



## Decision and Reasons for Decision

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**Application Number:** 2005 F0619

**Applicant:** Mr C Seal

**Respondent:** Queensland Police Service

**Decision Date:** 29 June 2007

**Catchwords:** **FREEDOM OF INFORMATION – ‘sufficiency of search’ – whether reasonable basis to believe that further documents exist in Queensland Police Service’s possession or control – whether searches have been reasonable in all the circumstances of the case**

**Section 44(1) of the *Freedom of Information Act 1992* (Qld) – matter affecting personal affairs – matter comprising personal affairs of police officers and members of the public**

**Section 40(c) of the *Freedom of Information Act 1992* (Qld) – matter concerning certain operations of agencies – substantial adverse effect on the management or assessment by an agency of its personnel – information regarding an officer’s performance in a performance review context**

**Section 46(1)(b) of the *Freedom of Information Act 1992* (Qld) – matter communicated in confidence – matter which may enable access to a confidential database**

**Section 22(a) of the *Freedom of Information Act 1992* (Qld) – documents to which access may be refused – whether documents reasonably available under arrangements made by an agency**

**Section 29 of the *Freedom of Information Act 1992* (Qld) – refusal to deal with application – whether dealing with applicant’s application would involve a substantial and unreasonable diversion of agency’s resources**

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## Reasons for Decision

### Background

1. At the time of his application, the applicant in this case was an officer of the Queensland Police Service (QPS) and living overseas. The documents in issue in this review relate to a number of complaints made by the applicant about other members of QPS, a complaint the applicant made to QPS about a member of the public, and complaints made about the applicant during his employment at QPS.
2. By letter dated 14 July 2005, the applicant made application, in two parts, for a large number of documents he believed to be held by QPS. The first part of the applicant's application requested access to documents in the following terms:
  1. *Any document, report or email that relates to the complaints made by Senior Constable D. Belz [...] about Constable Craig Seal, and the complaint file that relates to that matter.*
  2. *The official Queensland Police Service form of complaint completed in relation to the complaints of Senior Constable D. Belz [...] about Constable Craig Seal.*
  3. *Any record, document or email that relates to the application made by Constable Seal to attend the 41<sup>st</sup> Police Prosecutors Course, that application being made by report dated 19 October 1999. Any written material that relates to that application being denied.*
  4. *Any report or document compiled by Sergeant John Lane (Police Prosecutor) or his Officer in Charge or direct supervisor, relating to Crime Report Number [.....] (Stalking complaint made by Seal, suspect [.....] and any material relating to withdrawal of complaint.*
  5. *The report of Sergeant Collins to Inspector Black and/or Assistant Commissioner Freestone in relation to the complaint of Craig Seal about False Complaint made by [.....]. The report was requested at the direction of Assistant Commissioner Freestone and confirmed in a report dated 24 March 2003 where Inspector Black stated to the OIC Camp Hill "you are to report on the outcome of your action by 3 April 2003." Any further report from Inspector Black to Assistant Commissioner Freestone on that matter.*
  6. *The edited statement of Craig Seal that is referred to in the Workcover report attached at Point 5, that statement allegedly edited by Sergeant G Collins [.....].*
  7. *Any email record or document concerned with the "overview" referred to by Assistant Commissioner Freestone in his letter to Luke Smith of 4 April 2003, that overview to be conducted by Superintendent R. Wall into the handling of my complaint of False Complaint.*
  8. *Any report, document or email relating to the complaint of Craig Seal to the Crime and Misconduct Commission made on 30 January 2004 about alleged misconduct by Inspector Black.*
  9. *Any report, document or email generated by Ethical Standards Command (such as overview of investigation by Benjamin) relating to the complaint of Craig Seal to the Crime and Misconduct Commission made on 30 January 2004 about alleged misconduct by Inspector Black.*
  10. *The tapes index that relates to the Interview of Inspector Black by Chief Superintendent Benjamin. The tape recording of that interview. This interview is referred to in the*

*Workcover report attached at Point 1 where it states, "I interviewed Inspector Black." Any document that states the date when the tapes index entry was made.*

11. *The official Queensland Police Service form of complaint completed by Chief Superintendent Benjamin in relation to the complaint he took from Craig Seal in March 2004 that Inspector Black had blocked the transfer of Craig Seal from Cleveland to Holland Park Police Station. The complaint is referred to in the Workcover report attached at Point 2.*
12. *Any record, document or e mail relating to any complaint made by [.....] in relation to Craig Seal in April 2002, that complaint is believed to have been made to Superintendent J. Hoggood.*
13. *The objection to transfer of Craig Seal submitted to Superintendent R. Wall by Inspector Black in April, May June or July of 2002 as referred to in the Workcover report attached at Point 3 where it states, ".I assessed that Constable Seal was a sub standard performer. On this basis I submitted an objection to his proposed transfer in accordance with the policy of Superintendent Wall."*
14. *Any written report, email or other documents that relates to my work performance compiled by Inspector Black.*
15. *The Queensland Police Service computer entries for the Prosecutions Index of Craig Seal from 1 July 2001 to 30 April 2002 (the names of any members of the public involved are not required, only the numbers and offences etc).*
16. *The Queensland Police Service computer entries for the Traffic Infringement Notices issued by Constable Craig Seal from 1 July 2001 to 30 April 2002 (the names of any members of the public involved are not required, only the numbers of notices etc).*
17. *The Queensland Police Service computer entries for the Traffic Incident Reports Index entered by Constable Craig Seal from 1 July 2001 to 30 April 2002 (the names of any members of the public are not required, only the number of accidents etc).*
18. *The Queensland Police Service computer entries for the Activity Report(s) Index entered by Constable Craig Seal from 1 July 2001 to 30 April 2002 (the names of any members of the public are not required, only the number of reports entered).*
19. *The written document, email or other material stating the District Policy of Superintendent R. Wall on transfer referred to in the Workcover report attached at Point 4 where it states "The incumbent officer Superintendent Wall had a policy with regard to inter district transfers that all transfer applicants were to be assessed with regard to performance."*
20. *The minutes or any report relating to the meeting of the Transfer Advisory Committee in late October 2002 at which the transfer of Constable Craig Seal was approved (only the part of such document that relates to Constable Craig Seal is required at any point that relates to Seal).*
21. *Any report compiled by HSO Graham Thrupp in relation to Craig Seal.*
22. *Letter from Luke Smith (Lawyer) to Assistant Commissioner Freestone relating to Craig Seal, received by Fax on 3 April 2003 by Assistant Commissioner Freestone.*
23. *Report of Senior Constable L. Wathen to Senior Sergeant J. Harm provided between 1 December 2000 and 1 April 2001 in relation to Craig Seal at the Cleveland Station.*
24. *The result of any inquiry, any report or email provided to or from Assistant Commissioner Rynders as per her statement in her correspondence dated 30 September 2004 to Luke Smith (lawyer) that "your correspondence raises a number of*

*issues on which urgent advice is being sought. When this advice is received a response will be provided to your office.” Any report seeking that advice also.*

25. Any document, computer enquiry etc that shows any inquiry by the Queensland Police Service on vehicle registration [.....] (my former vehicle) or any enquiry relating to [.....] (my former residence).
3. The second part of the applicant’s application requested access to a further 47 items which were specific requests for emails sent and received by various QPS officers within certain time periods. For brevity, I have not reproduced the terms of that part of the applicant’s application here.
  4. By letter dated 10 October 2005 the applicant applied for external review, under part 5 of the *Freedom of Information Act 1992* (Qld) (FOI Act) on the basis that QPS had not made a decision within the time prescribed by section 25 of the FOI Act. QPS was advised of the applicant’s external review application by letter dated 11 October 2005.
  5. As QPS’ decision on access was almost completed, QPS finalised its decision and conveyed it to the applicant by letter dated 14 October 2005. QPS advised that while it did not accept its decision was made outside the time limit prescribed in the FOI Act, it would not object to the matter being dealt with as a deemed refusal of access by the Information Commissioner. Accordingly, this review has proceeded on the basis that QPS were deemed to have refused access to documents, but has been informed by QPS’ decision letter as to its claims for exemption.
  6. In his decision letter dated 14 October 2005, Superintendent Trappett of QPS advised that 520 folios which were responsive to the applicant’s application had been located. Superintendent Trappett decided to:
    - release folios 1-7, 11-100, 103-113, 119-146, 152, 154-174, 177-187, 193-213, 216-226, 232-307, 321-370, 380-386, 390-394, 400-418, 421-502, 509-519 subject to the deletion of matter considered exempt under section 44(1) of the FOI Act
    - release folios 8, 9 and 10 subject to the deletion of matter considered to be exempt pursuant to section 42(1A) of the FOI Act
    - release folios 147-151, 153, 308-320, 371-379, 387-389, 503-508 subject to the deletion of matter considered not relevant to the terms of the applicant’s application
    - refuse access to folio 520, an audio taped interview, pursuant to section 42(1A) of the FOI Actand
    - refuse access to documents numbered 101, 102, 114-118, 175, 176, 188-192, 214-215, 227-231, and 395-399 pursuant to section 44(1) of the FOI Act.
  7. The remainder of the documents were released to the applicant in full.

### **Steps taken in the external review process**

8. Copies of the documents in issue were obtained and examined. Evidence of the searches performed by QPS at the time of processing the applicant’s application was also provided to this Office.
9. By letter dated 5 May 2006 Assistant Commissioner White advised QPS that it was her preliminary view that the matter contained in folios 8, 9 and 10 of the documents in

issue did not qualify for exemption from disclosure under section 42(1A) of the FOI Act. I advised QPS, by letter dated 3 October 2006 that it remained my preliminary view that the matter did not qualify for exemption under section 42(1A). By letter dated 17 October 2006, QPS advised that it accepted my preliminary view and was prepared to release that matter to the applicant. Accordingly that matter is no longer in issue in this review.

