the allegations made by the complainant. This significantly reduced the privacy interests of the complainant, as against the applicant. Deletion of names and other personal details afforded some protection to the privacy interests of the complainant, while assisting the applicant to understand the basis on which the QPS decided to investigate the allegations and the steps taken to do so. Assistant Commissioner Shoyer was satisfied that disclosure of the Crime Report (subject to deletion of personal affairs details) was, on balance, in the public interest.

In relation to the audio tape of the interview with the applicant's son, he recognised an additional public interest in a parent having access to information about the manner in which their child has been interviewed. However, nothing on the tape suggested that the conduct of the interview was inappropriate in any way. The child made no disclosures and the audio tape did not contain any adverse information about the applicant.

Although the applicant argued that her son wanted her to have access to the tape, children have recognised privacy interests that are separate from those of their parents. Those privacy interests are substantial where the allegations relate to intensely personal and sensitive matters such as alleged sexual abuse. There is also a recognised public interest in safeguarding the flow of information to law enforcement agencies. There is a real prospect that children would be less inclined to assist police with their investigations if they thought information might be released where a decision was made not to prosecute.

The applicant had been given access to information about the allegations and the QPS investigation. No action was taken against the applicant. Assistant Commissioner Shoyer was satisfied that the public interest considerations favouring disclosure of the tape to the applicant did not outweigh the public interest considerations favouring non-disclosure, and decided that the tape was exempt matter under s.44(1) of the FOI Act.

Macrossan & Amiet and Queensland Health

(S 116/99, 27 February 2002)

In 1998, Queensland Health (QH) issued an invitation for legal firms to tender to become part of a panel of solicitors providing legal services to QH and its Health Service Districts. The applicant firm submitted a tender for the Mackay Health Service District, but was unsuccessful. The applicant then applied to QH, under the FOI Act, for access to tenders for that District by other firms. Following consultation with the other five tenderers, all of which objected to the disclosure of information to the applicant, QH refused access to the tender documents of other firms in their entirety.

The Deputy Information Commissioner decided that only some parts of the tender documents of other firms qualified for exemption under s.44(1) or s.45(1)(c) of the FOI Act. The s.44(1) matter comprised personal information about some staff members of the various firms. He found that disclosure of information of that type would not advance the public interest in the accountability of QH for the proper conduct of the tender process.

He decided that some parts of the matter in issue qualified for exemption under s.45(1)(c) of the FOI Act (although not under s.45(1)(a) or s.45(1)(b), as QH and some of the tenderers had argued). That matter comprised information, not generally available or known to the industry, which could adversely affect a tenderer's competitive position, such as details of specific, non-litigious legal work performed for identifiable clients, and details of the basis of charging for legal services submitted by the tenderers.

Two of the other tenderers sought to rely on s.46(1)(a) or (b) of the FOI Act, although QH had found that there was no obligation of confidence attaching to the tender documents. The Deputy Information Commissioner decided that the failure of any of the tenderers to specify that particular information in their tender documents was submitted in

confidence (notwithstanding an express invitation to tenderers to do so) told against the existence of an obligation of confidence; but if (notwithstanding that failure) equity might recognise an obligation of confidence in respect of information of genuine commercial sensitivity, such an obligation would not extend beyond the information found to be exempt under s.45(1)(c).

Reynolds and Redland Shire Council

(L 12/01, 28 February 2002)

The applicant sought review of the Council's decision that his application for 'all documents concerning myself' since a particular specified date, extended to include some documents which did not concern his personal affairs, and hence that an application fee of \$31 was payable. The documents that fell within the terms of the access application included the applicant's request for town planning permission to conduct a business from his home; the permit subsequently issued by the Council, and related correspondence. Assistant Commissioner Shoyer decided that documents of that type concerned the applicant's business affairs rather than his personal affairs (even though the applicant did not in fact commence the business and therefore made no money from it) and affirmed the Council's decision that an application fee was payable.

Varghese and Queensland Health

(S 289/00, 28 February 2002)

The only matter remaining in issue was a document dated 13 July 1999 from the Director of Pathology QHPSS, Bundaberg, to the Managing Pathologist, QHPSS. The author of the document and Queensland Health (QH) objected to disclosure. Assistant Commissioner Shoyer was satisfied that the document was a 'document of an agency' as defined in s.7 of the FOI Act, despite the fact that it was a draft letter stored only on a backup file on a backup tape. He considered the application of s.43(1), but the purpose of the document was to convey information from the author to his line manager. It was not created for any of the qualifying purposes identified in *Esso Australia Resources Ltd v Commission of Taxation* (1999) 74 ALJR 339. Therefore, s.43(1) had no application.

QH sought to rely on s.41(1). However, Assistant Commissioner Shoyer was not satisfied that disclosure of the document would harm an identifiable public interest. Further, he was satisfied that there were public interest considerations of some weight favouring disclosure. QH also relied on s.40(c), but Assistant Commissioner Shoyer was not satisfied that disclosure of the document could reasonably be expected to have an adverse effect on the management or assessment by QH of its personnel, let alone a substantial adverse effect. He held the document did not qualify for exemption from disclosure under the FOI Act.

Kent and Sunshine Coast Health Service District

(S 124/01, 28 February 2002)

This case raised a 'sufficiency of search' issue concerning a document relating to the applicant's medical treatment that she contended should be in the possession or control of the Health Service. The contents of the applicant's clinical file were disclosed to her. Extensive searches were undertaken, but no additional document could be located. Applying the principles detailed in *Re Shepherd and Department of Housing, Local Government & Planning* (1994) 1 QAR 464, Assistant Commissioner Shoyer decided the search efforts undertaken to locate the document of concern to the applicant had been reasonable in all the circumstances of the case.

