



Decision and Reasons for Decision

Application Number: 2005/F0681

Applicant: Nicholas Scott

Respondent: Queensland Corrective Services

Decision Date: 30 January 2008

Catchwords: **FREEDOM OF INFORMATION - sufficiency of search - correctional centre closed circuit television recordings - retention and disposal schedule - rotational recording policy - whether reasonable grounds to believe recordings exist - whether reasonable searches conducted by agency**

FREEDOM OF INFORMATION - sufficiency of search - video recordings of major breach hearings in correctional centre - retention and disposal schedule - rotational recording policy - whether reasonable grounds to believe recordings exist - whether reasonable searches conducted by agency

FREEDOM OF INFORMATION - sufficiency of search - various documents relating to breaches and incidents involving the applicant - compliance with reporting procedures - whether reasonable grounds to believe recordings exist - whether reasonable searches conducted by agency

FREEDOM OF INFORMATION - section 44(1) of the *Freedom of Information Act 1992 (Qld)* - matter affecting personal affairs - prisoners - public interest balancing test

FREEDOM OF INFORMATION - documents relating to investigations undertaken by Queensland Police Service into incidents at correctional centres - whether documents held by Queensland Corrective Services

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Reasons for Decision

Background

1. By letter dated 6 July 2005, the applicant applied to Queensland Corrective Services (QCS) for access to documents listed in the table below:

Table 1	
Item	Documents sought in initial FOI application
1	Audio recordings via intercom on 24 June 2005 and 6 July 2005 from cell 6, pod 1 in the Maximum Security Unit (MSU) at Arthur Gorrie Correctional Centre (AGCC).
2	Video footage of cell 6 and airlock to cell 6, pod 1 in the MSU of AGCC from 6.30am to 6.30pm from 15 June 2005, 22 June 2005, 29 June 2005 and 6 July 2005.
3	All video footage of major breach hearings from 6 July 2004 to 6 July 2005.
4	All documents relating to all breaches and incidents from the date of his incarceration, 30 April 1993, until the date of FOI application
5	All documents relating to an incident on 22 July 2003.
6	Video footage of airlock to cell 6, pod 1 in the MSU at AGCC from 30 June 2005 between 6.30am and 6.30pm.

2. By letter dated 8 July 2005, QCS acknowledged receipt of the applicant's freedom of information (FOI) application and informed him that it was currently processing a large number of applications under the *Freedom of Information Act 1992* (Qld) (FOI Act) and therefore, may not be able to provide its decision within the timeframe required under the FOI Act.
3. Having received no further correspondence from QCS, the applicant applied to this Office, by letter dated 4 October 2005, for external review.¹

Decision under review

4. The decision subject to external review is QCS' deemed refusal to grant the applicant access to all documents sought in his initial FOI application.

Steps taken in the external review

5. Following receipt of the applicant's FOI application, staff members of this Office made inquiries of QCS in relation to the documents sought by the applicant.
6. By letter dated 26 October 2005, this Office informed the applicant that it had jurisdiction to conduct an external review of QCS' deemed refusal to grant access to the documents sought in his initial FOI application dated 6 July 2005.
7. Between November 2005 and February 2006, staff members of this Office:
 - held meetings with QCS regarding this external review application

¹ At the time of making this external review application, the applicant made a further 20 external review applications for review of QCS' deemed refusal to grant access to documents sought by the applicant in separate FOI applications. Those 20 external review applications have now all been finalised.

