

OFFICE OF THE INFORMATION COMMISSIONER (QLD)

Decision No. 96016
Application S 156/93

Participants:

CAROLE FERRIER

Applicant

QUEENSLAND POLICE SERVICE

Respondent

DECISION AND REASONS FOR DECISION

FREEDOM OF INFORMATION - refusal of access - documents of the former Special Branch of the Queensland Police Service, relating to the applicant - whether certain documents qualify for exemption under s.42(1)(b) of the *Freedom of Information Act 1992 Qld* - whether matter concerning the affairs of persons other than the applicant is exempt matter under s.44(1) of the *Freedom of Information Act 1992 Qld* - whether matter concerning the shared personal affairs of the applicant and other persons is exempt from disclosure to the applicant under s.44(1) of the *Freedom of Information Act 1992 Qld*.

FREEDOM OF INFORMATION - refusal of access - names of targeted organisations - whether disclosure could reasonably be expected to prejudice a system or procedure for the protection of persons or property - application of s.42(1)(h) of the *Freedom of Information Act 1992 Qld*.

FREEDOM OF INFORMATION - refusal of access - information provided to the respondent by other law enforcement agencies - information more than 16 years old - whether information retains the necessary quality of confidence as against the applicant - whether exempt matter under s.38(a), s.38(b) or s.46(1)(b) of the *Freedom of Information Act 1992 Qld* - whether s.42(1)(b) of the *Freedom of Information Act 1992 Qld* extends to the routine interchange of information between law enforcement agencies - whether disclosure of the information could reasonably be expected to cause prejudice of a kind referred to in s.42(1)(e), s.42(1)(f) or s.42(1)(h) of the *Freedom of Information Act 1992 Qld*.

FREEDOM OF INFORMATION - refusal of access - information provided by the respondent to another law enforcement agency - whether s.38(a), s.38(b) or s.46(1)(b) of the *Freedom of Information Act 1992* Qld are capable of applying - whether disclosure of the information could reasonably be expected to cause prejudice of a kind referred to in s.42(1)(e), s.42(1)(f) or s.42(1)(h) of the *Freedom of Information Act 1992* Qld.

FREEDOM OF INFORMATION - respondent's refusal to confirm or deny the existence of documents, falling within the terms of the applicant's FOI access application, which post-date the winding-up of the Special Branch - whether such documents, if they existed, would contain exempt matter under s.42(1) of the *Freedom of Information Act 1992* Qld - consideration of s.35 of the *Freedom of Information Act 1992* Qld.

Freedom of Information Act 1992 Qld s.6, s.7, s.35, s.38, s.38(a), s.38(b), s.41(1), s.42(1), s.42(1)(a), s.42(1)(b), s.42(1)(e), s.42(1)(f), s.42(1)(h), s.42(2), s.44(1), s.46(1)(b)

"B" and Brisbane North Regional Health Authority, Re (1994) 1 QAR 279

Byrne and Gold Coast City Council, Re (1994) 1 QAR 477

Cannon and Australian Quality Egg Farms Limited, Re (1994) 1 QAR 491

"EST" and the Department of Family Services and Aboriginal and Islander Affairs, Re
(Information Commissioner Qld, Decision No. 95020, 30 June 1995, unreported)

McEniery and the Medical Board of Queensland, Re (1994) 1 QAR 349

Shepherd and Department of Housing, Local Government & Planning, Re (1994) 1 QAR 464

Smith and Administrative Services Department, Re (1993) 1 QAR 22

Stewart and Department of Transport, Re (1993) 1 QAR 227

"T" and Queensland Health, Re (1994) 1 QAR 386

DECISION

I vary the decision under review (being the decision made on behalf of the respondent by Assistant Commissioner G J Williams on 29 July 1993), by finding that the following matter (described by reference to folio numbers used in the decision under review) is not exempt from disclosure to the applicant under the *Freedom of Information Act 1992* Qld:

- (a) the first, third, fourth, fifth, twenty-ninth and thirtieth file names, on the list of files in folio 7;
- (b) folios 25-26 and 34-36;
- (c) the matter deleted from folios 18, 37 and 68; and
- (d) the last line of the fourth paragraph, and the last two lines of the fifth paragraph, of folio 40.

Date of decision: 19 August 1996

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F N ALBIETZ
INFORMATION COMMISSIONER

TABLE OF CONTENTS

	Page
<u>Background</u>	1
<u>External review process</u>	2
<u>'Sufficiency of search' issue</u>	3
<u>Relevant provisions of the FOI Act</u>	4
<u>Special Branch documents</u>	6
Documents which would disclose sources of information	7
Documents containing information about other individuals	8
Names of targeted organisations	10
File names	13
Interaction with other investigative bodies	13
<u>'Neither confirm nor deny' issue</u>	15
<u>Conclusion</u>	16