Price and Department of Justice and Attorney-General

(S 295/00, 12 March 2002)

The applicant sought access to all documents relating to certain litigation in which Crown Law had represented the QPS and the Department of Justice and Attorney-General (DJAG). The documents in issue consisted of Crown Law billing work sheets, memoranda of fees, and invoices/draft invoices, as well as internal file notes and correspondence between Crown Law and the QPS, and between Crown Law and the DJAG. The applicant also raised 'sufficiency of search' issues.

The DJAG was asked to provide details of the particular searches that it conducted in order to locate all documents falling within the terms of the applicant's FOI access application, and the results of those searches. The DJAG provided a description of all files held by it that related to the applicant, together with a history of which particular files had been considered in response to the various FOI access applications that the applicant had made to the DJAG since 1996. An additional file was located and the applicant was given access to some documents from that file. Another file, numbered 18 by the DJAG, could not be located.

Applying the principles detailed in *Re Shepherd*, Assistant Commissioner Moss found that there were no reasonable grounds for believing that additional documents falling within the terms of the applicant's FOI access application existed in the possession, or under the control, of the Department. As to file 18, Assistant Commissioner Moss was satisfied the search efforts made by the DJAG in an effort to locate that file had been reasonable in all the circumstances of the case.

She also decided that those parts of the billing documents which described or disclosed the particular nature of the professional legal advice or assistance which Crown Law had provided to the QPS and/or the DJAG in the course of acting for those agencies in litigation and/or in providing professional legal advice, qualified for exemption from disclosure under s.43(1) of the FOI Act. In relation to the internal file notes and correspondence between Crown Law and the QPS, and between Crown Law and the Department, Assistant Commissioner Moss decided that each comprised a record of a confidential communication made for the dominant purpose of giving or receiving professional legal advice or assistance, or for use in legal proceedings, and that accordingly, each of those documents attracted legal professional privilege and qualified for exemption from disclosure under s.43(1) of the FOI Act.

The applicant claimed that legal professional privilege could not apply to any of the documents in issue because they were created in furtherance of a crime or fraud. Assistant Commissioner Moss was not satisfied from her examination of the contents of the documents in issue, and of the material put forward by the applicant, of the existence of a *prima facie* case that the documents had been brought into existence in furtherance of an illegal or improper purpose.

She also decided that those parts of the billing documents which disclosed the specific hourly rates charged by Crown Law officers qualified for exemption under s.45(1)(c) of the FOI Act.

Kinder and Department of Housing

(S 91/01, 12 March 2002)

The matter in issue in this review comprised complaints about the applicant, who was a tenant of the Department of Housing (DH), and the identities of the complainants. DH did not investigate the complaints, which the applicant alleged were false, and did not take any action against the applicant, but the applicant argued that he should be given access to the complaints so that he could apply for amendment of false, misleading and inaccurate information. DH contended that the matter in issue was exempt under s.44(1) and s.46(1)(b) of the FOI Act.

Assistant Commissioner Moss found the matter in issue qualified for exemption from disclosure under s.46(1)(a) of the FOI Act. She decided that, as it had not been necessary to disclose the matter in issue to the applicant for the purpose of an investigation, it retained the necessary quality of confidence, and that disclosure to the applicant would be an unauthorised use of that information. She also decided that the matter in issue which concerned the personal affairs of both the applicant and the complainants, qualified for exemption under s.44(1) of the FOI Act, because the public interest in the privacy of the complainants and in maintaining the flow of similar information to DH, outweighed any public interest in disclosure to the applicant, who had not suffered any detriment as a result of the complaints.

Edward Kelly (aka Terry Sharples) and Department of Justice and Attorney-General

(S 41/00; 13 March 2002)

The applicant had applied to the Department of Justice and Attorney-General (DJAG) for all matter 'concerning myself or my affairs'. Some 14,000 documents were identified as responsive to the applicant's access application. The vast majority of those documents related to litigation initiated by the applicant in July 1998 against the Electoral Commissioner of Queensland and Pauline Hanson's One Nation Party, the Crown Solicitor having been retained to represent the Electoral Commissioner. Most of the documents were subject to a claim for exemption under s.43(1) of the FOI Act, as documents subject to legal professional privilege; however, a small amount of matter was claimed to be exempt under s.45(1)(c) of the FOI Act.

The applicant also raised several 'sufficiency of search' issues, and a related contention that a letter from the Members' Ethics and Parliamentary Privileges Committee ought appear on Departmental files and had not been disclosed to him.

As to the general 'sufficiency of search' issues raised by the applicant, Assistant Commissioner Moss was satisfied that there were no reasonable grounds for believing that additional responsive documents existed in DJAG's possession. She also found that segments of matter containing Crown Law charge rates appearing on billing guides qualified for exemption under s.45(1)(c) of the FOI Act.