10. QPS advised in its decision letter dated 14 October 2005 that it had located one audiotape of an interview between Chief Superintendent Benjamin and Inspector Black (folio 520) and had decided it was also exempt under section 42(1A) of the FOI Act. However, later in this review, by letter dated 29 March 2006, QPS advised this office that despite thorough searches, the audio tape of the interview between Chief Superintendent Benjamin and Inspector Black was unable to be located. It became apparent that QPS' decision on access to the audio tape had been made without having received the audio tape in the FOI unit. Consequently, the appropriateness of the exemption claim was no longer a relevant consideration in this review. Rather, it became necessary to consider the sufficiency of QPS' searches for the tape. I have dealt with this matter as a sufficiency of search issue in this review.
11. By letter dated 5 May 2006 Assistant Commissioner White advised QPS that it was her preliminary view that some parts of folios 101, 114-118, 175, 188-192, 214 and 227-231 of the documents in issue did not qualify for exemption from disclosure under section 44(1) of the FOI Act. These documents are summonses of witnesses and summons reports. By letter dated 12 May 2006, QPS advised that it accepted Assistant Commissioner White's preliminary view and was prepared to release that matter to the applicant. Accordingly that matter is no longer in issue in this review.
12. During the course of this review, the applicant raised a significant number of issues regarding the sufficiency of QPS' searches for documents responsive to his FOI application which the applicant contended should exist in QPS' possession or control. The applicant's contentions regarding sufficiency of search have been put to QPS at various times during the review, and QPS were required to perform further searches at various times.
13. As a result of further searches by QPS, a number of documents responsive to the applicant's application were located, and have, for the most part, been released to him.
14. Documents responsive to items 1, 3, 4, 12, 20, 24 and 25 of the first part of the applicant's application were located. QPS contended that parts of the further documents located that were responsive to items 1, 24 and 25 were exempt from disclosure to the applicant. The remainder of the further documents located were released to the applicant in full.
15. By letter dated 27 February 2007 the applicant was advised that a number of documents had been located as a result of further searches and that QPS were prepared to release some of those documents to him. I also advised the applicant of my preliminary view that the matter remaining in issue was exempt from disclosure under section 44(1) of the FOI Act, a further portion of information was exempt under section 46(1)(a), QPS were entitled to refuse access to certain documents under sections 22(a) and 29 and that it was also my preliminary view that there were no further documents responsive to his request in QPS' possession or control.
16. In my letter dated 27 February 2007 I advised the applicant that QPS had located six audio tapes which were responsive to item 1 of his application (the audio tapes). I

advised him that QPS were prepared to allow the applicant, or his legal representative in Australia, outside the operation of the FOI Act, to listen to the audio tapes at QPS.

17. In the event the applicant did not accept my preliminary views set out in my letter dated 27 February 2007 I provided the applicant with an opportunity to lodge further submissions. The applicant did so by letters dated 11 March 2007 and 5 April 2007. In those letters, the applicant advised that he did not accept the preliminary view and declined to accept QPS' offer to listen to the audio tapes.
18. By letter dated 27 March 2007 I requested that QPS provide me, in accordance with section 81(1) of the FOI Act, its view as to whether the audio tapes, or parts of the audio tapes were exempt from disclosure to the applicant. QPS advised a member of staff of this Office that it was QPS' view that the audio tapes were exempt from disclosure to the applicant under section 44(1) of the FOI Act, as they contain information concerning the personal affairs of persons other than the applicant, and that this personal affairs information was inextricably interwoven with other matter.
19. I formed the preliminary view that while some of the information contained on the audio tapes was exempt from disclosure, the remainder of the information contained on the audio tapes did not qualify for exemption. As it was impractical to sever the matter which, in my preliminary view, was exempt from disclosure from the audio tapes, in accordance with section 30(1)(d) of the FOI Act, a transcript of the audio tapes was created.
20. Having reviewed the transcripts of the audio tapes, on 22 May 2007, I advised QPS of my preliminary view that sections 44(1) and 40(c) of the FOI Act applied to exempt some segments of the audio tapes, but that the remainder of the information contained on the audio tapes did not qualify for exemption from disclosure. On 5 June 2007, QPS advised that it accepted the preliminary view and was prepared to release the transcripts of the interviews to the applicant, subject to the deletion of matter which, as outlined in my preliminary view, was exempt from disclosure.
21. By letter dated 5 June 2007 I advised the applicant of my preliminary view that some matter contained in the audio tapes was exempt from disclosure under sections 44(1) and 40(c) of the FOI Act, that it remained my preliminary view that there were no reasonable grounds to believe that further documents exist in the possession or control of QPS which are responsive to the applicant's application, and that QPS were entitled to rely on section 22(a) to refuse him access to certain documents.
22. By letter dated 21 June 2007 the applicant advised that he did not accept my preliminary view and advised that he did not consider that the searches undertaken by QPS for responsive documents had been sufficient. In his letter dated 21 June 2007, the applicant stated, under the heading, 'TAPES' that he was '*not interested in the personal particulars [mentioned]*', but also stated that he did not accept my preliminary view. For clarity, I will record my findings in relation to section 44(1) of the FOI Act as it applies to the matter in issue in the audio tapes.
23. Accordingly, apart from the matter which I considered qualified for exemption under sections 44(1) and 40(c) of the FOI Act, the information contained on the audio tapes is no longer in issue in this review.
24. In support of his contentions that further documents responsive to his application should be in QPS' possession, the applicant provided documents regarding an arrest he made and an affidavit dated 21 June 2007 attesting to his recollection of arrests made over a certain time period.

25. In making my decision in this matter I have taken the following into account:

- the documents in issue
- the applicant's initial and external review applications dated 29 July 2005 and 10 October 2005 respectively
- Superintendent Trappett's (*functus officio*) decision dated 14 October 2005
- letters from QPS dated 31 October 2005, 22 December 2005, 17 January 2006, 29 March 2006, 12 April 2006, 12 May 2006, 24 May 2006, 13 July 2006, 10 August 2006, 21 September 2006, 17 October 2006, 7 November 2006, 13 November 2006, 4 December 2006, 8 December 2006, 25 January 2007, 6 February 2007, 21 May 2007 and 5 June 2007
- statutory declarations of Inspector Costello dated 24 April 2006, Acting Senior Sergeant Rann dated 26 April 2006 and Ms Marmo dated 13 July 2006
- correspondence from the applicant as follows:
  - letter dated 15 October 2005 received by email on 17 October 2005
  - email dated 17 October 2005 attaching email correspondence with QPS
  - email dated 17 October 2005 attaching email correspondence with QPS
  - letter dated 19 October 2005 (to Assistant Commissioner Newbery) received by email on 20 October 2005
  - letter dated 19 October 2005 (to Ms Banks) received by email on 20 October 2005
  - email dated 25 October 2005 to Assistant Commissioner Newbery regarding Q-Comp
  - letter dated 24 November 2005 received by email on 25 November 2005
  - letter dated 9 December 2005 received by email on 12 December 2005
  - email dated 24 January 2005 to Assistant Commissioner Newbery regarding submissions from QPS
  - letter dated 30 January 2005 received by email on 31 January 2006
  - email dated 2 February 2006 attaching documents from WorkCover
  - email dated 2 February 2006 forwarding email sent to Mr Anderson of WorkCover
  - letter dated 31 January 2006 received by email dated 2 February 2006
  - email dated 2 February 2006 forwarding email sent by Ms Cokely of Q-Comp
  - letter to Courier Mail dated 4 February 2006 received by email on 6 February 2006
  - letter dated 4 February 2006 received by email on 6 February 2006
  - email dated 7 February 2006
  - undated affidavit received by email on 8 February 2006
  - letter dated 7 February 2006 received by email on 8 February 2006
  - email dated 8 February 2006 referring to affidavit and letter dated 7 February above
  - email dated 8 February 2006 forwarding application for internal review to Q-Comp dated 7 February 2006
  - email dated 8 February 2006
  - email dated 8 February 2006 forwarding email and attached documents sent to Mr Springborg
  - letter dated 7 February 2006 received by email on 8 February 2006
  - letter dated 8 February 2006 received by email on 9 February 2006
  - letter dated 9 February 2006 received by email on 9 February 2006
  - email dated 10 February 2006 forwarding email message from Inspector Guntrip
  - letter dated 10 February 2006 received by email on 10 February 2006
  - letter dated 12 February 2006 received by email on 13 February 2006

- email dated 15 February 2006 forwarding email from Ms Campbell of QPS
- letter dated 16 February 2006 received by email on 17 February 2006
- letter dated 20 February 2006 received by email on 21 February 2006
- letter dated 22 February 2006 received by email on 23 February 2006
- letter dated 23 February 2006
- letter dated 22 March 2006 received by email on 23 March 2006
- letter dated 24 March 2006 received by email on 26 March 2006
- email dated 5 April 2006
- letter dated 11 March 2007 received by email on 13 March 2006
- email dated 5 April 2007
- letter dated 5 April 2007 received by email on 6 April 2007
- letter dated 21 June 2007, received by email on 22 June 2007
- court brief and bench charge sheet received by mail on 22 June 2007
- affidavit dated 21 June 2007, received by facsimile on 22 June 2007
- file notes of telephone conversations between staff of this office and staff of QPS
- relevant case law

### **Matter in issue**

26. The applicant contests the exemption provisions applied to the documents initially located by QPS. During the course of the review, a number of documents were located and exemption claims have been made over parts of those documents. The applicant contests the exemption provisions applied to the documents located during the course of the review, as well as the sufficiency of searches undertaken by QPS for documents responsive to a number of items of his application.
27. However, as noted above, the matter in issue in this review has been reduced as a result of agreements by QPS to release some material which, in the view of this Office, was not exempt from disclosure.
28. Thus, the matter which remains in issue and is claimed to be exempt under section 44(1) of the FOI Act is as follows:
- segments of folios 1-7, 11-100, 101, 103-113, 114-118, 119-146, 152, 154-174, 175, 177-187, 188-192, 193-213, 214, 216-226, 227-231, 232-307, 321-370, 380-386, 390-394, 400-418, 421-502, 509-519
  - the whole of folios 102, 176, 215, and 395-399
  - segments of matter contained in the transcripts of audio tapes located as responsive to item 1 of the applicant's application
  - segments of matter contained in correspondence between QPS officers located as responsive to item 24 of the applicant's application.
29. Matter in issue which is claimed to be exempt under section 40(c) of the FOI Act is:
- segments of matter contained on pages 16 and 17 of the transcript of interview between Sergeant McIntosh and Inspector Flanagan, located as responsive to item 1 of the applicant's application.
30. Matter in issue which is claimed to be exempt under section 46(1)(b) of the FOI Act is:
- matter under the heading 'Unit', contained on page 2 of the further documents located as responsive to item 25 of the applicant's application.

31. Additionally, there are a number of issues regarding the sufficiency of searches undertaken by QPS remaining for my determination.

## Findings

32. In this decision I will deal with the matter in issue in two parts, with reference to the applicant's initial access application. As noted at paragraph 2 the applicant's application comprised two parts, Part 1 listing 25 separate items to which he sought access and Part 2 seeking access to another 47 items containing specific requests for emails. Under the heading 'Part 1' below, I will firstly address the matter remaining in issue in this review. I will then address the sufficiency of QPS' searches for documents responsive to the items of the applicant's application. Under the heading 'Part 2' I will address the issues arising in relation to the second part of the applicant's application.