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REASONS FOR DECISION

Background

1. The applicant seeks review of the respondent's decision to refuse her access, under the *Freedom of Information Act 1992 Qld* (the FOI Act), to a number of documents and parts of documents relating to her. These documents (which I will refer to as the "Special Branch documents") were created in the course of the operations of the former Special Branch of the Queensland Police Service (the QPS), or in the course of the winding up of the Special Branch.
2. The applicant also seeks review of the respondent's decision to neither confirm nor deny the existence of documents which may or may not have been created since the winding up of the Special Branch. The QPS indicates that a number of the functions of the Special Branch have been taken over by the Task Force-Bureau of Criminal Intelligence Queensland and, particularly, by the Counter-Terrorist Section of the QPS. The QPS neither confirms nor denies the existence of any documents relating to the applicant which post-date the winding up of the Special Branch.
3. Ms Ferrier applied to the QPS on 19 January 1993 for "*personal files, reports on myself, Special Branch files or reports or any other documentation held by the Service in relation to me*". The initial decision on behalf of the QPS was made by Superintendent J B Doyle and communicated to the applicant's solicitor by letter dated 25 June 1993. Superintendent Doyle determined that of 68 folios of Special Branch documents located, 38 should be released in full, 20 should be released in part (i.e., subject to the deletion of exempt matter) and 10 should not be released. The exemption provisions relied on were s.38, s.41(1), s.42(1)(b), s.42(1)(e), s.42(1)(f), s.42(1)(h), s.44(1) and s.46(1)(b) of the FOI Act. In addition, Superintendent Doyle stated:

Whilst there was no successor to the Special Branch, per se, some of its functions, namely intelligence gathering and V.I.P. protection, have been incorporated into Task Force - Bureau of Criminal Intelligence Queensland.

In the case of intelligence documents, however, it is necessary to consider and verify their true status, sensitivity and merits in accordance with the [FOI] Act. Bearing in mind that intelligence is the lifeblood of the criminal investigation process, the sources and nature of intelligence must therefore remain confidential in order to protect its value. The disclosure of what may appear on the surface to be information of little importance could destroy or, at least, prejudice the usefulness of intelligence.

I hasten to add that with this being said, you should not assume that there are intelligence documents held by this Service which concern your client or her activities (other than, of course, your client's Special Branch file). My explanation is required only for the purpose of this record and because of the nature of your request.

As a consequence, and in accordance with section 35 of the Act, I neither confirm nor deny the existence of any intelligence documents relating to your client. However, if any such document did exist it would be exempt pursuant to section 42 of the Act.

4. By a letter from her solicitor dated 13 July 1993, Ms Ferrier applied for internal review of Superintendent Doyle's decision. The internal review was conducted by Assistant Commissioner G J Williams, who, by letter dated 29 July 1993, communicated his decision which, in essence, affirmed the decision of Superintendent Doyle. By letter dated 17 August 1993, Ms Ferrier's solicitors applied on her behalf for external review, under Part 5 of the FOI Act, of the decision given by Assistant Commissioner Williams.

External review process

5. The Special Branch documents were obtained and examined. Attempts were then made, by way of informal consultation with the participants, to narrow the matters in issue. Although conferences between my staff and the representatives of both participants led to some narrowing of the matters in issue, it ultimately became clear that not all matters in issue could be resolved informally. I therefore invited a submission and/or evidence from the QPS in support of its case. The QPS lodged a lengthy submission together with a statement of Detective Inspector Peter Carlyle Coyle, the officer in charge of the Counter-Terrorist Section of the QPS. A copy of this material (edited to remove references to matter claimed by the QPS to be exempt) was provided to the applicant, who was invited to lodge a submission and/or evidence in reply. I have received no material from the applicant.
6. I also invited the applicant to lodge material in relation to the 'neither confirm nor deny' issue. In response, the solicitor for the applicant submitted that it was not possible for his client to make a submission when the QPS would neither confirm nor deny whether any documents exist. I accept that the operation of s.35 places an applicant, who is confronted with a response of this type from an agency, in a difficult position. I discussed some of the difficulties which arise in such cases in *Re "EST" and the Department of Family Services and*

Aboriginal and Islander Affairs (Information Commissioner Qld, Decision No. 95020, 30 June 1995, unreported). I responded to the applicant's solicitor by providing a copy of *Re "EST"* and drawing his attention particularly to paragraph 20 of that decision, where I made the following observations:

In a review of an ordinary refusal of access decision, the applicant for access is necessarily disadvantaged, in the extent to which meaningful submissions can be made about the exempt status of matter in issue, by a lack of precise knowledge as to the nature of the matter in issue. That disadvantage is exacerbated in a review of a decision to invoke a s.35 "neither confirm or deny" response. The review must largely proceed in private between the Information Commissioner and the respondent. Where requested documents do exist, I will call for and examine them, and where doubt exists, debate the merits of the claims for exemption with the respondent. If the requested documents do not exist, the debate will be over the merits of a claim for exemption of a notional document of the kind to which the applicant has requested access. The procedures adopted vis-à-vis the applicant should, so far as practical, not be varied according to whether a requested documents does or does not exist, as that may in effect give information as to the existence or non-existence of a requested document. The applicant's opportunity to participate in the review must necessarily be limited to submitting evidence or arguments based on what the applicant knows or believes about the documents to which access has been requested, and/or in response to such information as is disclosed in the respondent's reasons for decision, or in any evidence or submissions filed by the respondent which are able to be phrased in such a way that they give no indication as to the existence or non-existence of a requested document (where that is not practicable, the respondent's evidence and submissions necessarily have to be given in private, usually without reference to them being made in the Information Commissioner's subsequent reasons for decision).