The letter from the Members' Ethics and Parliamentary Privileges Committee had originally existed on Departmental files, but had been misplaced by the time of this external review. Assistant Commissioner Moss was satisfied that DJAG had made all reasonable searches and inquiries in an effort to locate the document. DJAG asked the Parliamentary Committee to provide it with a further copy for the purposes of this external review; however, the Parliamentary Committee refused that request. Assistant Commissioner Moss found that DJAG did not have legal ownership of any copies held by the Parliamentary Committee, and no legal entitlement to take physical possession of such copies. Accordingly, the letter was not a 'document of the agency' as defined by s.7 of the FOI Act, and could not be dealt with further in a review involving the Department. She observed that it was clear from the nature of the document that it would have qualified for exemption under s.50(c)(i) of the FOI Act in any event (cf. the case summary above for *Sharples and Queensland Police Service*, S 68/01, 7 December 2001).

Assistant Commissioner Moss found that the majority of the documents in issue were exempt from disclosure to the applicant under s.43(1) of the FOI Act. She identified four principal categories of privileged documents:

1. communications between the Electoral Commissioner and Crown Law;
2. copies of non-privileged documents made for use in litigation or for providing legal advice;
3. details of legal advice contained in Crown Law billing documents; and
4. communications between the Crown Solicitor and the solicitors for the One Nation party relating to certain interlocutory issues in the litigation and to certain settlement proposals, which qualified for legal professional

privilege under the head of 'common interest' privilege (see *Buttes Gas & Oil Co and Anor v. Hammer and Anor* (No.3) [1981] QB 223; *Bulk Materials (Coal Handling) Services Pty Ltd v. Coal and Allied Operations Pty Ltd* (1988) 13 NSWLR 689).

The applicant argued that the privilege claimed in relation to the bulk of the documents in issue had been waived as a consequence of the DJAG permitting him to inspect some documents during the course of the review, or alternatively, that privilege was denied under the 'illegal or improper purpose' exception. Assistant Commissioner Moss rejected these arguments. She found that the DJAG FOI officers, who had inadvertently allowed the applicant to inspect some privileged documents, did not have authority to waive a privilege that properly belonged to the Electoral Commissioner, and that there were no considerations of fairness to the applicant which warranted a finding of implied waiver stemming from the inadvertent disclosure of some privileged documents. Based on her examination of the documents in issue and the material put forward by the applicant, Assistant Commissioner Moss was not satisfied of the existence of a prima facie case that any of the documents in issue had been created in preparation for, or furtherance of, an illegal or improper purpose.

Tait and Burdekin Shire Council

(L 9/02, 22 March 2002)

A firm of consultants who had prepared an environmental impact study for a proposed expansion of a prawn farm were required to place the proposal on public display for a period of two weeks in accordance with s.93 of the *Environmental Protection and Biodiversity Conservation Act 1999* Cth. The firm entered into an arrangement with the Council for the documents to be placed on public display at the Council offices. At the end of the two-week display period, the documents were returned to the firm of consultants. The applicant, who had been permitted to inspect but not copy the documents during the two-week display period, sought access to the documents under the FOI Act. Once the Council had parted with possession of the documents (legal ownership of which had always remained with the consultants), there was no basis on which the documents were amenable to the application of the FOI Act, as they were not documents in the possession or control of the Council: see *Re Holt & Reeves and Education Queensland* (1998) 4 QAR 310 at pages 317-318, paragraphs 24-25. Pursuant to s.77 of the FOI Act, the Deputy Information Commissioner decided not to deal further with the application for review on the ground that it was misconceived and lacking in substance.

'HNS' and Queensland Health

(S 102/00, 25 March 2002)

The applicant was a former Health Service District manager, who accepted a transfer to QH in Brisbane following a series of complaints to QH and the Minister about various aspects of her management of the District. The applicant subsequently lodged an FOI access application for any correspondence containing such complaints. QH consulted a number of third parties and, as a result of their objections to disclosure, refused access to a number of documents and parts of documents under s.40(c), s.44(1) or s.46(1)(b) of the FOI Act.

The Deputy Information Commissioner found that letters of complaint from District staff qualified for exemption under s.40(c) of the FOI Act, and that other letters from members of the public qualified for exemption from disclosure under s.46(1)(b) of the FOI Act. The letters were critical of the applicant's conduct and abilities, and the applicant contended that she had a right to be informed of the complaints against her so that she could properly answer them.

The Deputy Information Commissioner found, however, that QH had provided the applicant with sufficient information about the nature of concerns held about her as District Manager. He observed that it was important that senior Departmental managers, remote from districts where services are delivered to citizens, have mechanisms that

enable them to be alerted to serious difficulties or potential difficulties that could impact on efficient and effective service delivery in remote districts, so that they have the opportunity to take remedial or preventative action. It was important that they be able to provide channels for communication, by citizens or staff in remote districts, about perceived serious difficulties or potential difficulties, and important too that citizens or staff not be unduly inhibited from seeking to communicate serious concerns. He decided that these public interests outweighed the applicant's interest in seeing the letters of complaint about aspects of her management of the Health Service District.

Price and Department of Justice and Attorney-General

(S 132/99, 28 March 2002)

The Deputy Information Commissioner found that the documents remaining in issue were exempt from disclosure to the applicant under s.43(1) of the FOI Act, as they were confidential communications between Crown Law, counsel and the QPS made for the dominant purpose of seeking or giving legal advice or professional legal assistance, or confidential communications made for the dominant purpose of use, or obtaining material for use, in litigation that had commenced, or was reasonably anticipated at the relevant time.

In determining that a copying charge was payable for documents that the Department had agreed to disclose to the applicant, the Deputy Information Commissioner observed that, while most of the documents contained a reference to the applicant's name as a party to the relevant litigation, those mere references were not sufficient to characterise the documents as documents concerning the applicant's personal affairs. Otherwise, the documents contained no information about the applicant's personal affairs. The documents were properly to be characterised as documents concerning the conduct and administration of the relevant litigation by Crown Law on behalf of its client.