- requested QCS to conduct searches for the documents sought by the applicant.
8. On 27 January 2006, Mr Cameron Thomas² provided this Office with a sworn statutory declaration regarding the documents sought by the applicant in his initial FOI application.³ Mr Thomas attached a schedule to his statutory declaration which listed the documents⁴ sought by the applicant which were no longer in QCS' possession or under its control because those recordings had been reused pursuant to the rotational recording policy set out in the *Queensland State Archives Disposal Authority QDAN 483* (Disposal Authority).⁵
 9. By letter dated 7 February 2006, this Office informed the applicant of its preliminary view that the audio and video recordings sought in Items 1, 2 and 6 of the applicant's FOI application no longer existed. That view was based on the statutory declaration of Mr Thomas, its attached schedule of non-existent documents and the relevant terms of the Disposal Authority.
 10. By letter dated 20 February 2006, the applicant contested the preliminary view in respect of Items 1, 2 and 6 and provided a document in support of his contentions that those documents existed. To support his submission that the documents existed, the applicant also relied upon verbal assurances given to him by the Manager of the MSU that the audio and video recordings had been sent to the QCS FOI Unit.
 11. By letter dated 10 May 2006, QCS informed this Office that it had located 428 folios responsive to Items 4 and 5 of the applicant's FOI application. QCS advised that it claimed exemption over certain matter in some of those folios pursuant to section 44(1) of the FOI Act. By letter dated 18 May 2006, this Office informed the applicant that QCS would release those folios to him, subject to the deletion of certain matter it claimed was exempt under section 44(1) of the FOI Act.
 12. On 7 June 2006, video tapes containing footage of major breach hearing recordings from 21 November 2004, 24 November 2004, 24 December 2004 and 27 December 2004 were released to the applicant by QCS in response to Item 3 of his FOI application.
 13. By letter dated 23 July 2006, the applicant requested QCS to provide him with a copy of his breach and incident history from 1993 to 2006 in order for him to analyse the documents provided by QCS in response to Items 4 and 5 of his application. As that document fell within the terms of Item 4, this Office instructed QCS to provide the applicant with a copy of his breach and incident history from 30 April 1993 (date of his incarceration) to 6 July 2005 (date of his FOI application).
 14. By letters dated 10 October 2006 and 31 October 2006, I asked the applicant to provide this Office with submissions with respect to the documents provided by QCS in response to Item 4 of his FOI application.
 15. By letter dated 9 November 2006, the applicant provided this Office with submissions on the documents released by QCS in response to Item 4. In his submissions the applicant contested the sufficiency of QCS' searches for documents relating to numerous breaches and incidents. In respect of certain breaches and incidents, the

² The then Manager, FOI and Privacy Unit, QCS.

³ That statutory declaration was also provided in respect of 20 other external review applications which were made by the applicant at the same time as this application.

⁴ Audio and video recordings only.

⁵ The relevant sections of the Disposal Authority are set out at paragraph 48 of this decision.

applicant indicated that all documents had been provided and withdrew his request for documents relating to those breaches and incidents.

16. On 4 December 2006, the breach hearing recording dated 25 February 2005 was released to the applicant by QCS.
17. On 9 January 2007, QCS provided this Office with copies of the 428 folios released to the applicant in response to Item 4 for the purpose of examining the sufficiency of search issues the applicant had raised in his submissions dated 9 November 2006.
18. During the course of this review, this Office corresponded with QCS on a number of occasions to obtain copies of various QCS policies and reporting procedures relating to breaches and incidents that were in force during the period relevant to the applicant's FOI application. It was necessary for this Office to examine such policies and procedures in order to determine the documentation requirements relevant to the breaches and incidents involving the applicant.
19. By letter dated 4 May 2007, QCS advised that it had located the following further documents responsive to Item 4 of the applicant's FOI application:
 - Disciplinary Breach Register for the period 16 July 2003 to 24 May 2005 (DBR No. 1) containing entries relating to the applicant
 - additional documents relating to breaches and incidents involving the applicant.
20. By letter dated 12 September 2007, this Office requested QCS to:
 - conduct further searches for documents relating to investigations carried out by the Queensland Police Service (QPS) Corrective Service Investigation Unit (CSIU) in relation to incidents occurring on 9 June 1994, 21 September 1998 and 3 January 2003
 - conduct further searches for documents relating to the 4 December 2003 major breach
 - identify the searches that were undertaken for documents relating to breaches and incidents which occurred prior to July 2001.
21. By letter dated 21 September 2007, QCS provided a submission in response to the matters listed in paragraph 20 of this decision.
22. By letter dated 25 September 2007, I advised the applicant, based on the information before me in this review, it was my preliminary view that:
 - there were no reasonable grounds to believe that the following documents were in the possession or under the control of QCS:
 - the recordings sought in Items 1, 2 and 6 of his FOI application
 - the 6 March 2005 and 17 March 2005 major breach hearing recordings
 - further paper documents responsive to Items 4 and 5 of his FOI application
 - the searches conducted by QCS for the documents listed above had been reasonable in the circumstances of this review
 - parts of documents released to the applicant by QCS in relation to the 11 January 1999 incident, 3 January 2003 major breach and incident and 24 May 2003 incident were exempt from disclosure under section 44(1) of the FOI Act
 - a small amount of matter in the IOMS printout relating to the 11 January 1999 incident was not exempt from disclosure under section 44(1) of the FOI Act