7. I provided the applicant with a copy of the Charter of the QPS Counter-Terrorist Section and again invited the applicant to make any submission she wished in relation to the 'neither confirm nor deny' issue. I have received no submission from the applicant in relation to this issue.

'Sufficiency of Search' issue

8. One matter raised by the applicant in the course of the review was whether the QPS had located and dealt with all documents falling within the terms of her FOI access application. The applicant considered that there were gaps in her Special Branch file, stretching over periods of years in which she had been politically active, and that she could not see any reason why surveillance of her activities would have been any less during those years than in others. She also stated that photographs had been taken of her in the course of rallies and marches, and thought it likely that she had been photographed by QPS officers. I required the QPS to undertake further searches, in light of Ms Ferrier's comments, for documents which might fall within the terms of her FOI access application. Those searches were carried out but no other documents falling within the terms of Ms Ferrier's FOI access application were located. I wrote to the applicant on 25 August 1995, advising her of the outcome of the further searches. The applicant has not further pressed this 'sufficiency of search' issue.

9. I considered my jurisdiction, and powers on review, in respect of 'sufficiency of search' issues in *Re Smith and Administrative Services Department* (1993) 1 QAR 22 at pp.26-42 and *Re Shepherd and Department of Housing, Local Government & Planning* (1994) 1 QAR 464 at p.466 (paragraphs 7-8) and pp.469-470 (paragraphs 18 and 19). In such cases, there are two questions which I must consider. First, 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). Secondly, if that it is the case, whether the search efforts made by the agency to locate such documents have been reasonable in all the circumstances of the particular case. On the basis of the information provided by the QPS, I find that there are no reasonable grounds to believe that further documents falling within the terms of Ms Ferrier's FOI access application exist and are held by the QPS. Further, I find that the search efforts made by the QPS to locate any further documents have been reasonable in all the circumstances.

Relevant provisions of the FOI Act

10. The following provisions of the FOI Act are relevant to my decision in this external review:

Information as to existence of certain documents

35.(1) Nothing in this Act requires an agency or Minister to give information as to the existence or non-existence of a document containing matter that would be exempt matter under section 36, 37 or 42.

(2) If an application relates to a document that includes exempt matter under section 36, 37 or 42, the agency or Minister concerned may give written notice to the applicant—

- (a) that the agency or Minister neither confirms nor denies the existence of that type of document as a document of the agency or an official document of the Minister; but*
- (b) that, assuming the existence of the document, it would be an exempt document.*

(3) If a notice is given under subsection (2)—

- (a) section 34 applies as if the decision to give the notice were the decision on the application mentioned in that section; and*
- (b) the decision to give the notice were a decision refusing access to the document because the document would, if it existed, be exempt.*

Matter affecting relations with other governments

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

- (a) cause damage to relations between the State and another government; or*

- (b) *divulge information of a confidential nature that was communicated in confidence by or on behalf of another government;*

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

Matter relating to deliberative processes

41.(1) Matter is exempt matter if its disclosure—

- (a) *would disclose—*
- (i) *an opinion, advice or recommendation that has been obtained, prepared or recorded; or*
- (ii) *a consultation or deliberation that has taken place;*
- in the course of, or for the purposes of, the deliberative processes involved in the functions of government; and*
- (b) *would, on balance, be contrary to the public interest.*

Matter relating to law enforcement or public safety

42.(1) Matter is exempt matter if its disclosure could reasonably be expected to—

- ...
- (b) *enable the existence or identity of a confidential source of information, in relation to the enforcement or administration of the law, to be ascertained; or*
- ...
- (e) *prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law (including revenue law); or*
- (f) *prejudice the maintenance or enforcement of a lawful method or procedure for protecting public safety; or*
- ...
- (h) *prejudice a system or procedure for the protection of persons property or environment; ...*

Matter affecting personal affairs

44.(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.

(2) Matter is not exempt under subsection (1) merely because it relates to information concerning the personal affairs of the person by whom, or on whose

behalf, an application for access to a document containing the matter is being made.

Matter communicated in confidence

46.(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.*

11. I will first consider the Special Branch documents before dealing with the 'neither confirm nor deny' issue.

Special Branch documents

12. The Special Branch was a unit of the QPS disbanded in 1989, following recommendations of the Fitzgerald Inquiry. The function of the Special Branch was explained, and the recommendations of the Inquiry set out, in the following passages from the Fitzgerald Report (at pp.242-243):

This Unit was established to gather intelligence on individuals or groups regarding threats to democratic government, peace and order including terrorism, espionage and subversive activity, whether that be criminal or political. This Commission reviewed data held by the Branch, and concluded that the intelligence gathering capacity of the Unit was limited, systems were out of date, and that past rumours of politically inspired intelligence gathering on a wide scale could not be substantiated, (though basic information was obtained from all Parliamentarians to assist in the event of a threat). Other criminal intelligence held was in inaccessible manual form.