Price and Crime and Misconduct Commission

(S 102/96 & S 37/97, 28 March 2002)

These reviews concerned access applications for documents relating to a number of complaints made by the applicant to the former CJC. The Deputy Information Commissioner affirmed the CJC's refusal, in accordance with s.25(2) of the FOI Act, to deal with part of one of the access applications, because the applicant did not provide the information reasonably necessary to enable a responsible officer of the CJC to identify the requested documents.

Of the matter or documents remaining in issue, he found that:

- matter contained in one document that consisted of opinion prepared for the deliberative processes involved in the functions of the CJC qualified for exemption under s.41(1) of the FOI Act;
- certain personal affairs matter, including the names and other identifying details of third parties, qualified for exemption under s.44(1) of the FOI; and
- matter contained in several documents that was communicated to the CJC in confidence qualified for exemption under s.46(1)(b) of the FOI Act.

The applicant also raised 'sufficiency of search' issues in relation to a number of categories of documents. The CJC was requested to undertake additional searches and a number of additional documents, including an audio tape were located. Those documents were disclosed to the applicant, subject to the deletion of matter which qualified for exemption under s.44(1) of the FOI Act. The CJC was not able to locate any further documents responsive to the terms of the access applications. The Deputy Information Commissioner decided that the search efforts to locate additional responsive documents had been reasonable in all the circumstances of the case.

Carter and James Cook University

(S 210/00, 28 March 2002)

James Cook University commissioned an external consultant to conduct a review of the School of Earth Sciences following concerns that were raised about the administration of the School. A Report was produced which comprised the matter in issue in this review. The applicant, who was a former Head of the School of Earth Sciences, applied to access the Report. The University claimed that the release of the report would have a substantial adverse effect on the management and assessment by the University of its personnel, and claimed exemption under s.40(c) of the FOI Act.

Assistant Commissioner Shoyer decided that disclosure of some parts of the report could reasonably be expected to heighten tension and conflict within the School, and thereby have an adverse effect on the management of the school. Those parts of the report were found to be exempt from disclosure under s.40(c) of the FOI Act. Some parts of the report, which referred to the applicant and provided general information, were released to the applicant.

Aries Tours Pty Ltd and Environmental Protection Agency

(S 27/01, 28 March 2002)

This was a 'reverse FOI' application by Aries Tours challenging a decision by the Environmental Protection Agency (EPA) to grant access (to a competitor of Aries Tours), under the FOI Act, to parts of two deeds of agreement between the Environmental Protection Agency (EPA) and Aries Tours, setting out the terms and conditions upon which Aries Tours was permitted to take tour groups to the Natural Bridge in Springbrook National Park. Aries Tours claimed that disclosure would be detrimental to its business interests, and claimed exemption under s.45(1)(b), s.45(1)(c), and/or s.46(1) of the FOI Act.

The Deputy Information Commissioner decided that none of the matter remaining in issue had a commercial value to Aries Tours that could reasonably be expected to be diminished by its disclosure under the FOI Act, and hence that it did not qualify for exemption under s.45(1)(b) of the FOI Act. He also decided 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 Aries Tours, or to prejudice the future supply of like information to government.

With respect to the exemption claims under s.46(1) of the FOI Act, the Deputy Information Commissioner decided that equity would not hold the EPA conscience-bound to refrain from disclosing the matter in issue, because that information should be available to any interested member of the public who wished to scrutinise how well the EPA was discharging its function of licensing, and supervising the performance of, commercial tour operators in National Parks, having regard to the legitimate public interest in the proper management and protection of a valuable, publicly-owned, natural resource.

'WRT' and Department of Corrective Services

(S 182/98, 26 April 2002)

The applicant sought access under the FOI Act to a number of documents relating to his imprisonment. As a result of concessions made by the Department of Corrective Services (DCS), the only matter remaining in issue comprised parts of a psychiatric report on the applicant, prepared in connection with his application for parole. DCS had reluctantly withdrawn its claims for exemption in respect of the psychiatric report, accepting that they could not be sustained in law. However, the psychiatrist who authored the report had been granted status as a participant in the review, and maintained his claims that the matter in issue was exempt from disclosure to the applicant under the FOI Act.

The psychiatrist claimed that his report had been communicated in confidence to the Queensland Community Corrections Board (QCCB), and that the report qualified for exemption under s.46(1)(a) of the FOI Act. The Deputy Information Commissioner reviewed a number of Queensland Supreme Court decisions which had held that procedural fairness applied to proceedings of parole boards, and would ordinarily require the parole board to bring to the notice of the applicant for parole, who might be adversely affected by the board's determination, the critical issues or factors on which the determination was likely to turn, so that he or she might have an opportunity of dealing with them.

The Deputy Information Commissioner observed that the state of the law in Queensland was such that, in the ordinary case, neither a psychiatrist submitting a report adverse to an applicant for parole, nor the QCCB receiving such a report, could reasonably have an expectation that the report was to be treated in confidence as against the subject of the report. Equity would not ordinarily find a parole board conscience-bound to treat a psychiatric report as confidential from the subject of the report, in a situation where the common law principles of procedural fairness required disclosure of information in the psychiatric report to the subject of the report.