- there were no reasonable grounds to believe that QCS held any documents relating to investigation by the QPS CSIU into the 9 June 1994, 21 September 1998 and 3 January 2003 incidents.
23. In my letter to the applicant dated 25 September 2007, I also requested him to provide submissions as to any audio and video recordings to which he sought access in Item 4 of his FOI application.
24. By letter dated 5 October 2007, the applicant advised that:
- he did not intend his request in Item 4 of his FOI application to generally include audio and video recordings
 - his request in Item 3 of his FOI application was concerned with audio and video recordings.
25. By facsimile dated 15 October 2007, the applicant applied for an extension of time within which to respond to my preliminary view dated 25 September 2007. By return facsimile on that date, I granted the applicant an extension of time within which to provide his submissions, until 19 October 2007.
26. By letter dated 16 October 2007, the applicant contested my preliminary view dated 25 September 2007 in respect of all items concerning sufficiency of search and provided submissions and documents in support of his contentions. The applicant was silent in his response to the parts of my preliminary view concerning:
- matter that was exempt from disclosure under section 44(1) of the FOI Act
 - the QPS CSIU investigation documents.
27. By letter dated 27 November 2007, I:
- informed QCS of my preliminary view on the application of section 44(1) of the FOI Act to those parts of the DBR No. 1 not concerning the applicant
 - requested QCS to send a copy of the DBR No. 1 to the applicant, with the matter concerning other prisoners deleted
 - requested QCS conduct further searches for a further DBR relevant to the period 1 July 2001 to 15 July 2003
 - requested QCS conduct further searches for a video recording of the 11 January 1999 incident and 22 July 2003 incident and for photographic evidence relating to the 22 July 2003 incident.
28. By letter dated 27 November 2007, I informed the applicant:
- of my preliminary view that those parts of the DBR No. 1 concerning other prisoners were exempt from disclosure under section 44(1) of the FOI Act
 - that QCS was prepared to release DBR No. 1 to him subject to the deletion of the matter concerning other prisoners.
29. By letter dated 3 December 2007 the applicant accepted my preliminary view on the application of section 44(1) of the FOI Act to DBR No. 1.
30. By letter dated 10 December 2007, QCS advised that:
- a copy of DBR No. 1 had been sent to the applicant

- a DBR entry relating to the applicant on 19 August 2001 had been located (DBR No. 2)
- further DBR entries relating to the applicant during his accommodation at Sir David Longland Correctional Centre (SDL) were located in archives
- the video recording of the 11 January 1999 incident would likely have been destroyed in accordance with the Disposal Authority but if not destroyed, it may be located in the archived SDL records
- searches of the archived SDL records would not be undertaken until this Office advised QCS that such searches were necessary
- further searches of AGCC records had been conducted for the video recording of, and photographic evidence relating to, the 22 July 2003 incident but those documents were not able to be located.

31. By letter dated 13 December 2007, I:

- advised QCS of my preliminary view that those parts of DBR No. 2 not concerning the applicant were exempt from disclosure under section 44(1) of the FOI Act
- requested QCS to send DBR No. 2 to the applicant
- requested QCS to undertake searches of the archived SDL records for further DBR entries and the video recording of the 11 January 1999 incident.

32. By letter dated 13 December 2007, the applicant informed this Office that he had received a copy of DBR No. 2 from QCS.

33. By letter dated 11 January 2008, QCS advised that:

- further DBR entries for the period 1 July 2001 to 15 July 2003 (DBR No. 3) were located in the archived SDL records
- DBR No. 3 could be released to the applicant with the matter concerning other prisoners deleted on the basis that it is exempt from disclosure under section 44(1) of the FOI Act
- searches of the archived SDL records failed to locate the video recording of the 11 January 1999 incident.

34. By letter dated 14 January 2008, I informed the applicant:

- of my preliminary view that those parts of DBR No. 3 concerning other prisoners were exempt from disclosure under section 44(1) of the FOI Act
- that QCS was prepared to release DBR No. 3 to him subject to the deletion of the matter concerning other prisoners.

35. By letter dated 19 January 2008 the applicant accepted my preliminary view on the application of section 44(1) of the FOI Act to DBR No. 3.