The major role of the Branch in recent years has been VIP protection and escort. There is no good reason why this function cannot in future be performed by the Witness Protection Unit of the Criminal Justice Commission. The intelligence responsibility of Special Branch could best be incorporated into a revised central information bureau for the Police Force.

The Special Branch is the Police Force's official ASIO liaison point for mutually agreed information exchange in terms of a formal but voluntary agreement between these two bodies. The detailed review of intelligence systems and needs within the Criminal Justice Commission and the Police Force will, however, establish the proper liaison point or points for the exchange of information with ASIO in future. Once this is clarified the Special Branch should be abolished.

13. Apparently, Ms Ferrier came to the attention of the Special Branch through her engagement in non-mainstream political activities in the 1970s and 1980s. Most of the documents containing or comprising the matter in issue in this review were held on the Special Branch file maintained on Ms Ferrier during that period. In addition, a number of documents which refer to Ms Ferrier, among others, were created in the course of the winding up of the Special Branch. Ms Ferrier has already been given access to some documents and parts of documents from her Special Branch file. I will deal with the matter remaining in issue in five groups.

Documents which would disclose sources of information

14. Folios 17, 19, 20 and 23 are records of information supplied to the Special Branch in the period 1979-1983. The QPS contends that these folios are exempt matter under s.42(1)(b) of the FOI Act, which is designed to protect confidential sources of information.
15. In *Re McEniery and Medical Board of Queensland* (1994) 1 QAR 349 at pp.356-357 (paragraph 16), I identified the following requirements which must be satisfied in order to establish that matter is exempt under s.42(1)(b) of the FOI Act:
- (a) there must exist a confidential source of information;
 - (b) the information which the confidential source has supplied (or is intended to supply) must relate to the enforcement or administration of the law; and
 - (c) disclosure of the matter in issue could reasonably be expected to—
 - (i) enable the existence of a confidential source of information to be ascertained; or
 - (ii) enable the identity of the confidential source of information to be ascertained.
16. A "confidential source of information", for the purposes of s.42(1)(b), is a person who supplies information on the understanding, express or implied, that his or her identity will remain confidential: see *Re McEniery* at p.358 (paragraphs 20-21). As to the indicia of an implied understanding that the identity of a source of information will be treated in confidence, see *Re McEniery* at pp.361-364 (paragraphs 26-34) and p.371 (paragraph 50). Given the nature of the information recorded, and the circumstances of its supply to the Special Branch (as evidenced by the documents), I find that the information contained in folios 17, 19, 20 and 23 was supplied on the understanding that the identities of its sources would remain confidential.
17. I also consider that the information contained in folios 17, 19, 20 and 23 relates to the enforcement or administration of the law. The Special Branch was intended to perform a preventative law enforcement role. One of its key functions was to identify, and monitor the activities of, persons and organisations who might have intended to break the law, in an effort to prevent breaches of the law from occurring. To that end, it collected background, 'intelligence' information, relevant to its ongoing monitoring role. The information contained in folios 17, 19, 20 and 23 is of that kind, and I find that the second requirement for exemption under s.42(1)(b) of the FOI Act is established.
18. I must therefore consider whether disclosure of the matter recorded in those folios could reasonably be expected to enable the identity of a confidential source of information to be ascertained. The correct approach to the application of the phrase "could reasonably be expected to" is explained in *Re Cannon and Australian Quality Egg Farms Limited* (1994) 1 QAR 491 at p.515 (paragraphs 62-63). The test embodied in that phrase calls for the decision maker to discriminate between unreasonable expectations and reasonable expectations, between what is

merely possible (e.g. merely speculative/conjectural expectations) and expectations which are reasonably based, i.e., expectations for the occurrence of which real and substantial grounds exist.

19. The information in issue must have been obtained through conversations which the suppliers of the information have had either with Ms Ferrier herself or persons connected with her. The information is more than ten years old and would appear to be of little consequence now. However, it is possible that Ms Ferrier might be able to link particular information with her recollection of events at the time, and thereby identify the sources of the information. While I would not wish to overrate the likelihood of identification, I have come to the conclusion that there are real and substantial grounds for believing that disclosure of folios 17, 19, 20 and 23 could enable the identification of the sources of the information recorded in those folios. I therefore consider that the third requirement of s.42(1)(b) is satisfied.
20. There is no public interest test incorporated into s.42(1)(b) of the FOI Act, unless one of the exceptions referred to in s.42(2) applies. There is nothing before me which would suggest that s.42(2) applies in this case. I find that folios 17, 19, 20 and 23 are exempt matter under s.42(1)(b) of the FOI Act.