The Deputy Information Commissioner observed it was arguable that, in exceptional circumstances, equity might impose a binding obligation of confidence restraining a parole board from disclosing an adverse psychiatric report to the subject of the report (e.g., where the subject of the report had a demonstrated propensity to violence or retribution against persons perceived to have wronged the subject, and certain information in the report was so sensitive in nature that its disclosure to the subject could reasonably be expected to pose a genuine danger to the physical safety of others). In such circumstances, the common law requirements of procedural fairness might not extend to requiring disclosure of the adverse material, or equity might hold that conscientious conduct on the part of the parole board required non-disclosure regardless of the usual rules of procedural fairness.

However, the Deputy Information Commissioner was not satisfied from his examination of the matter in issue, and the applicant's known criminal history, that there were any circumstances which took this case outside of the ordinary one where equity would hold that conscientious conduct on the part of the QCCB and DCS required compliance with the principles of procedural fairness (and in this instance, disclosure to the applicant of at least the substance of the adverse material in the psychiatrist's report). The Deputy Information Commissioner decided that disclosure to the applicant of the matter remaining in issue would not found an action for breach of confidence, and hence that it did not qualify for exemption from disclosure to the applicant under s.46(1) of the FOI Act.

He also made a finding that he was not satisfied, on the material before him, that disclosure to the applicant of the matter in issue could reasonably be expected to endanger the physical safety of the psychiatrist or any other person.

He observed that it was arguable that the system by which prisoners can apply for release from custody into a community based program was a system or procedure for the protection of persons or property, within the terms of s.42(1)(h) of the FOI Act, but noted that he was not satisfied that there was a reasonable basis for expecting that disclosure of the matter in issue could prejudice that system. He was not satisfied that disclosure to the applicant of the particular matter remaining in issue could reasonably be expected to cause psychiatrists to decline to provide parole boards with psychiatric assessments of prisoners, or to provide less frank and candid assessments, or to otherwise prejudice the parole system.

The psychiatrist also contended, in the alternative, that the matter in issue should not be disclosed to the applicant, but should be disclosed to a qualified medical practitioner in accordance with s.44(3) of the FOI Act. The Deputy Information Commissioner observed that he had not been provided with information that satisfied him that disclosure of the matter in issue might be prejudicial to the applicant's physical or mental health or wellbeing, and declined to order that access be given to a qualified medical practitioner nominated by the applicant in accordance with s.44(3) of the FOI Act.

Bentwood Enterprises Pty Ltd and Queensland Police Service

(S 264/01, 30 April 2002)

The applicant was proprietor of a property used as a childcare centre and preschool. Logan City Council staff had on a number of occasions attended the property for the purpose of inspecting the centre. On one occasion, QPS officers accompanied Council staff. The centre operator subsequently lodged a complaint with the CJC as to the conduct of that inspection, which was referred to the QPS for investigation. In the course of its investigation, the QPS obtained from the Council a copy of a legal opinion received from Council solicitors relating to the conduct of Council staff during a prior inspection. The applicant sought access to that advice, and to a summary of it contained in a QPS report relating to the investigation of the operator's complaint. The applicant variously submitted that the advice was created for furtherance of an illegal purpose, that privilege in it had been waived by the Council's act of disclosure to the QPS, and that public interest considerations merited its release.

Assistant Commissioner Shoyer was satisfied from his examination of the legal opinion, and the summary of it, that they attracted legal professional privilege. Neither the common law test for legal professional privilege, nor s.43(1) of the FOI Act, incorporated a public interest balancing test, and therefore the submissions put by the applicant on this point were of no relevance. He could find no prima facie evidence that the legal opinion was brought into existence in preparation for, or furtherance of, an illegal or improper purpose. He also found that the Council had voluntarily disclosed the legal opinion to the QPS on the implicit mutual understanding that it would remain confidential and only be used for the limited purpose of assisting the QPS investigation, and hence that there had been no intentional, general waiver of the privilege attaching to the legal opinion.

Applying the principles stated by the High Court of Australia in *Mann v Carnell* (1999) 74 ALJR 378 and applied in *Re Noosa Shire Council and Department of Communication and Information, Local Government and Planning* (2000) 5 QAR 428, Assistant Commissioner Shoyer found that the conduct of the Council was not inconsistent with the maintenance of confidentiality in the legal opinion, and that there were no considerations of fairness to the applicant that warranted a finding of implied waiver. Consequently, Assistant Commissioner Shoyer upheld the claims for exemption under s.43(1) of the FOI Act.

Bredillet and Cook Shire Council

(L 6/01, 15 May 2002)

The applicant, who had been in dispute with the Council for several decades in relation to roads, fences and other matters concerning his grazing property, lodged an FOI access application for a wide variety of documents relating to those matters. Following a deemed refusal of access by the Council, which had not realised that the applicant had paid the prescribed fee in respect of his FOI access application, the Council located a number of documents, but advised that it had not retained any relevant documents which were dated prior to 1967, and that some of the documents sought by the applicant should be in the possession of other agencies. The Council also advised that there was not enough information to identify or locate further documents. The applicant was asked for further details, but did not provide any relevant information. The applicant also stated that he believed some of the documents to which he sought access may not exist.

Assistant Commissioner Shoyer found that the searches and inquiries undertaken by the Council to locate documents responsive to the terms of the applicant's FOI access application had been reasonable in all the circumstances of the case, and that there were no reasonable grounds for believing that the Council had any further responsive documents in its possession or under its control.