## Part 1

### Exemptions claimed

#### **Section 44(1) of the FOI Act**

33. Section 44(1) of the FOI Act provides as follows:

**44 Matter affecting personal affairs**

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

34. In applying section 44(1) of the FOI Act, the first question to ask is whether disclosure of the matter in issue would disclose information concerning the personal affairs of a person other than the applicant for access. If that is the case a public interest consideration favouring non-disclosure is established, and the matter in issue will be exempt, unless there are public interest considerations favouring disclosure which outweigh all public interest considerations favouring non-disclosure.
35. In *Stewart and Department of Transport* (1993) 1 QAR 227, Information Commissioner Albiez discussed in detail the meaning of the phrase 'personal affairs of a person' (and relevant variations) as it appears in the FOI Act (see pp.256-267, paragraphs 79-114, of *Stewart*). In particular, he said that information concerns the 'personal affairs of a person' if it concerns the private aspects of a person's life and that, while there may be a substantial grey area within the ambit of the phrase 'personal affairs', that phrase has a well accepted core meaning which includes:
- family and marital relationships
  - health or ill health
  - relationships and emotional ties with other people
  - domestic responsibilities or financial obligations.
36. Whether or not matter contained in a document comprises information concerning an individual's personal affairs is a question of fact, to be determined according to the proper characterisation of the information in question.

***Application to the matter in issue***

37. The documents located initially by QPS which remain in issue are:
- segments of folios 1-7, 11-100, 101, 103-113, 114-118, 119-146, 152, 154-174, 175, 177-187, 188-192, 193-213, 214, 216-226, 227-231, 232-307, 321-370, 380-386, 390-394, 400-418, 421-502, 509-519
  - the whole of folios 102, 176, 215, and 395-399.
38. These documents are internal QPS reports and correspondence, witness statements, summons and service documents, and court briefs regarding an incident which gave rise to a complaint made about the applicant by another officer; a complaint made about the applicant by a member of the public; and, a complaint about a member of the public made by the applicant.
39. As discussed above in paragraphs 16-22, six audio tapes responsive to item 1 of the applicant's request were located during the course of the review. The audio tapes consist of interviews between:
- Inspector Flanagan and Senior Constable Belz on 6 March 2003
  - Inspector Flanagan and Sergeant McIntosh on 14 March 2003 (this interview goes over two tapes)
  - Inspector Flanagan and Senior Constable Saunders on 14 March 2003
  - Inspector Flanagan and the applicant on 16 March 2003
  - Inspector Flanagan and Senior Constable Belz on 17 June 2003.
40. Each of the interviews describes, in varying detail, the events preceding a complaint made by Senior Constable Belz against the applicant.
41. As a result of further searches at Metropolitan South Region, QPS located five documents responsive to the terms of item 24 of the applicant's application as follows:
- report to Superintendent Cooper by Detective Senior Sergeant Sheldon dated 2 February 2005 regarding Letter from Hemming & Hart Lawyers
  - report to District Officer, South Brisbane District from Detective Sergeant Anderson dated 28 January 2005 regarding letter from Hemming & Hart Lawyers
  - report to District Officer, South Brisbane District from Chief Superintendent, Metropolitan South Region dated 5 January 2005 regarding letter from Hemming & Hart Lawyers
  - report by Assistant Commissioner, Metropolitan South Region to Chief Superintendent, Metropolitan South Region dated 5 January 2005 regarding letter from Hemming & Hart Lawyers
  - letter dated 30 December 2004 from Assistant Commissioner Rynders to Mr Luke Smith, Hemming & Hart.
42. Matter claimed to be exempt in these documents consists of the names of two people, one of whom was the subject of a complaint to QPS and the other who made a complaint to QPS.
43. The information in issue in the documents listed above in paragraphs 37, 39 and 41 can be categorised as follows:
- information which would identify aggrieved and respondent spouses involved in, and witnesses to, several domestic violence incidents

- information concerning the marital and family relationships of two police officers other than the applicant
  - the date of birth of another officer
  - description of the activity of one officer after the conclusion of his shift
  - explanation as to a period of absence of the interviewer
  - information which would identify members of the public who were the subject of complaints to QPS
- and
- information which would identify members of the public who made complaints to QPS.

44. I am satisfied that the information which would identify persons involved in domestic violence incidents falls within the core meaning of personal affairs. I also consider that the matter which involves the family relationships of police officers as well as the descriptions of officers' activities outside of work, fall within the core meaning of personal affairs.
45. It is also clear from previous decisions of the Information Commissioner that the fact that an individual (acting in his or her private capacity) has made a complaint to a government agency is properly characterised as information concerning that individual's personal affairs (see *Byrne and Gold Coast City Council* (1994) 1 QAR 477). It is also my view that in this instance, the fact that a person has been the subject of a complaint to QPS, where the allegations remain unproven and the complaint has been withdrawn, is properly characterised as concerning that person's personal affairs.
46. I am therefore satisfied that the matter listed above, in paragraph 43, can consequently be categorised as matter concerning the personal affairs of persons other than the applicant. Thus, such information is *prima facie* exempt from release pursuant to section 44(1) of the FOI Act.

#### ***Public interest balancing test***

47. Because of the way that section 44(1) of the FOI Act is worded and structured, the mere finding that information concerns the personal affairs of a person other than the applicant for access must always tip the scales against disclosure of that information, and must decisively tip the scales if there are no public interest considerations which tell in favour of disclosure of the information in issue. The extent to which the scales are tipped will vary from case to case according to the relative weight of the privacy interests attaching to the particular information in issue and the particular circumstances of any given case. It therefore becomes necessary to examine whether there are public interest considerations favouring disclosure, and if so, whether they outweigh all public interest considerations favouring non-disclosure.
48. The applicant has not made specific submissions regarding the public interest balancing test contained in section 44(1) of the FOI Act as it applies to the matter remaining in issue. It appears from correspondence to this Office, however, that the applicant wishes to gather documents in relation to his dissatisfaction with various actions by QPS during his employment. This points to a number of public interest considerations that may favour release.
49. The Information Commissioner has recognised that, in an appropriate case, there is a public interest in a person who has suffered, or may have suffered, an actionable wrong, obtaining access to information which would assist the person to pursue any

remedy which the law affords in the circumstances (see *Willsford and Brisbane City Council* (1996) 3 QAR 376).

50. Ordinarily, this public interest consideration would require an assessment of the elements set out in *Willsford* which are necessary to establish that this particular public interest consideration is present, that is:
  - that loss or damage or some kind of wrong has been suffered, in respect of which a remedy is, or may be, available under the law
  - the applicant has a reasonable basis for seeking to pursue the remedyand
  - disclosure of the information held by the agency would assist the applicant to pursue the remedy, or to evaluate whether a remedy is available, or worth pursuing.
51. However, in light of the fact that I do not consider that the third element of the *Willsford* test is satisfied, and it is obligatory to satisfy all three elements of the test, it is not necessary to address each element.
52. I do not consider that having access to the matter in issue would assist the applicant to pursue a remedy. I do not consider that withholding the kind of information in issue, that is, information which would identify parties and witnesses to domestic violence incidents and which would reveal the family relationships of other officers, will deprive the applicant of any opportunity to assess whether or not he has received fair treatment by QPS, or whether there may be any avenues of legal redress open to him. I am aware that the applicant has made application to WorkCover and Q-Comp in respect of the alleged grievances suffered by the applicant, without knowledge of the matter remaining in issue. Accordingly, I do not consider that this public interest consideration is established in the circumstances of this case.
53. The applicant's statements concerning his dissatisfaction with his treatment while employed by QPS may give rise to two further public interest considerations. There is a general public interest in enhancing the accountability of QPS for its investigations of, or actions taken in response to complaints (see for example *Godwin and Queensland Police Service* (1997) 4 QAR 70). The Information Commissioner has also noted that the fair treatment of individuals in accordance with the law in their dealings with government agencies is a legitimate public interest consideration (see *Pemberton and The University of Queensland* (1994) 2 QAR 293).
54. However, this is not a case where the applicant having access to the matter in issue would materially further an assessment of whether QPS acted reasonably in its investigation of the relevant complaints or its treatment of the applicant. I do not consider that having access to information of the kind that is in issue, concerning the personal affairs of others, will assist the applicant's understanding of how QPS dealt with his complaints, and complaints made against him. The information so far disclosed, about the substance of the complaints and the manner in which QPS dealt with the complaints is more apt to satisfy the public interest considerations mentioned above than disclosure of the personal affairs information in issue. Accordingly, I do not consider that these public interest considerations are established either.
55. The terms in which section 44(1) of the FOI Act is framed means that satisfaction of the initial test for exemption in section 44(1) establishes a public interest accepted by Parliament as weighing against disclosure of the matter in issue. This public interest is in protecting the privacy of information concerning the personal affairs of an identifiable

individual. I consider that ordinarily, the privacy interests of persons involved in domestic violence and persons choosing to make complaints to regulatory agencies would be strong.

56. Some documents to which full access has been refused reveal that a particular person has been charged with stalking and required to appear at a hearing. While I acknowledge that the applicant is aware of the circumstances surrounding the charge of stalking, I must nevertheless also have regard to the principle that disclosure under the FOI Act is considered to be disclosure to the 'world at large', as there is no restriction under the FOI Act regarding the use to which information obtained under the FOI Act can be put. The Information Commissioner has noted that there is a public interest in the fair treatment of individuals and the protection of their privacy in respect of allegations of wrongdoing that have not been proven (see *Pope and Queensland Health; Hammond and Robbins, Third Parties* (1994) 1 QAR 616). I note that in this case the charge against the particular person was withdrawn and the matter did not result in public court proceedings. Therefore, I consider in this case that there is a significant public interest consideration favouring non-disclosure of matter which consists of untested allegations.
57. A further public interest consideration telling against disclosure of the matter in issue which would reveal the identities of individuals who made complaints to QPS, is safeguarding the free flow of information from members of the public concerning possible breaches of law by not unduly inhibiting co-operation with the investigation of complaints. While I acknowledge that there are many occasions where QPS must account to the community for how effectively it is performing its functions, as I have expressed above, I do not consider that release of the matter in issue would assist in this regard. Consequently, the public interest in safeguarding the free flow of information to government weighs against disclosure.
58. I am unable to identify any public interest considerations favouring disclosure of the matter in issue which can be accorded any weight in this case. Accordingly, consideration for the privacy of the persons concerned, fair treatment of individuals that are the subject of untested allegations and safeguarding the free flow of information weigh against disclosure of the matter in issue in the circumstances of this case, so that disclosure of the matter would not, on balance, be in the public interest.
59. I find that the matter remaining in issue which is claimed to be exempt under section 44(1) of the FOI Act, that is:
- segments of the various folios listed at paragraph 37 and the whole of the folios also listed there
  - segments of matter contained in the transcripts of audio tapes located as responsive to item 1 of the applicant's application during the course of the review and
  - segments of matter contained in correspondence between QPS officers and QPS and other parties located as responsive to item 24 during the course of the review

qualifies for exemption from disclosure under section 44(1) of the FOI Act.