Documents containing information about other individuals

21. The QPS contends that information in a number of folios, which is about people other than Ms Ferrier, is exempt from disclosure to Ms Ferrier under s.44(1) of the FOI Act. The terms of s.44(1) are set out at paragraph 10 above. As to the meaning of the phrase "personal affairs of a person", see *Re Stewart and Department of Transport* (1993) 1 QAR 227 at p.249 and following. Whether or not matter contained in a document comprises information concerning an individual's personal affairs is essentially a question of fact, to be determined according to the proper characterisation of the information in question. Some of the matter claimed to be exempt relates solely to the affairs of persons other than Ms Ferrier, while the balance relates to the shared personal affairs of Ms Ferrier and other persons.
22. It seems, from the portion of folio 29 disclosed to Ms Ferrier, that the matter deleted from folio 29 was obtained for the purpose of attempting to identify people who were associating with Ms Ferrier at her home. However, the nature of the information deleted from folio 29 (the names and addresses of registered owners of motor vehicles parked near Ms Ferrier's home on a certain date - being persons who may or may not have had anything to do with Ms Ferrier on that day) is such that, in my opinion, it must be properly characterised as information which, in itself, concerns only the personal affairs of the registered owners, and not as information which concerns shared personal affairs (i.e., shared with Ms Ferrier). The information deleted from folio 29 is *prima facie* exempt from disclosure under s.44(1) of the FOI Act, as information which concerns the personal affairs of persons other than the applicant for access, subject to the application of the public interest balancing test incorporated in s.44(1). The applicant has not referred me to any public interest considerations which favour the disclosure of matter of the kind deleted from folio 29, and I am not aware of any that would be sufficiently strong to outweigh the public interest in protecting the privacy of individuals mentioned in Special Branch records in such a context. I find that the matter deleted from folio 29 is exempt matter under s.44(1) of the FOI Act.
23. Most of the matter deleted from folio 40, and all of the matter deleted from folio 44, is information which solely concerns the personal affairs of persons other than the applicant. It consists of information about other persons under investigation by, or who had come to the notice of, the Special Branch. The matter deleted from folio 40 contains details of the activities of a

person, including the person's political activities. (There are two small segments of matter on folio 40 which concern shared personal affairs of the applicant and another person. Those segments are dealt with in paragraph 26 below.) The information deleted from folio 44 is the names of three persons who are said (in the parts of folio 44 which have been disclosed to Ms Ferrier) to be "well known for their left wing ideologies, affiliations and associations". In my view, the information deleted from folio 40 (except for the two small segments dealt with in paragraph 26 below) and from folio 44, is information which solely concerns the personal affairs of persons other than the applicant and I do not consider that there is any public interest in its disclosure which could outweigh the public interest in protecting the privacy of those persons. I therefore find that this matter is exempt under s.44(1) of the FOI Act.

24. The matter deleted from folios 22, 33, 39 and 53 relates not only to the affairs of other persons, but also to the affairs of Ms Ferrier. The matter records that Ms Ferrier has lived or associated with a number of persons. The context in which these persons are named makes it clear that they were regarded as "radicals", considered worthy of attention by the Special Branch. This matter concerns the shared personal affairs of Ms Ferrier and the persons named. Whether or not it is exempt matter under s.44(1) of the FOI Act is to be determined according to the principles explained in *Re "B" and Brisbane North Regional Health Authority* (1994) 1 QAR 279 at pp.343-345 (paragraphs 172-178), in particular the following (from p.344):

... The correct sense of s.44(2) would be conveyed by paraphrasing it as — matter is not exempt under s.44(1) purely by reason that it relates to information concerning the personal affairs of the applicant for access.

176. Thus, if matter relates to information concerning the personal affairs of another person as well as the personal affairs of the applicant for access, then the s.44(2) exception to the s.44(1) exemption does not apply. The problem here arises where the information concerning the personal affairs of the applicant is inextricably interwoven with information concerning the personal affairs of another person. The problem does not arise where some document contains discrete segments of matter concerning the personal affairs of the applicant, and discrete segments of matter concerning the personal affairs of another person, for in those circumstances:

- (a) the former will fall within the s.44(2) exception;*
- (b) the latter will be exempt under s.44(1) (unless the countervailing public interest test applies to negate the prima facie ground of exemption); and*
- (c) s.32 of the FOI Act can be applied to allow the applicant to have access to the information concerning the applicant's personal affairs, by the provision of a copy of the document from which the exempt matter has been deleted.*

Where, however, the segment of matter in issue is comprised of information concerning the personal affairs of the applicant which is inextricably interwoven with information concerning the personal affairs of another person, then:

- (a) severance in accordance with s.32 is not practicable;*
- (b) the s.44(2) exception does not apply; and*
- (c) the matter in issue is prima facie exempt from disclosure to the applicant according to the terms of s.44(1), subject to the*

application of the countervailing public interest test contained within s.44(1).

25. The applicant is assisted by s.6 of the FOI Act, which provides that the fact that a document contains matter relating to the personal affairs of the applicant for access is an element to be taken into account in deciding whether it is in the public interest to grant access to the applicant. However, the public interest in the applicant knowing the identities of the persons whom the Special Branch believed she associated or lived with some 16-19 years ago, is not, in my opinion, sufficient to outweigh the public interest in protecting the privacy of individuals mentioned in Special Branch files in a context which makes it clear that those persons were regarded as "radicals", considered worthy of attention by the Special Branch. I find that the matter remaining in issue on folios 22, 33, 39 and 53 is exempt matter under s.44(1) of the FOI Act.
26. There are two small segments of matter on folio 40 which also concern the shared personal affairs of Ms Ferrier and another person, but which are capable of being edited so as to disclose the information in so far as it concerns Ms Ferrier's personal affairs, while protecting the privacy interest of the other person. I find that the last line of the fourth paragraph on folio 40, and the last two lines of the fifth paragraph on folio 40, are not exempt from disclosure to the applicant under s.44(1) of the FOI Act.