'GHS' and Department of Emergency Services

(S 80/01, 15 May 2002)

The Department received an application from a journalist for access to documents relating to fire safety in hostel accommodation in Queensland. Among the documents to which it granted access was a letter from the applicant to an Assistant Commissioner of what was then the Queensland Fire Service (QFS). Although the Department decided that matter that would identify the applicant was exempt, the applicant pursued a 'reverse FOI' application, arguing that disclosure of any part of the letter would identify him, and that it had been written in confidence.

The letter expressed the applicant's concerns about fire safety in backpacker accommodation, and submitted a proposal for a fire safety system in which the applicant sought to interest the QFS. The Deputy Information Commissioner found that those parts of the letter which were in issue did not qualify for exemption under s.44(1), as they would not disclose the identity of the applicant. The Deputy Information Commissioner observed that there was nothing on the face of the letter, or in its contents, to suggest that confidential treatment was sought, and found that the matter remaining in issue did not qualify for exemption under s.46(1)(a) or (b) of the FOI Act.

Manning and Griffith University

(S 237/01, 21 May 2002)

The applicant, who was enrolled as an undergraduate at the University's School of Applied Psychology in 2000, made complaints to the University about the delivery of one of the subjects she studied, the assessment of her work in that subject, and her final grading. The University investigated the applicant's complaints, but the applicant was not satisfied with the outcome. She subsequently applied for access to all documents relating to her complaints and the University's investigation. The University refused access to some documents and parts of documents but, in the course of the review, the matter in issue was reduced to one segment of information — a brief comment by the applicant's supervisor in the disputed subject, made in the margin of a document written by the applicant. The University contended that the matter in issue was exempt matter under s.41(1) of the FOI Act. Assistant Commissioner Shoyer decided that, although the matter in issue was part of a deliberative process of the University (determining how to deal with the applicant's complaints), he was not satisfied that its disclosure to the applicant would, on balance, be contrary to the public interest.

Reivers and Crime and Misconduct Commission

(S 128/01, 23 May 2002)

The applicant contended that the Crime and Misconduct Commission (CMC) held copies of a submission he had made to the Connolly-Ryan Commission of Inquiry (COI) and a submission made by the CMC to the COI concerning him. Assistant Commissioner Shoyer found there were no reasonable grounds for believing that such documents existed in the possession or control of the CMC, and that the search efforts made by the CMC had been reasonable in the circumstances of the case. He also upheld a number of claims for exemption under s.50(c)(i) of the FOI Act, relying in part on a certificate from the Clerk of the Parliament that certain documents were 'proceedings in Parliament' as defined by ss. 2, 3(3)(d) and 3(3)(g) of the *Parliamentary Papers Act 1992* Qld.

'SVG' and Queensland Police Service

(S 263/01, 30 May 2002)

The applicant had complained to the QPS about her treatment in the course of an investigation. She sought access to a copy of the report prepared in response to her complaint, and the appendices to that report. Assistant Commissioner Shoyer decided that all of the matter to which the applicant had been refused access comprised information concerning the personal affairs of other individuals. He also found that the public interest in the applicant being informed about the QPS's handling of the matter had been satisfied by the extent of the information disclosed to her by the QPS, and decided that the matter remaining in issue qualified for exemption under s.44(1) of the FOI Act.

McCaffrey and James Cook University

(S 184/01, 30 May 2002)

In this case, the matter in issue comprised details of further study options being considered by a lecturer at the University's School of Law, and some comments by a senior academic concerning the lecturer's professional development and participation in the administration of the University. The applicant argued that the matter in issue should be disclosed to further the public interest in the accountability of the University for its failure to properly manage the lecturer's activities, which the applicant contended were damaging to the University and the general community. (The lecturer has been an active opponent of the Port Hinchinbrook development, and has given considerable time to various environmental bodies and causes.)

Assistant Commissioner Shoyer found that information about proposed studies concerned the lecturer's personal affairs, and that disclosure of the comments about the lecturer by a senior member of the academic staff of the University could reasonably be expected to prejudice the University's ability to obtain frank and useful assessments of staff performance in the future. Both categories of matter were therefore prima facie exempt from disclosure. He also found that disclosure would not materially advance the public interest in the University's accountability, given the amount of material already made available to the applicant, and that the matter in issue qualified for exemption from disclosure under s.44(1) and s.40(c) of the FOI Act.

'GDS' and Queensland University of Technology

(S 121/01, 7 June 2002)

As a result of concessions made during the course of this review, the only matter remaining in issue comprised two paragraphs in a statement by an employee of the University (the third party). That statement was given in support of a complaint by another employee against the applicant. As a result of the original complaint, and of information provided by the third party and several others, the applicant was under investigation for possible serious misconduct.

The original complaint and other statements, including the bulk of the third party's statement, had been provided to the applicant either before, or during the course of, the external review. Segments of the supporting statements, including the third party's, had also been included in a letter from the University to the applicant notifying him of particulars of his conduct that were to be the subject of a disciplinary investigation. The third party objected to the disclosure of the balance of her statement on the ground that the statement had been given in confidence.

The Deputy Information Commissioner decided that, having regard to the purposes for which the third party's statement was sought and given, any understanding of confidential treatment must necessarily have been conditional. Given the stage that the disciplinary proceedings against the applicant had reached, he concluded that

procedural fairness required disclosure of the matter in issue to the applicant; that disclosure would therefore not be an unconscionable use by the University of the matter in issue; and that the matter in issue did not qualify for exemption under s.46(1)(a) of the FOI Act.