#### **Section 40(c) of the FOI Act**

60. Section 40(c) of the FOI Act provides as follows:

**40 Matter concerning certain operations of agencies**

*Matter is exempt matter if its disclosure could reasonably be expected to—*

...

- (c) *have a substantial adverse effect on the management or assessment by an agency of the agency's personnel;*

...

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

61. The focus of section 40(c) is on the management or assessment by an agency of the agency's personnel.
62. In applying section 40(c), I must determine whether:
- any adverse effects of the management or assessment by QPS of its personnel could **reasonably be expected to follow** from disclosure of the matter in issue. There must be expectations for which real and substantial grounds exist (see *B and Brisbane North Regional Health Authority* (1994) 1 QAR 279 at pp. 339-341) and
  - the adverse effects amount to a **substantial adverse effect** on the management or assessment by the university of its personnel. The adjective 'substantial' in the phrase 'substantial adverse effect' means grave, weighty, significant or serious effects (see *Cairns Port Authority and Department of Lands* (1994) 1 QAR 663 at pp. 724-725).
63. If those requirements are satisfied, I must then consider whether the disclosure of the matter in issue would nevertheless, on balance, be in the public interest.
64. The matter in issue is recorded on pages 16 and 17 of the transcript of interview between Sergeant McIntosh and Inspector Flanagan in relation to the complaint made by Senior Constable Belz against the applicant. There is a small amount of matter contained on those pages which record Sergeant McIntosh's views regarding Senior Constable Belz' performance and information which was discussed in a performance review.

***Substantial adverse effect***

65. The matter in issue is information which was discussed in a performance review, and the views of a senior officer about Senior Constable Belz' work performance, in the context of being interviewed about a complaint made by Senior Constable Belz. It is claimed that a substantial adverse effect on QPS' ability to assess and manage its personnel would result from disclosure of the matter in issue by significantly diminishing the effectiveness of performance reviews.
66. I consider that an adverse effect of diminishing the effectiveness of performance reviews could reasonably be expected to follow from disclosure of the matter in issue. I am satisfied that if documents, containing information about matters which were discussed in performance reviews were disclosed to third parties under the FOI Act, it would result in officers of QPS being unwilling to participate in performance reviews with candour and frankness in the future.
67. At paragraph 145 of *Pemberton and The University of Queensland* (1994) 2 QAR 293, the Information Commissioner made the following comments in relation to the process of performance appraisal with respect to the application of section 40(c) of the FOI Act:

*...There is widespread agreement in management literature that performance appraisal is one of the most significant human resource management tools for maintaining a satisfactory level of employee performance. Accurate feedback about performance is regarded as critical to an employee's ability to perform effectively in an organisation. Regular performance appraisal and review has been a management initiative aimed at promoting the performance of leading corporations for several decades. Since the mid-1980s it has gradually been penetrating the Commonwealth and State public sectors. It is based on a simple premise that those charged with management responsibility should, in addition to regular informal feedback on staff performance, undertake regular formal appraisals of staff performance, which afford an opportunity for -*

- (a) acknowledging positive contributions by the employee to the organisation;*
- (b) providing clear goals and standards so that an individual employee knows what is expected in terms of his or her individual performance; and*
- (c) a systematic approach to addressing shortcomings in performance, or room for improvement in performance, in a constructive way aimed at securing better outcomes for the organisation and the individual.*

68. In *Pemberton*, the matter in issue comprised referee reports, and reports by Dr Pemberton's Head of Department, on Dr Pemberton's suitability for promotion. The Information Commissioner decided that disclosure of information of that kind (including performance appraisal material) other than to the subject of the report or appraisal, could reasonably be expected to have a substantial adverse effect on the management or assessment by the University of its personnel. In particular, he said (at paragraph 152):

*The task of constructively addressing shortcomings in staff performance has greater prospects of success through co-operative effort if details of the perceived shortcomings in performance, and the action plan to address them, remain confidential to the relevant managers and the staff member concerned.*

69. The Information Commissioner has recognised the importance of performance reviews to agencies' management and assessment of their personnel, as well as the importance of keeping confidential matter which is discussed in performance reviews. I am satisfied the lessened effectiveness of performance reviews which I consider would result from disclosure of the matter in issue constitutes a substantial adverse effect.

### ***Public interest test***

70. I accept that there is a public interest in scrutinising the job performance of QPS officers. However, I also consider that, given the importance of the QPS' statutory responsibilities and objectives, there is a public interest in the QPS operating as efficiently and effectively as possible, which is dependent, to a large extent, on its ability to manage its staff effectively. That interest is best served by the QPS retaining the ability to conduct frank, candid and confidential appraisals of the performance of its staff in a performance review context.
71. I also note that the discussion regarding Senior Constable Belz' performance occurred in the context of an interview regarding a complaint which Senior Constable Belz had made about the applicant. I do not consider that the public interest in scrutinising the job performance of QPS officers would be served by disclosing, to the world at large, the comments made by an officer being interviewed in such circumstances.
72. I consider that the detrimental effect on the ability of the QPS to manage its staff which disclosure of the matter in issue could reasonably be expected to have, outweighs the public interest consideration in scrutinising the performance reviews of QPS officers.

73. Accordingly, I consider that matter which records Sergeant McIntosh's views regarding Senior Constable Belz' work performance, in a performance review context, is exempt from disclosure under section 40(c) of the FOI Act.

**Section 46(1)(b) of the FOI Act**

74. Section 46(1)(b) of the FOI Act provides as follows:

**46 Matter communicated in confidence**

(1) *Matter is exempt if—*

...

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

75. Accordingly, matter will be exempt under section 46(1)(b) if:

- it consists of information of a confidential nature
  - it was communicated in confidence
  - its disclosure could reasonably be expected to prejudice the future supply of such information
- and
- the weight of the public interest considerations favouring non-disclosure equals or outweighs that of the public interest considerations favouring disclosure.

(See *B and Brisbane North Regional Health Authority* (1994) 1 QAR 279)

76. As a result of my directions to QPS to perform further searches for documents responsive to item 25 of the applicant's application, QPS advised in a letter dated 6 February 2007 that Information Security Services had located documents (six pages in total) responsive to the terms of the first part of item 25 of the applicant's application. That is, the applicant's request for '*any document, computer enquiry etc that shows any inquiry by the Queensland Police Service on vehicle registration [...] (my former vehicle)*'.
77. QPS submitted that the inquiry which is listed on page 2 of one of the documents located, is one which was made by QPS of a database at Queensland Transport. There is a portion of matter on this page which is a 'unit code' and which identifies a terminal or terminals at Queensland Transport. QPS submitted that release of this information would potentially enable an informed person to interrogate Queensland Transport's confidential database.
78. I am satisfied that the matter claimed to be exempt on page 2 is information of a confidential nature. It is sufficiently inaccessible that it cannot be obtained from sources available to the public.
79. The second requirement for exemption under section 46(1)(b) is discussed at paragraphs 149-153 of *B and Brisbane North Regional Health Authority* (1994) 1 QAR 279 in which the Information Commissioner said that the phrase 'communicated in confidence' is used to convey a requirement that there be mutual expectations that the information is to be treated in confidence. There must be some evidence of an

express consensus, or an implicit understanding, between the confider and the confidant as to preserving the confidentiality of the information imparted. I am satisfied, on the information before me, that a mutual understanding of confidence exists between QPS and Queensland Transport in relation to the access by QPS of Queensland Transport's database. I consider that an implicit understanding that QPS would not release matter which could potentially enable unauthorised interrogation of Queensland Transport's database is in place between the agencies.

80. I am also satisfied that disclosure of the matter contained on page 2 could reasonably be expected to prejudice the future supply of like information. The information contained on page 2 is the results of a search of the Minda database. That database is a joint project between QPS and Queensland Transport and I consider that provision of information which would potentially enable interrogation of Queensland Transport's database would be sufficient to encourage Queensland Transport and QPS to discontinue the joint project in the future, to the detriment of law enforcement in Queensland.
81. I do not consider that there are any public interest considerations which would favour release of the matter contained on page 2.
82. I find that the matter under the heading 'Unit', contained on page 2 of the further documents located in response to the first part of item 25 of the applicant's application, is exempt from disclosure under section 46(1)(b) of the FOI Act.

### Sufficiency of search

83. I will now address the applicant's contentions that further documents exist in the possession or control of QPS that are responsive to his application and have not been released to him. Such contentions by the applicant necessitate a consideration of the sufficiency of the searches undertaken by the QPS.
84. The Information Commissioner explained the principles applicable to 'sufficiency of search' cases in *Shepherd and Department of Housing, Local Government & Planning* (1994) 1 QAR 464 (pp. 469-470, paragraphs 18 and 19) as follows:

18. *It is my view that in an external review application involving 'sufficiency of search' issues, the basic issue for determination is whether the respondent agency has discharged the obligation, which is implicit in the FOI Act, to locate and deal with (in accordance with Part 3, Division 1 of the FOI Act) all documents of the agency (as that term is defined in s.7 of the FOI Act) to which access has been requested. It is provided in s.7 of the FOI Act that:*

**"document of an agency" or "document of the agency"** means a document in the possession or under the control of an agency, or the agency concerned, whether created or received in the agency, and includes -

- (a) a document to which the agency is entitled to access; and
- (b) a document in the possession or under the control of an officer of the agency in the officer's official capacity;"

19. *In dealing with the basic issue referred to in paragraph 18, there are two questions which I must answer:*

- (a) *whether there are reasonable grounds to believe that the requested documents exist and are documents of the agency (as that term is defined in s.7 of the FOI Act);*

*and if so*

*(b) whether the search efforts made by the agency to locate such documents have been reasonable in all the circumstances of a particular case.*

85. In the applicant's letter dated 8 February 2006, he raised a number of sufficiency of search issues in relation to the first part of his application numbered 1 to 25. In that letter, the applicant also advised that he was satisfied with the documents provided by QPS in response to items 2, 5, 7, 16, 17, 18, 22 and 23 of his application.
86. Over the course of this review the applicant has maintained the general position that further documents responsive to his application must exist that have not been disclosed to him. In addition to his general position, the applicant has made specific submissions about various items of this application which remain in issue. In relation to some items of his application, however, the applicant has not made further specific submissions in addition to his general contention that further documents must exist.
87. In accordance with section 81 of the FOI Act, QPS has the onus of establishing that the Information Commissioner should give a decision that is adverse to the applicant. However, section 25(2) of the FOI Act requires an applicant for access to provide such information concerning a document as is reasonably necessary to enable the agency to identify the document. It is therefore a practical consequence of the issues which must be determined in sufficiency of search cases (set out above at paragraph 84) that applicants will ordinarily need to explain fully their grounds for believing that the respondent agency holds additional responsive documents, and to disclose any relevant documentary or other evidence which tends to support the existence of reasonable grounds for such a belief. If the information provided by the agency, supports a finding that the questions posed in paragraph 19 of *Shepherd* should be answered in favour of the agency, and I am unable, independently, to identify any further relevant avenues of search or inquiry that an agency could reasonably be required to undertake, then, in the absence of evidence to the contrary from the applicant, it is only open to me to answer the questions in *Shepherd* in favour of the agency (see *Ainsworth and Criminal Justice Commission; A (third party); B (fourth party)* (1999) 5 QAR 284 at paragraphs 43-53).
88. The terms of part 1 of the applicant's application are set out at paragraph 2. Where the applicant has made specific submissions regarding an item of his application, I have summarised those contentions below. Additionally, I have set out my findings in relation to each item remaining in issue in the applicant's application.