Names of targeted organisations

27. The titles of a number of Special Branch files listed on folio 2 and folio 7 contain the names of organisations which had been subject to scrutiny by the Special Branch. These files have been retained by the Counter-Terrorist Section (the CTS) of the QPS. The possible targeting by the CTS of one organisation is discussed in two paragraphs appearing on folio 8. The applicant has indicated that she does not seek access to the names of individuals appearing on those folios. Therefore, apart from some file names appearing on folio 7 (discussed at paragraphs 37-39 below), the names of organisations comprise the only matter remaining in issue on folios 2 and 7, and the two paragraphs discussing the possible targeting of an organisation comprise the only matter remaining in issue on folio 8.
28. One of the exemptions which the QPS contends is applicable to the names of these organisations is s.42(1)(h) of the FOI Act. Section 42(1)(h) refers to matter the disclosure of which could reasonably be expected to prejudice a system or procedure for the protection of persons, property or the environment. The concept of prejudice to the effectiveness of a "procedure" appears in s.42(1)(e) of the FOI Act, and I considered that provision in *Re "T" and Queensland Health* (1994) 1 QAR 386 (see, especially, pp.393-396, paragraphs 23-37). In the context of s.42(1)(h) of the FOI Act, I consider that the word "system" has a meaning consistent with the following dictionary definitions: "[an] *organised scheme or plan of action, esp. a complex or comprehensive one; an orderly or regular procedure or method;*" (Shorter Oxford English Dictionary); "[a] *co-ordinated body of methods, or a complex scheme or plan of procedure*" (Macquarie Dictionary).
29. The role of the CTS is prescribed by a detailed Charter. Clause 1 of the Charter sets out its role as follows:

The primary functions of the Queensland Police Service are the preservation of life, the protection of property, the prevention and detection of offences and the bringing to justice of offenders. To these ends all efforts of members of the Service, wherever stationed, must be directed.

The Counter-Terrorist Section (C.T.S.) is part of the Bureau of Criminal Intelligence within the Service and it is staffed by Police Officers, therefore these primary functions apply to the C.T.S. Its members are subject to the provisions of the Police Service Administration Act 1990. The C.T.S. shall act in defence of the rights of citizens, including the rights of lawful assembly and free speech under the law.

The role of the C.T.S. is to:-

- (a) discharge operational intelligence responsibilities within the approved charter in respect of persons who may pose a threat to individuals, groups or property (and similarly in respect of those individuals, groups or property considered at risk).*
- (b) maintain liaison with relevant police personnel, Commonwealth and State Officials and other persons who may be of assistance within and without the State.*
- (c) provide V.I.P. Protection in accordance with State/Commonwealth legislation and International Conventions, as required.*
- (d) prevent politically motivated violence.*

30. Clause 3 of the Charter states:

3.(a) C.T.S. shall discharge its functions by:

- (i) gathering and receiving information and disseminating it, pursuant to the provisions of Clause 6;*
 - (ii) assessing information relating to any person to whom or property to which the provisions of Clause 5 apply;*
 - (iii) recording intelligence for retrieval as required;*
 - (iv) disseminating such recorded intelligence to authorised persons as listed in Clause 4;*
 - (v) providing Close Personal Protection and/or security for dignitaries;*
 - (vi) providing Threat Assessments for authorities assisting with the protection and security of dignitaries.*
- (b) The C.T.S. will use only lawful and legitimate police methods in discharging its functions. It will be guided by this Charter and not by any party political considerations.*

31. The Charter provides that groups or individuals are to be targeted for investigation only with the approval of a Control Committee comprising the Commissioner of the QPS, the Chairman of the Criminal Justice Commission (the CJC) and the Assistant Commissioner, Task Force, or their respective delegates (cl. 2(b)). The Charter requires selection of only those targets which tend to show (cl. 3(d)):
- (i) *a proven or believed involvement in, or the planning of, crime related to politically motivated violence; or*
 - (ii) *a history of politically motivated violence beyond mere parading, picketing and vocal complaint; or*
 - (iii) *a past, present and/or future criminal impact of a politically motivated violent nature on the citizens of Queensland and/or Australia,*
32. Dissemination of information obtained by the CTS is strictly limited by the terms of the Charter. Clause 10 provides for at least annual audits of the operations of the Section by an auditor nominated by the Commissioner of the QPS and by the CJC.
33. In my view, the functions and methods of the CTS, relating to intelligence gathering, as set out in its Charter, form a sufficiently coherent, organised and comprehensive scheme to answer the description of a "system" within the terms of s.42(1)(h) of the FOI Act. Moreover, it is a system which clearly has the objects of protecting persons and property. In pursuit of those objects, the CTS must adopt procedures of the kind, or for the purposes, referred to in paragraph 30 above. The relevant question is whether disclosure of the names of targeted organisations could reasonably be expected to prejudice that system, or relevant procedures, for the protection of persons or property. The test embodied in the phrase "could reasonably be expected to" has been explained at paragraph 18 above.
34. Disclosure of the fact that an individual or organisation is subject, or has in the past been subject, to scrutiny by a body like the CTS would, in my view, only be likely to prompt the individual, or members of the organisation, to be more secretive and guarded in their activities. If such information were disclosed, I consider that the effectiveness of the system and procedures for preventing "politically motivated violence" would be correspondingly diminished. Conversely, knowledge by members of an activist political organisation that it has not been targeted for scrutiny might encourage them to undertake illegal activity, knowing that their chances of being detected were reduced. I therefore accept that disclosure of information as to whether a particular organisation has been targeted for scrutiny by the CTS could reasonably be expected to prejudice a system or procedure for the protection of persons or property.
35. However, I consider that the potential for prejudice will reduce over time. This appears to have been tacitly accepted by the QPS in acknowledging to the applicant that she has in the past been a subject of interest to the Special Branch.