He also found that a small amount of matter was exempt under s.44(1) of the FOI Act, as it concerned the emotional reactions of two persons, and the third party's private address.

'VO' and Queensland Health

(S 6/02, 17 June 2002)

The applicant sought access to his file from QH's Drugs of Dependence Unit (the DDU). QH refused the applicant access to a number of documents under s.42(1)(e) of the FOI Act, on the ground that disclosure would prejudice the effectiveness of some of the DDU's methods for detecting and investigating breaches of the *Health (Drugs and Poisons) Regulation 1996* in relation to drugs of dependence.

Assistant Commissioner Barker decided that the matter in issue qualified for exemption under s.42(1)(e), as its disclosure would not only reveal certain methods or procedures used by the DDU to prevent, detect, investigate or deal with contraventions of the Regulation in respect of dangerous drugs, but would also be useful to any person who wanted to avoid being detected in obtaining unlawful access to a dangerous drug.

'TRA' and Royal Brisbane Hospital & Health Service District

(S 81/01, 25 June 2002)

The applicant had been convicted of four counts of indecent dealing with a minor. The applicant had unsuccessfully appealed to the Court of Appeal, and sought to obtain medical records of the complainant for use in a petition for pardon. The case involved the application of principles stated in *Re Lovelock and Queensland Health* (2001) 6 QAR 24 and discussion of the principles established by the High Court decision in *Mickelberg v R* (1988-1989) 167 CLR 259. I decided that the medical records were exempt from disclosure under s.44(1) of the FOI Act.

'OSN' and Department of Families

(S 249/01, 26 June 2002)

This was a 'sufficiency of search' case, in which the applicant contended that the Department should hold additional documents concerning herself and other members of her family that it had not located and disclosed to her in its response to her FOI access application. The applicant suggested a number of locations in which documents could be held, including a non-government care agency which was not under the Department's control, but further detailed searches and inquiries by the Department failed to locate any additional material held by the Department or its officers. Assistant Commissioner Barker decided there were no reasonable grounds for believing additional responsive documents existed in the Department's possession or control, and that the searches and inquiries made by the Department to locate any such documents had been reasonable in all the circumstances of the case.

'OSN' and Education Queensland

(S 250/01, 26 June 2002)

The applicant sought access to information about a child protection notification in respect of her disabled son. Assistant Commissioner Shoyer was satisfied that disclosure of the matter in issue would have enabled the identities of confidential sources of information, in relation to the enforcement or administration of the law, to be ascertained, and that it was exempt matter under s.42(1)(b) of the FOI Act.

He also considered the application of s.42(1)(h) of the FOI Act, and found that disclosure could reasonably be expected to prejudice a system or procedure for the protection of persons established under the *Child Protection Act*.

'MCL' and Medical Board of Queensland

(S 22/02, 26 June 2002)

The applicant sought access to documents held by the Medical Board of Queensland (MBQ) concerning complaints about the professional conduct of her husband (a medical practitioner). The MBQ claimed that the matter in issue was exempt under s.42(1)(a) of the FOI Act. The MBQ confirmed that the matter in issue related to an ongoing investigation. The applicant conceded that she had previously contacted a person, who was a source of information concerning a complaint about her husband, while the investigation was ongoing, although she denied making any threats. Assistant Commissioner Shoyer was satisfied that the MBQ had established a reasonable expectation of prejudice to its investigation if the matter in issue was disclosed, and affirmed the MBQ's decision that the matter in issue was exempt under s.42(1)(a) of the FOI Act.

McMahon and Department of State Development

(S 18/01, 27 June 2002)

As part of the deployment process for retrenched public service officers, the applicant had applied unsuccessfully for appointment to advertised vacancies in the respondent agency. He sought access under the FOI Act to documents pertaining to the selection and appointment of officers to two advertised vacancies, and the decision not to deploy him at level to one of the advertised vacancies. He sought external review of the agency's decision to refuse him access to identifying information contained in the job applications of other unsuccessful candidates for the advertised vacancies, and also raised 'sufficiency of search' issues.

The Deputy Information Commissioner decided that the respondent had been overly cautious in making deletions, and that some additional matter from the job applications could be disclosed without identifying the other unsuccessful job applicants. However, he decided that all of the remaining identifying matter did qualify for exemption under s.44(1) of the FOI Act, in accordance with principles stated in *Re Baldwin and Department of Education* (1996) 3 QAR 251. The Deputy Information Commissioner acknowledged there was a public interest in fair treatment of the applicant under, and a public interest in accountability of the Department for its compliance with, established government rules and policies for the deployment of surplus public service officers; but he was satisfied, having regard to the extent of the material already released to the applicant under the FOI Act, that disclosure of the matter remaining in issue could not materially further those public interests to an extent that would justify overriding the privacy interests of the other unsuccessful job applicants.

The Deputy Information Commissioner also applied the principles stated in *Re Shepherd* in dealing with the 'sufficiency of search' issues raised by the applicant.

Caddy and Queensland Police Service

(S 70/02, 27 June 2002)

(S 92/02, 28 June 2002)

The applicant sought review of the QPS decision to refuse him access, under s.44(1) of the FOI Act, to information concerning the home addresses, telephone numbers, birth dates, a signature, and leave status of witnesses to a motor vehicle accident in which his infant daughter had suffered fatal injuries. The applicant submitted that some of the information concerned was already known to him or available in the public domain, and that he required some of the information to pursue action against the driver he alleged was responsible for the accident. Assistant Commissioner Shoyer decided that the fact that personal affairs information might be available from another source did not necessarily mean it did not qualify for exemption under s.44(1). In the circumstances, he decided that any public interest considerations favouring disclosure of the personal affairs information contained in the documents held by the QPS were not sufficiently strong to outweigh the public interest in protecting the privacy interests of the relevant third parties. He decided that the matter in issue was exempt under s.44(1) of the FOI Act.