#### **Item 1**

89. In relation to this item the applicant raised concerns that QPS' searches were insufficient as they had not located audio tapes or transcripts responsive to this item of his application.
90. At the request of Assistant Information Commissioner Rangiheata, QPS performed searches at Ethical Standards Command, which is responsible for internal disciplinary matters. It also undertook searches at the Metropolitan South Regional Office, which is the area office which oversees the operations of the stations where both the applicant and Senior Constable Belz were based at the time the interviews took place. I am satisfied that audio tapes which relate to internal disciplinary processes occurring in relation to the applicant would most likely be located in these areas.

91. As outlined earlier in this decision, audio tapes of six interviews which are responsive to this item of the applicant's application were located.
92. QPS have undertaken searches at locations where responsive documents are likely to be held and further documents have been located. In the absence of any further evidence or information from the applicant to the contrary, I do not consider there are reasonable grounds to believe that further documents, responsive to this part of the applicant's application exist in QPS' possession or control.

### **Item 3**

93. The applicant contended that further documents responsive to this part of his request must exist. He advised that he holds a copy of a report from Assistant Police Commissioner Banham stating that he was approved to attend the 41<sup>st</sup> Police Prosecutions course and argued that consequently documents must exist to show why he was removed from the course.
94. Initially, QPS performed searches at Police Prosecutions and failed to locate any relevant documents. During the course of the review, I requested that QPS perform further searches and it did so at both Police Prosecutions and Operations Support Command. A search of the files retained at the Training Office, Brisbane Prosecutions Corps, which had not initially been searched, located three documents as follows:
  - report by Senior Sergeant Cash, Officer in Charge, Training Office to the Inspector, Police Prosecutions Corps concerning the 41<sup>st</sup> prosecutions course transfers and secondments, dated 5 January 2005
  - email from Senior Sergeant Cash to selected officers dated 24 December 1999
  - list of participants for 41<sup>st</sup> prosecutions course.
95. I have obtained and examined these documents and am satisfied that none of the documents contain the applicant's name, any mention of his application to attend the course or the fact of his application being denied. As this part of the applicant's application was for any record, document or email that relates to his application for the course and any written material that relates to the application being denied, I consider that the documents located as listed above do not fall within the scope of his application.
96. In his letter dated 11 March 2007, the applicant contended that as he was initially approved to attend the course, the Metropolitan South Region would have been notified if there was any change to that approval. I requested that QPS perform further searches at the Metropolitan South Regional Office and by facsimile dated 4 May 2007 QPS provided six documents which were responsive to the applicant's application which had been located at Metropolitan South Regional Office. QPS advised that it had no objection to the documents being released to the applicant, particularly as it had been evidenced in the applicant's correspondence that he was already in possession of all but one of the documents.
97. In his letter dated 21 June 2007, the applicant reiterated his contention that notification of the fact that his application had been approved, but subsequently refused, would have been sent to the Metropolitan South Regional Office and argued that there must at least be documents in existence which would have been created in order to notify the relevant Assistant Police Commissioner.

98. As Assistant Police Commissioners of each Region have the responsibility to organise, administer, coordinate, supervise, and control all police activities within the region, it is possible that some notification to the relevant Assistant Police Commissioner of the kind suggested by the applicant may have been given. I am satisfied, however, that if a document of the kind suggested by the applicant was in fact created, it would be located at the Metropolitan South Regional Office and would have been located in the searches of that office.
99. I note that one of the documents which was located at the Metropolitan South Regional Office recommended that the applicant not be transferred to the Police Prosecutions Corps, and that this document, along with the further documents located appear to address this item of the applicant's application.
100. Having regard to the terms of the applicant's application, and his submissions during the course of the review, I am satisfied that any documents responsive to the applicant's request would only be located at Operations Support Command, Police Prosecutions or the Metropolitan South Regional Office. Searches have been performed both initially by QPS and again during the course of the review, at each of these locations and all the documents which have been located at these areas that are responsive to the applicant's application, have been provided to him.
101. I am satisfied that the only locations where documents are likely to be held have been searched and have yielded several responsive documents. Accordingly I find that there are no reasonable grounds to believe that further documents responsive to this part of his application exist in QPS' possession or control.
102. In addition, I am satisfied that the searches performed by QPS for documents responsive to this part of the applicant's application have been reasonable in all the circumstances of the case.

**Item 4**

103. The applicant contended that there should exist a QP9, a prosecutions cover sheet and an Index to Brief regarding this matter. The applicant also suggested there may be a report requesting action or a report regarding late statements and other late material in relation to item 4.
104. As a result of its initial searches, QPS located a report by Inspector Wacker regarding the withdrawal of the charge. This document was released to the applicant as folio 391, subject to the deletion of matter which is exempt under section 44(1) of the FOI Act. Folios 395-399 consist of the Court Brief and Bench Charge sheet in relation to this matter. As I have decided above, parts of folio 391 and the whole of folios 395-399 qualify for exemption from disclosure under section 44(1) of the FOI Act.
105. At my request, further searches were undertaken at the Police Information Centre. The Police Information Centre is managed by Operations Support Command and records and maintains offender information including offender details, court diversionary processes, and court results from QPS initiated prosecutions.
106. One document (other than those documents already considered) was located. It is a fax cover sheet sent to Sergeant Lane, attaching the report by Inspector Wacker which is folio 391. That document was released to the applicant.
107. The applicant asserted in his letter dated 8 February 2006 that there should be reports relating to late statements and other late material, and that documents which he

provided in relation to the complaint made by Senior Constable Belz are evidence that these kinds of documents should have been created.

108. The complaint made by Senior Constable Belz was in relation to statements not being provided within the usual time required to prepare court brief. While it could be guessed that the applicant is suggesting that there are further documents relating to the late provision of statements, he has not provided any evidence to show whether or not such documents would have been created in relation to the matter canvassed by this item of the applicant's application. There is nothing before me to suggest that a report regarding the late provision of statements exists in QPS' possession or control in relation to this item. QPS has submitted that given that the particular charge was withdrawn and the matter did not proceed to hearing, it is unlikely that further documents than those already released to the applicant would have been created in relation to the matter.
109. I am satisfied that documents responsive to this part of the applicant's application would be located within the Police Information Centre. QPS submit that it has twice searched this area and that all responsive documents have been located. As the area where documents are likely to be held has been twice searched, and the applicant's submission does not provide any evidence to suggest further documents exist, it is my view that there are no reasonable grounds to believe that any further documents responsive to this part of the applicant's application exist in QPS' possession or control.
110. In addition, I consider that QPS' searches have been reasonable in all the circumstances of the case.

**Item 6**

111. The applicant applied for '*The edited statement of [the applicant] that is referred to in the WorkCover report attached Point 5, that statement allegedly edited by Sergeant Collins*'. The WorkCover decision to which the applicant refers states that Sergeant Collins prepared an edited statement. The applicant contends that the statement which was provided to him as a result of his application was the statement which he drafted and is unedited.
112. QPS conducted further searches at Camp Hill Police station (where Sergeant Collins is based) and did not locate a further statement which differed to that already provided.
113. Apart from the statement recorded in the WorkCover decision attached to his application, the applicant has not provided any evidence to show that there is reason to believe that a further or different statement exists. It is my view that if a further, edited, statement which is different to the one in the applicant's possession existed it would be located with Sergeant Collins.
114. As QPS have searched the area where any responsive documents are likely to exist, and in the absence of any evidence or information from the applicant to the contrary, I am satisfied, that there are no reasonable grounds to believe that a further statement which is different to the one already released to the applicant exists in QPS' possession or control.

**Item 8**

115. The applicant contends that the CMC revisited his complaint and that if requests for information were made of QPS, QPS should hold records of those requests.

116. During the course of the review, at the request of Assistant Information Commissioner Rangiheata, QPS undertook further searches at Ethical Standards Command and no further documents were located. QPS submitted that the Crime and Misconduct Commission (CMC) deals directly and exclusively with Ethical Standards Command and consequently, all documents relating to complaints made by QPS officers to the CMC would be held at Ethical Standards Command.
117. I am satisfied that if documents existed which relate to any further requests for information from the CMC about the applicant's complaint, they would be held at Ethical Standards Command. As QPS have searched for responsive documents at this area, and as the applicant has not provided any information or evidence to suggest that further responsive documents exist, I am satisfied that there are no reasonable grounds to believe that further documents exist in QPS' possession or control.

### **Item 9**

118. The applicant submitted that in light of correspondence he received from Assistant Police Commissioner Rynders advising that an overview of the investigation was conducted by Ethical Standards Command, further documents responsive to this item of his application should exist.
119. At my behest, QPS performed further searches at Ethical Standards Command, which, as mentioned, is the only area which deals with the CMC in respect of complaints made to it by police officers. Searches were also undertaken at the Metropolitan South Regional Office, where both Inspector Black and the applicant were based, for documents responsive to this part of the applicant's application. No further documents were found.
120. I am satisfied that if there were any further documents in existence, generated by Ethical Standards Command, relating to the complaint of alleged misconduct made about Inspector Black by the applicant, they would be located at either Ethical Standards Command, or at the Metropolitan South Regional Office where Inspector Black and the applicant were based. I am satisfied that these areas have been searched by QPS and the only documents relating to the applicant's complaint regarding Inspector Black held at these areas are those which have already been released to him.
121. Based on the searches performed by QPS and in the absence of any evidence or information from the applicant to the contrary, I am satisfied that there are no reasonable grounds to believe that further documents responsive to this part of the applicant's request in QPS' possession or control.