36. In the instant case, disclosure of the matter described above would show whether, in 1990, there was a continuing interest by the CJC and the CTS, in particular organisations. I consider that there remains a reasonable basis for expecting prejudice of the kind contemplated by s.42(1)(h) of the FOI Act if the names of organisations appearing on folios 2 and 7, and the two paragraphs appearing above the first signature on folio 8, were to be disclosed. Hence, I find that matter exempt under s.42(1)(h) of the FOI Act.

File Names

37. A number of file names (of Special Branch files) deleted from folio 7 do not refer to any particular organisation or individual. The QPS contends that those file names are exempt under s.41(1), s.42(1)(f), s.42(1)(h) and s.44(1) of the FOI Act.
38. With regard to s.41(1) of the FOI Act, I can see no way in which the disclosure of those file names would prejudice the operations of the QPS or any other body, or otherwise be contrary to the public interest. The QPS has not specified any grounds for its claim. I therefore find that the file names are not exempt under s.41(1). I discussed s.42(1)(f) in *Re Byrne and Gold Coast City Council* (1994) 1 QAR 477 at pp.483-484 (paragraphs 18-20), and s.42(1)(h) in paragraphs 28 and 33 above. I can see no reasonable basis for expecting prejudice of the type envisaged by either of those exemption provisions if the few general file names appearing on folio 7 were to be disclosed. Nor do I see any possible application for s.44(1) in relation to those file names. There is nothing in them which could conceivably be described as information concerning the personal affairs of an identifiable individual.
39. I therefore find that the first, third, fourth, fifth, twenty-ninth and thirtieth file names, in the list of files on folio 7, are not exempt matter under the FOI Act.

Interaction with other investigative bodies

40. A number of documents were created in the course of interaction between the QPS and law enforcement authorities in other jurisdictions. Folios 25-26 and 34-36, and the matter deleted from folio 37, either comprise information provided by another law enforcement authority or show that information was requested from another law enforcement authority. The QPS contends that this matter is exempt under s.38, s.42(1)(b), s.42(1)(e), s.42(1)(f), s.42(1)(h) and s.46(1)(b) of the FOI Act. The documents were created in the period 1977-1979. They are therefore more than 16 years old. I shall consider each exemption provision in turn.
41. The QPS contends that disclosure of the matter in issue in these documents could reasonably be expected to cause damage to relations between the State and another government and that their disclosure would be contrary to the public interest. I do not consider that disclosure could reasonably be expected to cause damage of the type referred to in s.38(a), given the routine nature of the information contained in the documents, and the lapse of time since the interactions took place. One of the organisations contacted could provide no information, and much of the information provided by the other organisation has already been made available to the applicant in other documents. I do not rule out the possibility that s.38(a) or s.38(b) could be found to be applicable in relation to more recent or more sensitive information of the general kind now in issue, but I do not consider that there is a basis for such a finding in respect of the matter in issue in folios 25-26 and 34-37. There is some suggestion that folios 34-36 were originally provided in confidence by one of the organisations in question. However, I do not consider that the information in folios 34-36, communicated some 18 years ago, retains the necessary quality of

confidence as against the applicant. In any event, I consider that there is a public interest in the applicant having access to matter which relates to her personal affairs (see s.6 of the FOI Act) and that that interest is sufficient to outweigh any slight prejudice which could possibly flow from disclosure of the document. I find that the matter in issue in folios 25-26 and 34-37 is not exempt matter under s.38 of the FOI Act.