The second application raised a 'sufficiency of search' issue in respect of a meeting the applicant held with police, which was audio taped. The applicant asserted that there must be additional tapes beyond those already disclosed to him. After considering evidence from the police officer who attended the meeting with the applicant, Assistant Commissioner Shoyer was satisfied there were no reasonable grounds for believing that additional tapes existed, and also held that the QPS's searches had been reasonable in all the circumstances of the case.

Pearce and Queensland Police Service

(S 265/01, 28 June 2002)

This review involved a 'sufficiency of search' issue relating to documents about a complaint made to police alleging that five motor vehicles had been stolen from a motor vehicle showroom. Following investigation of the complaint, both the QPS and the Australian Federal Police were satisfied that the five vehicles were subject to a civil dispute, and had not been stolen. The applicant sought documents relevant to that conclusion by the QPS investigators. During the course of the external review, the QPS undertook two additional searches for relevant documents, but failed to locate any additional documents or information. It was established that some documents relating to the QPS's inquiries had been destroyed in accordance with the QPS Records Retention and Disposal Schedule. Applying the principles set out in *Re Shepherd*, Assistant Commissioner Shoyer decided that the search efforts made by the QPS to locate documents falling within the terms of the applicant's FOI access application had been reasonable in all the circumstances of the case.

McMahon and Environmental Protection Agency

(S 105/00, 28 June 2002)

In this case, the Deputy Information Commissioner applied principles stated in *Re Baldwin* in finding that matter in issue, which would identify unsuccessful candidates for advertised vacancies in the respondent agency, qualified for exemption under s.44(1) of the FOI Act. Some appointments had required consideration by Executive Council, and the Deputy Information Commissioner decided that relevant documentation in that regard qualified for exemption under s.37(1) of the FOI Act. He also applied principles stated in *Re Shepherd* in dealing with 'sufficiency of search' issues raised by the applicant.

Department of Justice and Attorney-General and Department of Emergency Services

(S 257/01, 28 June 2002)

The access applicant sought documents held by the Department of Emergency Services (DES) concerning who was to pay the legal costs of two DES employees being sued by the access applicant for defamation. Under s.51 of the FOI Act, the DES consulted DJAG about a memorandum from the Crown Solicitor to the Attorney-General. DJAG asserted that the document was subject to legal professional privilege and exempt under s.43(1) of the FOI Act. The DES decided that the document in issue did not attract legal professional privilege, and was not exempt under s.43(1) of the FOI Act. DJAG sought external review of that decision, arguing that the document qualified for exemption on the basis of 'advice privilege', in the context of the legal professional relationship existing between the Crown Solicitor and the Attorney-General.

Assistant Commissioner Shoyer considered whether the advice contained in the document in issue was communicated for the dominant purpose of giving professional legal advice or assistance, or whether it was advice of an executive or administrative nature. Having considered the context in which the advice was given, the relationship between the Crown Solicitor and the Attorney-General, and the nature of the legal issues requiring consideration in giving such advice, he was satisfied that the document attracted legal professional privilege, and qualified for exemption under s.43(1) of the FOI Act.

North Mackay Bowls Club Inc. and Department of Innovation & Information Economy, Sport and Recreation

(S 31/02, 28 June 2002)

This was a 'reverse FOI' application by the Club, which objected to the Department's decision to disclose to an FOI access applicant, a number of documents relating to the Club's successful request for a grant to assist in the construction of a covered bowling green. The Club contended that the matter in issue, which included specifications for the green, technical reports, and information about the operation of the Club and its fundraising activities, was exempt from disclosure under s.41, s.44, s.45 and s.46 of the FOI Act.

The Deputy Information Commissioner found that the only matter which qualified for exemption (under s.44(1) of the FOI Act) was the private telephone number of a member of the Club. He decided the balance of the matter in issue did not concern the personal affairs of any person; that its disclosure could not reasonably be expected to have an adverse effect on the Club's commercial affairs; and that there was no evidence that the matter in issue, some of which was already available to the public under statute, was communicated to the Department in confidence. He also decided that the public interest in accountability of the Department for the proper and prudent allocation of grant monies warranted a finding that disclosure would, on balance, be in the public interest.

'Mike' and Queensland Police Service

(S 79/01, 30 June 2002)

The applicant was a minor who, through his mother and solicitors, sought access to details of police investigations into complaints made by him concerning alleged abuse at a school he attended. The Deputy Information Commissioner decided that information supplied by the school in the form of statements and other documents was not exempt from disclosure to the applicant under s.46(1)(b) of the FOI Act, as any understanding of confidentiality must necessarily have been subject to the conditions discussed in *Re McCann and Queensland Police Service* (1998) 4 QAR 30 at paragraph 51. He also found that information associating various individuals with alleged, but not proven, sexual misconduct was information concerning their personal affairs, but that disclosure to the applicant, subject to the deletion of identifying matter, would, on balance, be in the public interest by allowing the applicant to have sufficient details to gain an adequate understanding of the manner in which the QPS dealt with his complaints.