### **Item 10**

122. At Item 10 of the applicant's application, he requested access to:

*10. The tapes index that relates to the interview of Inspector Black by Chief Superintendent Benjamin. The tape recording of that interview. This interview is referred to in the WorkCover report attached at point 1 where it states, "I interviewed Inspector Black". Any document that states the date when the tapes index entry was made.*

123. I will deal firstly with the matter of the 'tapes index'. The applicant contended that there should be a record of the interview with Inspector Black located on the tapes index.

The applicant submitted that the entry on the tapes index is created on the day of the relevant interview and is found on the QPS mainframe system.

124. In response, QPS stated that internal disciplinary interviews are not indexed on the QPS mainframe by officers' names, which makes it difficult to search for specific tapes. Inspector Costello of the Metropolitan South Regional Office (as evidenced in his statutory declaration dated 24 April 2006) has performed a search of the tapes index and found no record of the taped interview with Inspector Black.
125. I accept that QPS have searched the tapes index and have been unable to locate any responsive entries, as sworn by Inspector Costello. Apart from his general contention that a responsive entry must exist, the applicant has not provided any information which contradicts the evidence provided by QPS that there are no relevant entries on the tapes index.
126. As to the matter of the tape itself, as previously mentioned, in its decision letter dated 14 October 2005 QPS advised that it considered that the audio tape of interview between Inspector Black and Chief Superintendent Benjamin was exempt under section 42(1A) of the FOI Act. By letter dated 29 March 2006, QPS confirmed that it was unable to locate a copy of the audio tape of Chief Superintendent Benjamin's interview with Inspector Black. QPS advised that it undertook searches of the FOI file, the Central Tapes Facility, Metropolitan South Regional Office (including inquiries with Chief Superintendent Benjamin), Ethical Standards Command and the QPS Solicitor, and that the searches were unsuccessful.
127. By letter dated 12 May 2006, QPS provided the statutory declarations of Inspector Costello of the Metropolitan South Regional Office and Acting Senior Sergeant Rann of the Internal Investigations branch, attesting to the searches performed. By letter dated 13 July 2006 QPS provided a further statutory declaration of Ms Marmo, Senior Administrative Officer of the QPS FOI and Privacy Unit, attesting to the fact that she had searched the FOI file and had not located the audio tape and that there was no record of the audio tape ever being received at the FOI and Privacy Unit.
128. In his covering report to Acting Senior Sergeant Rann's statutory declaration, Assistant Commissioner Stewart of Ethical Standards Command stated that the applicant's complaint which was the subject of the interview was dealt with exclusively on the COMPASS complaints management system. QPS advise that when complaints are dealt with in this way, audio tapes are not generally forwarded to Ethical Standards Command. Assistant Commissioner Stewart stated that the audio tape was not received at Ethical Standards Command and suggested searches be conducted at the Regional office. As sworn by Inspector Costello the audio tape could not be located at the Metropolitan South Regional Office. The audio tape was never received at the FOI and Privacy Unit as sworn by Ms Marmo.
129. I consider that it is reasonable to believe that the audio tape would be located at either Ethical Standards Command, Metropolitan South Regional Office, the Central Tapes Facility, the QPS solicitor or the FOI and Privacy Unit. Having regard to the information and statutory declarations provided by QPS, I am satisfied that QPS have performed searches at each of these locations and have not been able to locate the audio tape.
130. In relation to this item of the applicant's application, *vis-à-vis* the audio tape, there are reasonable grounds to believe that documents responsive to this part of the applicant's application existed at one time and should be in QPS' possession. However, I am satisfied that all reasonable steps have been taken to locate the audio tape and it cannot be found. I am also satisfied that QPS have searched the tapes index and there

is no record of the interview between Chief Superintendent Benjamin and Inspector Black. Accordingly, I find that all reasonable steps have been taken to locate an entry on the tapes index and it cannot be found. Additionally, I am unable to identify any further searches which it would be reasonable to require QPS to perform. Accordingly, I find that the searches undertaken by QPS in relation to this item of the applicant's application have been reasonable in all the circumstances of the case.

**Item 11**

131. The applicant submitted that Assistant Police Commissioner Benjamin took a complaint from him regarding Inspector Black and his request for transfer and consequently, an official complaint form should have been completed by Assistant Police Commissioner Benjamin. As previously noted, QPS have stated that the applicant's complaint was dealt with exclusively in the COMPASS complaints management system and as such, the official form of complaint is contained in that format. The complaint as recorded in the COMPASS system has been provided to the applicant as folios 1-6 and 15.
132. On the basis of the information provided by QPS, I consider that it is reasonable to conclude that the official complaint was prepared by Assistant Police Commissioner Benjamin exclusively on the COMPASS system and that there is no other official form of complaint held by QPS. The applicant has not provided any evidence or information, in addition to his general position that further documents must exist, to suggest that there exists a further complaint form than that already provided to him.
133. Accordingly, I am satisfied that there is no reasonable basis to believe that further documents responsive to this item of the applicant's application exist in QPS' possession or control.

**Item 12**

134. In addition to his general contention that further documents must exist, the applicant pointed out that in folio 325 of the documents released, there is mention that notes were made by Superintendent Hopgood in Police Diary B6707. At the request of this Office, further searches were undertaken by QPS at the Metropolitan South Region, the Wynnum District Office and the Central Exhibit Facility. These searches failed to locate Police Diary B6707 and QPS advised that Superintendent Hopgood had left the employ of QPS and was likely to have retained his diary.
135. I requested that QPS contact Superintendent Hopgood and by letter dated 13 November 2006, QPS advised that it had contacted Superintendent Hopgood who had located an entry in the diary which was responsive to the terms of the applicant's request. The relevant diary entry has been released to the applicant, subject to the removal of matter which was not relevant to the terms of the applicant's request.
136. The only specific issue, in addition to his general position, raised by the applicant regarding this item of his application, was in relation to the diary of Superintendent Hopgood. The applicant has not made further submissions regarding this item subsequent to the provision of the relevant part of the diary to him. As mentioned, searches for further documents responsive to this part of the applicant's request were also undertaken by QPS at the Metropolitan South Region, the Wynnum District Office and the Central Exhibit Facility and no further documents have been located.
137. On the basis of the searches performed by QPS, which yielded a document which is responsive to the applicant's specific submissions regarding this item, and in the absence of anything further from the applicant, I am satisfied that there are no

reasonable grounds to believe that further documents responsive to this part of the applicant's application exist in QPS possession or control. In addition, I am satisfied that QPS' searches have been reasonable in all the circumstances of the case.

**Item 13**

138. The applicant applied for access to *'The objection to transfer of [the applicant] submitted to Superintendent Wall by Inspector Black in April, May June or July 2002 as referred to in the Workcover report attached at Point 3....'*. QPS submitted that searches have been performed at the Metropolitan South Region, where both Inspector Black and the applicant were located, and no written objection was located.
139. In response to enquiries made by this Office, QPS has provided information that there is no standard form for objections to transfers and it is possible that the objection made was verbal. Apart from the reference in the WorkCover decision attached to his application, to the fact that Inspector Black objected to the applicant's transfer, the applicant has not provided any evidence to suggest that any responsive documents were, or should have been created.
140. I accept the submission of QPS that there is no standard written form for making objections to transfers and in the absence of any evidence from the applicant to the contrary, I am satisfied that there are no reasonable grounds to believe that documents responsive to this part of the applicant's application exist in QPS possession or control. Additionally, I consider that the searches undertaken by QPS have been reasonable in the circumstances and that if a written objection ever existed, it no longer exists or is unable to be located.

**Item 14**

141. In item 14, the applicant applied for *'Any written report email or other document that relates to my work performance compiled by Inspector Black'*. The applicant asserts that Inspector Black objected to his transfer on the basis of his work performance and there should subsequently be a written report regarding his alleged poor work performance.
142. QPS has contended that work performance documents are not released by QPS pursuant to the provisions of the FOI Act because the QPS Human Resources Management Policy allows for the provision of these documents under an alternative scheme. QPS contend that the applicant can gain access to documents relating to his work performance under another arrangement made by QPS.
143. Section 22(a) of the FOI Act provides as follows:

**22 Documents to which access may be refused**

*An agency or Minister may refuse access under this Act to—*

- (a) *a document the applicant can reasonably get access to under another enactment, or under arrangements made by an agency, whether or not the access is subject to a fee or charge*

144. In his letters dated 11 March 2007 and 5 April 2007, the applicant advised that he may shortly be separated from the QPS and consequently, would not have access to documents relating to his work performance. An officer of this organisation has contacted the Human Resources Management section of the Metropolitan South Regional Office and confirmed that officers who have separated from the QPS are not

precluded from making application for and receiving documents relating to their work performance. I am satisfied that any documents relating to the applicant's work performance are available under an alternative access arrangement made by QPS and I find that QPS are entitled to refuse access to documents relating to the applicant's work performance on this basis.

**Item 15**

145. The applicant submitted that he arrested many persons and that the index entries for these arrests must exist on the QPS mainframe. With his letter dated 11 March 2007, the applicant provided documentation that made reference to at least one arrest in the time frame stipulated in his application, and contended that that arrest, and others, should be recorded on the prosecutions index. On 22 June 2007, the applicant provided a court brief and bench charge sheet which records him as the arresting officer for an arrest during the relevant time. Also on 22 June 2007, the applicant provided an affidavit swearing to his recollection of other arrests which he made during the relevant time period.
146. QPS were requested to undertake further searches in relation to this item and QPS submitted that searches had been performed by both Expert Services, Information Resource Management and the Information Security Section, Information Management Division. QPS submitted that each of those areas interrogated the prosecutions index and have derived the same result. That is, that there are no entries listed on the prosecutions index in the applicant's name for the time period the applicant has requested.
147. During the course of the review I made further inquiries with QPS regarding the prosecutions index. QPS advised that the prosecutions index was designed to alert officers when they are required to attend court in relation to arrests they have made. It is not the case that every arrest is recorded on the prosecutions index. Once an arrest has been made and a CRISP (Crime Reporting Information System for Police) report created, it is at the discretion of the relevant police prosecutor to determine whether or not to enter a matter into the prosecutions index. It is then the responsibility of individual officers to monitor the prosecutions index to see if and when they are required to attend court or perform other duties in relation to a prosecution.
148. I understand that there are a number of reasons why each arrest is not recorded on the prosecutions index. For example, there may be insufficient evidence to proceed with the prosecution of a particular matter, or an offender has pleaded guilty in the first instance and police witnesses are not required, or a matter does not proceed to hearing for some reason. In such cases the matter may not be entered onto the prosecutions index. In smaller regions, prosecutors liaise directly with the arresting officer and may not enter the matter onto the prosecutions index.
149. I note QPS' further advice that matters which have been listed on the prosecutions index and have been finalised are deleted from the index every 18 months. The time period for which the applicant requested entries on the index is approximately three years before his FOI application was made and searches initially performed by QPS. Accordingly, any entries on the prosecutions index relevant to the applicant would have been deleted.
150. In response to my inquiries as to whether any of the data is retained once entries have been deleted, or whether the data on the prosecutions index is transferred or backed up, QPS stated that no data from finalised entries which have been deleted from the prosecutions index is retained. The rationale behind this twofold. The first reason is

that the system was not designed to provide officers with a source of statistics regarding the number of arrests they had made, as it was susceptible to inaccuracies when the correct officer is not recorded as the arresting officer, or arrests are made but are not recorded on the prosecutions index. Secondly, the relevant data where prosecutions are finalised is recorded elsewhere, for example, in the criminal history of the offender.