42. The QPS contends that organisations which communicated information to the Special Branch qualify for protection under s.42(1)(b) of the FOI Act, in that they are confidential sources of information. However, I consider it well known that law enforcement organisations co-operate in the exchange of information for law enforcement purposes. For example, I have already quoted above a passage from the Fitzgerald Report which publicly acknowledged the fact that the Special Branch was the usual QPS point of contact with ASIO (see paragraph 12 above). The CTS Charter also lists numerous law enforcement agencies to which dissemination of information is authorised. It is only reasonable to expect that reciprocal arrangements apply. I do not rule out the possibility that an organisation not normally expected to provide information to the QPS could be protected under this provision, or that (having regard to the circumstances of a particular investigation) extreme sensitivity could attach to the fact that a particular law enforcement agency was the source of particular information. However, I am not satisfied that s.42(1)(b) extends to the protection from disclosure of routine interchanges of information between law enforcement agencies of the kind evident in folios 25-26 and 34-37.
43. The QPS contends that disclosure of these folios could reasonably be expected to prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law. The only method or procedure which I can identify as being revealed should these folios be disclosed, is the procedure of obtaining information from other law enforcement agencies. As I said above, I consider that this procedure is already well known to the public and I do not accept that disclosure of the matter in issue in folios 25-26 and 34-37 could reasonably be expected to cause prejudice of a kind referred to in s.42(1)(e) of the FOI Act. Likewise, I can see no reasonable basis for expecting prejudice of a kind referred to in s.42(1)(f) or s.42(1)(h), of the FOI Act, in the event that the matter in issue in folios 25-26 and 34-37 were to be disclosed.
44. As to s.46(1)(b) of the FOI Act, I find that the information in issue in folios 25-26 and 34-37 no longer has the necessary quality of confidence to satisfy the test for exemption under that provision, as against Ms Ferrier. Nor do I consider that the disclosure of this information, after the length of time which has passed, could reasonably be expected to prejudice the future supply of such information.
45. I therefore find that the matter in issue in folios 25-26 and 34-37 is not exempt matter under the FOI Act.
46. The matter deleted from folios 18 and 68 indicates that information has been passed on by the Special Branch to another law enforcement agency. Section 38(b) and s.46(1)(b) of the FOI Act cannot apply to the matter deleted from those folios. Those exemption provisions are designed to protect information received by a government agency, pursuant to an understanding of confidence owed for the benefit of the original supplier of the confidential information. They do not otherwise apply to protect from disclosure information in the hands of an agency subject to the FOI Act, which may itself have supplied that information to an agency of another government in circumstances where the latter owes an obligation of confidence to the former.

47. As for s.38(a), I do not rule out the possibility that, in a particular case, the fact that information held by the QPS has been passed onto an agency of another government, could be of such sensitivity that its disclosure could reasonably be expected to damage relations with another government. However, having regard to the age of folios 18 and 68, and the matters referred to in paragraph 42 above, I am not satisfied that disclosure of the matter in issue in folios 18 and 68 could reasonably be expected to cause damage to relations between the State of Queensland and another government.
48. Further, I am not satisfied that there is any reasonable basis for prejudice of a kind referred to in s.42(1)(e), s.42(1)(f) or s.42(1)(h) of the FOI Act, in the event of disclosure of the matter deleted from folios 18 and 68. That matter will merely disclose that the QPS supplied documents to another law enforcement organisation (as to which, see paragraph 42 above). I therefore find that the matter in issue in folios 18 and 68 is not exempt matter under the FOI Act.

'Neither confirm nor deny' issue

49. I discussed the operation of s.35 of the FOI Act in *Re "EST"* (see also paragraph 6 above). The QPS neither confirms nor denies the existence of any documents (of a kind sought in the applicant's FOI access application) which post-date the winding up of the Special Branch. The QPS contends that, if such documents did exist, they would be exempt under one or more of the provisions of s.42(1) of the FOI Act. Because of the nature of s.35, and the strictures which apply to the review of a decision by an agency to invoke s.35 (see paragraph 6 above), I am able to discuss only in general terms the possible applicability of exemption provisions in s.42(1) to documents likely to be generated by the CTS.
50. I have referred above to the Charter of the CTS. In some cases, s.42(1)(a) of the FOI Act may well have application to documents which one would expect the CTS to hold. Clearly, where investigations are in progress, there may be circumstances where it could reasonably be expected that disclosure of documents would prejudice the investigation of a contravention or possible contravention of the law in a particular case. Section 42(1)(b) (confidential sources of information) may also come into play in certain circumstances (see the discussion of this provision at paragraphs 15-20 above). No doubt, where covert investigation or unusual methods or procedures are used, s.42(1)(e) may also arise for consideration. As I have noted above, I consider that the intelligence gathering functions of the CTS constitute a system for the protection of persons or property, for the purposes of s.42(1)(h). It is likely that, if documents of a kind sought in the applicant's FOI access application, which would post-date the winding-up of the Special Branch, do exist, they would be exempt under this provision.
51. In coming to a determination I must, if documents do exist, also consider the possible application of s.42(2) of the FOI Act.
52. In the circumstances of this case, I am satisfied that the QPS was entitled to exercise the discretion conferred by s.35 of the FOI Act to issue a response to the applicant's FOI access application which neither confirmed nor denied the existence of documents created by, or for the purposes of, the CTS.

Conclusion

53. My findings have affirmed the decision under review in most respects, although I have not found it necessary to consider all of the grounds of exemption relied upon by the QPS where I have upheld its decisions to refuse access to particular documents or parts of documents. In terms of a formal decision, it is appropriate that I vary the decision under review by finding that the following matter is not exempt from disclosure to the applicant under the FOI Act—
- (a) the first, third, fourth, fifth, twenty-ninth and thirtieth file names, on the list of files in folio 7;
 - (b) folios 25-26 and 34-36;
 - (c) the matter deleted from folios 18, 37 and 68; and
 - (d) the last line of the fourth paragraph, and the last two lines of the fifth paragraph, of folio 40.

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F N ALBIETZ
INFORMATION COMMISSIONER