36. In making this decision, I have taken into account the following:

- the applicant's initial FOI application dated 6 July 2005
- the applicant's application for external review dated 4 October 2005
- file notes of telephone conversations held between staff members of this Office and QCS during the course of this review
- written correspondence exchanged between this Office and the applicant and QCS during the course of this review

- the applicant's submissions dated 20 February 2006, 9 November 2006, 5 October 2007 and 16 October 2007
- statutory declaration of Mr Thomas and the attached schedule
- relevant QCS policies and procedures
- the Disposal Authority
- this Office's decision in external review no. 746/04 dated 7 September 2005
- relevant legislation and case law.

37. For the purposes of this decision, it is important to identify that the AGCC is privately managed and operated by GEO Group Australia Pty Ltd (GEO) under contract to QCS. QCS has informed this Office⁶ that pursuant to this contract, all documents prepared by GEO in managing and dealing with offenders at AGCC are documents *'in the possession or under the control'* of QCS for the purpose of section 7 of the FOI Act. Accordingly, in this decision, where a document in issue has been created by GEO, I have considered it to be a document in the possession or under the control of QCS.

Matter in issue

38. The matter remaining in issue in this review is set out in the table below:

Table 2 - Matter in issue	
Item	Documents remaining in issue
1	Audio recordings via intercom on 24 June 2005 and 6 July 2005 from cell 6, pod 1 in the MSU at AGCC.
2	Video footage of cell 6 and airlock, pod 1 in the MSU of AGCC from 6.30am to 6.30pm from 15 June 2005, 22 June 2005, 29 June 2005 and 6 July 2005.
3	Video footage of 6 March 2005 and 17 March 2005 major breach hearings.
4	Additional documents relating to 53 breaches and incidents occurring between 30 April 1993 and 6 July 2005.
5	All documents relating to an incident which occurred on 22 July 2003 at AGCC.
6	Video footage of airlock to cell 6, pod 1 in the MSU at AGCC from 30 June 2005 between 6.30am and 6.30pm.

39. Certain documents falling within the scope of Items 3 and 4 have been dealt with in the context of other external reviews involving the applicant. In paragraphs 40-48 of this decision, I have set out the documents which remain in issue in Items 3 and 4 and identified those that have been dealt with in other reviews which are now finalised.

Item 3

40. For the reasons outlined below, the video recordings remaining in issue in relation to Item 3 in this review have been reduced to the 6 March 2005 and 17 March 2005 major breaches.

41. The applicant's breach and incident history indicates that between 6 July 2004 and 6 July 2005, he was involved in major breaches on the following dates:

- 14 September 2004
- 15 November 2004 (two breaches)

⁶ In the context of previous external reviews involving the applicant.

- 18 November 2004
 - 19 December 2004
 - 21 February 2005
 - 6 March 2005
 - 17 March 2005.
42. During the course of this and other reviews, QCS released video recordings of major breach hearings to the applicant for the following dates:
- 21 November 2004
 - 24 November 2004
 - 24 December 2004
 - 27 December 2004
 - 25 February 2005.
43. Accordingly, the recordings listed in paragraph 42 of this decision are not in issue in this review. The 14 September 2004 major breach recording is also not in issue because it was dealt with in external review no. 615/05.⁷
44. Therefore, the only recordings remaining in issue in this review are those relating to the 6 March 2005 and 17 March 2005 major breaches.

Item 4

45. In his submissions to this Office dated 9 November 2006, the applicant did not contest the sufficiency of QCS' searches for documents relating to the following 15 breaches and incidents:
- 9 January 1998 breach
 - 21 October 1998 breach
 - 17 September 1999 breach
 - 20 February 2001 breach
 - 21 February 2001 breach
 - 13 December 2001 breach
 - 7 April 2002 breach
 - 8 July 2002 breach
 - 17 September 2002 breach
 - 14 November 2002 breach
 - 3 January 2003 breach
 - 9 January 2003 breach
 - 26 May 2004 breach
 - 13 June 2004 breach and incident
 - 14 September 2004 breach.
46. The applicant indicated in his submissions that the above-listed breaches and incidents were complete and therefore, documents relating to those breaches and incidents are not in issue in this review.

⁷ In that review, the applicant accepted my preliminary view that, with respect to the breach hearing which occurred on or about 17 September 2004 in relation to the 14 September 2004 major breach, there were no reasonable grounds to believe that the recordings were in the possession or under the control of QCS and that the search efforts of QCS had been reasonable in the circumstances of that review.