151. I accept the applicant's evidence that he made a number of arrests during the time period set out in this part of his application. However, the applicant has not provided me with any information which confirms that any arrests he made were recorded on the prosecutions index. At any rate, if any of the applicant's arrests were recorded on the prosecutions index, those entries would have been deleted prior to the date on which he made his initial access application.
152. I am satisfied, therefore, that there are no entries relevant to the applicant's request for the relevant time period currently recorded on the prosecutions index. I am satisfied that while there are reasonable grounds to believe that an entry or entries may have existed on the prosecutions index at one time, they no longer exist.
153. In addition, I am satisfied that the searches performed by QPS were reasonable in all the circumstances of the case and I am unable to identify any further searches which it would be reasonable to require QPS to perform.

**Item 19**

154. QPS were unable to locate any documents which were responsive to this part of the applicant's request. The applicant submitted that such a policy would have to exist in written form and should have been retained. QPS contended that extensive searches and inquiries have been undertaken at the Metropolitan South Region but have failed to locate a policy that relates to inter-district transfers.
155. The reference to Inspector Wall's policy in the WorkCover statement is as follows:

*The incumbent officer Superintendent Wall had a policy with regard to inter district transfers that all transfer applicants were to be assessed with regard to performance indicators and that sub standard officers' transfer applications were to be objected to.*
156. The reference to Inspector Wall's policy in the WorkCover statement does not confirm that the policy mentioned is a written policy or one that is adhered to by anyone other than Superintendent Wall. I consider that having regard to the context in which the policy is mentioned, it is likely to have been a personal policy of Superintendent Wall, may well not have been written, and that some verbal arrangement may have been in place.
157. Apart from the applicant's general contention that further documents responsive to this part of his application must exist, he has not provided any evidence or information which would suggest that Superintendent Wall's policy was a written policy and should be in QPS' possession. Based on the information provided by QPS, and in the absence of any evidence from the applicant to the contrary, I am satisfied that if a written policy ever existed, it no longer exists or is unable to be located. Additionally, I am satisfied that the searches performed by QPS have been reasonable in all the circumstances of the case.

**Item 20**

158. In support of his contention that further documents responsive to this item of his application must exist that have not been disclosed to him, the applicant noted that in an email dated 30 October 2002 a staff member of QPS stated that she had received the minutes of the Transfer Advisory Committee, and that such minutes have not been disclosed.
159. At my request, QPS conducted further inquiries with the Transfer Advisory Committee. As a result, QPS located one further document that is responsive to this part of the applicant's application. The document is a list of officers requesting transfer and includes a handwritten indication of whether the transfer is to be supported. QPS has released that document to the applicant.
160. QPS has submitted that this document essentially comprised the minutes of the Transfer Advisory Committee for the particular date requested by the applicant, and that there were no other minutes recorded for this meeting. QPS submitted that while the document does not record discussions which occurred, it records the decisions made by the Committee and that it is not unusual to record the decisions made by the Committee in this way.
161. On the basis of the information before me, I consider that it is reasonable to conclude that the document located is the only responsive document regarding the Transfer Advisory Committee meeting of the relevant date.
162. I am satisfied that the only document responsive to this part of the applicant's application has been released to him. In the absence of any evidence or information from the applicant to the contrary, I find that there are no reasonable grounds to believe that further documents responsive to this part of his application exist in QPS' possession or control. I am also satisfied that the searches undertaken by QPS have been reasonable in all the circumstances of the case.

**Item 21**

163. The applicant contends that Mr Thrupp read out to him, notes that Mr Thrupp had made about the applicant, but that these notes have not been provided. QPS has provided the information that Mr Thrupp is no longer employed by QPS. QPS submitted that the Human Services Officer who is currently employed at the Metropolitan South Region has searched all documents left by Mr Thrupp at the end of his employment but has not located any notes which are responsive to this part of the applicant's application.
164. It is my view that if any notes were made by Mr Thrupp about the applicant they are most likely to have been retained at the Human Resources section of the Metropolitan South Regional Office where Mr Thrupp was based. Mr Thrupp was a staff member of QPS and not a police officer. Although police officers are required to leave their police notebooks with QPS when separating from QPS, I understand that it is common for police officers to take their notebooks with them. In contrast, I have no reason to believe that Mr Thrupp would have taken any work related notes with him when he separated from QPS. I am satisfied that the only area where documents are likely to be held has been searched, and if any notes were in fact made by Mr Thrupp about the applicant, they no longer exist or are unable to be located.
165. I consider that the applicant's initial assertion that notes were read out to him by Mr Thrupp raise reasonable grounds to believe that there may at one time have been

documents in existence that are responsive to this part of the applicant's application. However, I am satisfied that if any responsive documents had been created and retained, they would be located in the Metropolitan South Region's Human Resources Section. As QPS have twice performed searches at this area, I am satisfied that no responsive documents can be located.

166. On this basis, I am satisfied that the searches undertaken by QPS for documents responsive to this part of his application have been reasonable in all the circumstances of the case. In addition, I am unable to identify any further searches which it would be reasonable to require QPS to perform.

#### **Item 24**

167. The documents located as a result of further searches at the Metropolitan South Regional Office, described above at paragraph 41 appear to address this part of the applicant's application and I do not consider that further documents responsive to this part of the applicant's application are likely to be in QPS' possession or control.
168. The applicant has not made further specific submissions regarding this item that are in addition to his general statement to the effect that he does not accept that no further documents exist that are responsive to this part of his application. I am satisfied that QPS have twice searched at the Metropolitan South Region, where responsive documents are likely to be held.
169. QPS have searched for documents in the relevant area and have located several further responsive documents, which appear to address the applicant's submission that responsive documents had not been disclosed to him. In the absence of any evidence or information from the applicant to the contrary, I find that there are no reasonable grounds to believe that further documents exist in QPS' possession or control that are responsive to this part of the applicant's application.

#### **Item 25**

170. Regarding the first part of item 25, the applicant submitted that folio 390 of the documents released to him show that 7 inquiries have been made in relation to the relevant vehicle and that records of these inquiries should therefore exist. As discussed above in paragraph 76, QPS advised in its letter dated 6 February 2007 that as a result of further searches performed by Information Security Services, six pages responsive to the terms of item 25 of the applicant's application were located.
171. This part of the applicant's application encompassed only records of computer enquiries made by members of QPS about his former vehicle, and several responsive documents have been located. The applicant has not raised any further issues regarding the sufficiency of QPS' searches in respect of this item since QPS has agreed to release the further documents located that are responsive to this part of his application.
172. With respect to the second part of item 25 of the applicant's application for '*any inquiry relating to [.....] (my former residence)*', QPS stated Expert Services performed searches for this part of the applicant's request but that it was unable to locate any inquiries recorded for the specified address.
173. By letter dated 9 January 2007 I directed QPS to undertake further searches for inquiries about the address specified in this part of the applicant's application and in accordance with the dates further specified in his letter dated 8 February 2006. By

letter dated 6 February 2007, QPS advised that it had again searched for any inquiries regarding the applicant's former residence made between 1 April 2005 and 1 June 2005 and had not been able to locate any relevant inquiries. I have obtained and examined the results of that search and am satisfied that none of the records of inquiries contain the address of the applicant's former residence.

174. Accordingly, I find that (apart from the further six pages located, which have been released to the applicant subject to the deletion of exempt matter) there are no reasonable grounds to believe that there are any further documents responsive to the terms of this part of the applicant's application in QPS' possession or control. In addition, I am satisfied that the searches undertaken by QPS have been reasonable in all the circumstances of the case.

## Part 2

175. This part of the applicant's application requested access specifically to emails sent and received by various officers within certain time periods.
176. While various emails have been located and provided to the applicant, he has asserted, during the course of this review, that there are further emails responsive to the second part of his application (item numbers 1-47) which have not been located by QPS. By letter dated 31 October 2005, QPS advised that internal emails are no longer backed up. QPS also advised, however, that some back-up tapes exist for older email records, depending on when the new computer rollout occurred for particular regions. QPS advised that the new computer rollout occurred in the Metropolitan South Region between March and September 2002. Accordingly, any emails which are responsive to the terms of the applicant's application that are still in existence could only be held on either back-up tapes created prior to 30 September 2002 or in the current email accounts of individual officers.

### Emails created prior to 30 September 2002 – Back-up tapes

177. In its letter dated 31 October 2005 QPS contended that to search back up tapes for emails responsive to the applicant's application as it stood, would amount to a substantial and unreasonable diversion of its resources.
178. Sub-sections 29(1) and (2) of the FOI Act provide as follows:

#### **29 Refusal to deal with application—agency's or Minister's functions**

- (1) *An agency or Minister may refuse to deal with an application for access to documents or, if the agency or Minister is considering 2 or more applications by the applicant, all the applications, if the agency or Minister considers the work involved in dealing with the application or all the applications would, if carried out—*
- (a) *substantially and unreasonably divert the resources of the agency from their use by the agency in the performance of its functions; or*
  - (b) *interfere substantially and unreasonably with the performance by the Minister of the Minister's functions.*
- (2) *Without limiting the matters to which the agency or Minister may have regard in making a decision under subsection (1), the agency or Minister must have regard to the resources that would have to be used—*
- (a) *in identifying, locating or collating the documents in the filing system of the agency or the Minister's office; or*

- (b) *in deciding whether to give, refuse or defer access to the documents, or to give access to edited copies of the documents, including resources that would have to be used—*
  - (i) *in examining the documents; or*
  - (ii) *in consulting with an entity in relation to the application; or*
- (c) *in making a copy, or edited copy, of the documents; or*
- (d) *in notifying any interim or final decision on the application.*

179. Assistant Information Commissioners of this Office invited the applicant to identify individuals listed in his initial application in respect of whom further searches could be undertaken. Assistant Information Commissioner Rangihaeata advised the applicant by letter dated 15 February 2006 that QPS had provided information that the new computer rollout occurred for the Metropolitan South Region over the period from March to September 2002 and requested that he identify any further specific emails created before 30 September 2002, to which he wished to pursue access. By letter dated 12 February 2006 the applicant withdrew his application in respect of certain requests and refined the remaining parts of his application by reducing the time periods in respect of which he wished further searches to be conducted.

180. By letter dated 23 March 2006 Assistant Information Commissioner White provided the revised dates of the application to QPS and requested its response as to whether it still contended that to search back-up tapes for the emails requested dated prior to 30 September 2002 would constitute a substantial and unreasonable diversion of resources. QPS advised that based on the revised dates provided by the applicant and taking into account his requests for emails between different officers over the same time period, the number of days for which emails were requested amounted to 274.

181. QPS has stated that back-up tapes contain one day of emails and that it takes two hours to load and run each back-up tape. In a letter dated 12 April 2006 QPS stated as follows:

*In relation to the issue of [the applicant's] revised request for search of back-up tapes for various dates provided between 1997 and 2002, it is submitted that the searches involved would still constitute a substantial and unreasonable diversion of resources. When calculating the time involved, advice has been received from the Information Security Section (ISS) that it is actually incorrect to assume that searching different officers' e-mail accounts for the region over the same time frame would not add extra time to the searching required.*

*ISS has advised that this request would constitute at least 12.2 weeks of searching time, amounting to a cost of approximately \$27,500 to the QPS. It should again be emphasised that this is a conservative estimate.*

182. In his letter dated 12 February 2006 the applicant contended to search a back-up tape should take 5-10 minutes in total.

183. I understand that to load a back-up tape for the period the applicant has requested involves reconstituting information from a magnetic tape onto a hard drive, and that the amount of information stored for an entire day is considerable. The information, once reconstituted, must then be searched for relevant text. I accept the information provided by QPS that to load a back-up tape for a single day takes two hours. Having regard to the number of days for which the applicant wishes emails to be searched and the time required to load and search back-up tapes, I am satisfied that for QPS to

search back-up tapes for the emails requested would take at least 10 working weeks. To require QPS to search the relevant tapes would involve the use of considerable QPS resources.

184. I find, therefore, that QPS were entitled to refuse to deal with this part of the applicant's application on the basis that to do so would substantially and unreasonably divert the resources of the QPS from their use in the performance of its functions.

#### **Other emails**

185. As I have noted, QPS has provided the information that internal emails are no longer backed-up. I requested therefore, that QPS confirm that it had contacted each of the officers, still employed by QPS, that are named in the applicant's application to ascertain whether emails responsive to the terms of his application had been retained in current email accounts personally by the officers. As previously noted, in the course of this review the applicant withdrew his application for access to emails sent or received by certain officers. Thus, it is only necessary to deal with those parts of the applicant's application which requests emails sent or received by the following officers:

- Superintendent Hopgood
- Inspector Flanagan
- Constable Donohue
- Constable Brandon
- Sergeant Moran
- Sergeant Servin
- Senior Sergeant Halloran
- Assistant Commissioner Rynders
- Sergeant Norrish
- Senior Sergeant McIntosh
- Superintendent Wall
- Superintendent Cooper
- Sergeant Bolderrow
- Senior Sergeant Harm
- Sergeant Manning
- Constable Hale
- Inspector Pettinger
- Inspector Black
- Sergeant Downie
- Inspector Hogan
- Senior Sergeant Jones
- Sergeant Thomas
- Sergeant Beauchamp
- Inspector McDonald
- Inspector Hopkins
- Sergeant Collins
- Sergeant Anderson
- Inspector Wacker
- Sergeant Peterson
- Constable Saunders
- Sergeant Lane
- Constable Sparkes

186. In response to my inquiry about what searches it had undertaken QPS stated that the primary mechanism for searching for emails responsive to this part of the applicant's request was forwarding tracers (which are written requests sent to areas or individuals of QPS which are likely to hold responsive documents) to relevant areas and individuals. In addition, officers not contacted by tracer, who are still employed by QPS, were individually contacted by email to ascertain whether they had personally retained any responsive emails.
187. QPS has confirmed that the following officers separated from QPS before the date of the applicant's application.
- Superintendent Hopgood
  - Inspector Flanagan
  - Constable Donohue
  - Constable Brandon
  - Sergeant Moran
  - Sergeant Servin
  - Senior Sergeant Halloran
188. Accordingly, individual email accounts for each of these officers no longer exist and did not exist at the time of the applicant's application. Therefore, any emails which may still be in existence that were sent or received by the officers listed above would only be located on back-up tapes created prior to 30 September 2002. As I have found that to retrieve emails from back-up tapes in this instance would be a substantial and unreasonable diversion of QPS' resources, I am satisfied that no further emails in relation to the officers above are able to be retrieved.
189. Tracers were sent by QPS to the Assistant Commissioner, Metropolitan South Region; Ethical Standards Command; Police Prosecutions; South Brisbane District Office; Employee Assistance Service; Cleveland Station; Information Security Section; Holland Park Station; Human Resource Management Branch; the Manager, Information Management Division; Camp Hill Police Station; and the Human Services Officer, Metropolitan South Region.
190. Among these tracers, requests were sent individually to:
- Assistant Commissioner Rynders
  - Sergeant Norrish
  - Senior Sergeant McIntosh
  - Superintendent Wall
  - Superintendent Cooper
  - Sergeant Bolderrow
  - Senior Sergeant Harm

The following officers were contacted individually by email:

- Sergeant Manning
- Constable Hale
- Inspector Pettinger
- Inspector Black
- Sergeant Downie
- Inspector Hogan
- Senior Sergeant Jones

- Sergeant Thomas
- Sergeant Beauchamp
- Inspector McDonald
- Inspector Hopkins
- Sergeant Collins
- Sergeant Anderson
- Inspector Wacker
- Sergeant Peterson
- Constable Saunders
- Sergeant Lane
- Constable Sparkes

191. Assistant Information Commissioner Newbery requested that QPS provide evidence of the searches performed in relation to each of the officers who were contacted individually by email. QPS provided either email responses or file notes of responses received verbally, indicating whether or not any emails had been retained by each of the officers contacted by email.
192. Emails were located by Inspector Hogan and Inspector McDonald. However, these emails were previously located and released to the applicant as a result of his initial application as folios 509-517. Each of the other officers, still employed by QPS, have responded and advised that they have not retained any emails responsive to the terms of this part of the applicant's application.
193. I am satisfied that each of the officers listed in the applicant's application who are still employed at QPS have been contacted either by a tracer request or by email personally. Given the responses from each officer, I am satisfied that apart from those already provided to him, no further emails responsive to the terms of the applicant's application exist in QPS' possession or control. In his letter dated 12 February 2006, the applicant made submissions regarding emails which in all probability, once existed. For example, there are documents which have been released to the applicant which refer to emails which have not been located. I acknowledge that the applicant's submissions raise reasonable grounds to believe that emails responsive to this part of his application once existed. However, I am satisfied, on the material before me, that any responsive emails no longer exist.
194. I note that items numbered 1, 14, 21, 22, 37 and 40 of Part 2 of the applicant's application are requests for emails sent by particular officers to 'any person'. Accordingly, it is possible that emails sent by the officers named in those items to persons not named elsewhere in the applicant's application may exist in the email accounts of persons not named in his application.
195. It is my view however, that the applicant has not provided any submissions or evidence to show that there are reasonable grounds to believe that emails would exist from the officers named in items 1, 14, 21, 22, 37 and 40 in the email accounts of persons not named in his application. On the material before me, it appears that officers named in his application are likely to be the only officers which would hold emails that refer to the applicant, given their involvement in the matters canvassed by his application. In addition, it is not possible to know who the potential recipients of responsive emails are, when the emails do not exist in the email accounts of those officers named in the application. I consider that the searches undertaken by QPS for emails responsive to Part 2 of the applicant's application, as outlined above, have been reasonable in all the circumstances of the case.

## Decision

196. I vary the decision under review, (being the deemed decision of the QPS refusing access to documents sought in the applicant's FOI access application dated 29 July 2005), by deciding that:

- segments of matter contained on folios 1-7, 11-100, 101, 103-113, 114-118, 119-146, 152, 154-174, 175, 177-187, 188-192, 193-213, 214, 216-226, 227-231, 232-307, 321-370, 380-386, 390-394, 400-418, 421-502, 509-519, and the whole of folios 102, 176, 215, and 395-399 are exempt from disclosure under section 44(1) of the FOI Act
- matter contained in each of the audio tapes responsive to item 1 of the applicant's application (described at paragraph 43) which would identify persons involved in several domestic violence incidents, and information which comprises the personal affairs of other officers is exempt from disclosure under section 44(1) of the FOI Act
- matter contained in further documents located that are responsive to item 24 of the applicant's application (described at paragraphs 41 and 42) which would reveal the identity of a person who made a complaint to QPS and a person who was the subject of a complaint to QPS is exempt from disclosure under section 44(1) of the FOI Act
- matter contained under the heading 'Unit code' on page 2 of the further documents located in response to item 25 of the applicant's application is exempt under section 46(1)(b) of the FOI Act
- matter contained in the interview between Sergeant McIntosh and Inspector Flanagan which concerns Constable Belz work performance is exempt from disclosure under section 40(c) of the FOI Act
- there are either:
  - no reasonable grounds to believe that further documents responsive to the terms of the applicant's application are in QPS' possession or control; or
  - where there are reasonable grounds to believe that responsive documents may once have existed, they have either not been retained or are unable to be located; and
  - the searches undertaken by QPS have been reasonable in all the circumstances of the case
- QPS was entitled to refuse access to documents responsive to item 14 of the applicant's application under section 22(a) of the FOI Act
- QPS was entitled to refuse to deal with that part of the applicant's application which requires the search of back-up tapes under section 29 of the FOI Act

197. I have made this decision as a delegate of the Information Commissioner, under section 90 of the *Freedom of Information Act* 1992.

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**V Corby**  
**Assistant Information Commissioner**

**Date: 29 June 2007**