47. The documents relating to the breaches and incidents listed in Table 3 below are also not in issue in this review⁸:

Table 3 - Matter dealt with in previous reviews		
Date	Breach or incident	Status
23 April 1998	Incident	Dealt with on external review no. 673/05. File closed on 23 October 2006 by the applicant's acceptance of preliminary view by letter dated 12 October 2006.
16 November 2003	Major Breach	Dealt with on external review no. 674/05. File closed on 5 June 2007 by decision.
21 November 2003	Major Breach	Dealt with on external review no. 674/05. File closed on 5 June 2007 by decision.
21 November 2003	Incident	Dealt with on external review no. 674/05. File closed on 5 June 2007 by decision.
22 November 2003	Incident	Dealt with on external review no. 674/05. File closed on 5 June 2007 by decision.
23 November 2003	Two incidents	Dealt with on external review no. 674/05. File closed on 5 June 2007 by decision.
22 February 2005	Minor Breach	Dealt with on external review no. 674/05. File closed on 5 June 2007 by decision.

48. Accordingly, the Item 4 documents remaining in issue in this review are those relating to the 53 breaches and incidents in respect of which the applicant, in his submissions dated 9 November 2006, raised sufficiency of search issues.⁹

Findings

Items 1, 2 and 6

49. The documents remaining in issue in Items 1, 2 and 6 of the applicant's FOI application are listed in Table 2 of this decision.
50. As stated in paragraph 8 of this decision, on 27 January 2006, Mr Thomas, swore a statutory declaration as to the non-existence of certain audio and video recordings sought by the applicant in this and other external reviews. Relevantly, Mr Thomas swore that all audio and video recordings sought in Items 1, 2 and 6 of the applicant's FOI application were no longer in existence because they had been reused pursuant to the rotational recording policy set out in the Disposal Authority. Sections 1.11 and 1.13 of the Disposal Authority set out the relevant terms of the rotational recording policy and provide as follows:

- section 1.11 - audio footage of telephone calls between prisoners and members of the public containing no material that is required for investigative purposes is

⁸ Those documents were dealt with, with the applicant's consent, in the context of other external reviews involving the applicant. Those external reviews have all been finalised.

⁹ Those breaches and incidents are listed in Schedules 1 and 2 of this decision.

to be retained for one month after completion of the tape, after which time it can be reused or destroyed

- section 1.13 - video footage used to monitor prisoners living in maximum security units which contains no material that is required for investigative purposes is to be retained for one month after completion of the tape, after which time it can be reused or destroyed.

51. In response to Mr Thomas' statutory declaration, the applicant contended that the audio and video recordings should in fact be in the possession or under the control of QCS. The applicant's contentions essentially concern the sufficiency of searches undertaken by QCS for those documents.

52. The questions which I must answer in sufficiency of search matters are:

- whether there are reasonable grounds to believe that the requested documents exist and are documents of the agency as that term is defined in section 7 of the FOI Act, and if so
- whether the search efforts made by the agency to locate such documents have been reasonable in all the circumstances of the review.¹⁰

53. To support his sufficiency of search submissions, the applicant relied upon:

- verbal assurances given to him by the Manager of the MSU that those recordings had been sent by AGCC to the QCS FOI Unit
- a letter dated 8 July 2005 sent to him by QCS which acknowledged receipt of his initial FOI application
- oral assurances he was given by the Manager of MSU that the tapes containing the audio and video recordings sought in Items 1, 2 and 6 were retained by QCS
- letter from the applicant to the General Manager of AGCC dated 15 July 2005
- memorandum from the General Manager of AGCC to the applicant dated 21 July 2005
- 'blue letters' dated 23 February 2005, 1 March 2005, 2 March 2005, 10 March 2005, 15 July 2005, 2 August 2005, 15 August 2005 and 28 August 2005 that he sent to the General Manager of AGCC.

54. I have examined the documents provided by the applicant in support of his submissions and note as follows:

- the letter dated 8 July 2005 sent to him by QCS acknowledged receipt of his FOI application and advised of potential delays in processing that application due to QCS' workload
- the letter from the applicant to the General Manager of AGCC dated 15 July 2005 constituted a request for the relevant audio and video tapes to be removed from the rotational recording system
- the memorandum from the General Manager to the applicant dated 21 July 2005 advised, in response to a letter from the applicant dated 19 July 2005, that the QCS FOI Unit had been in contact with the General Manager regarding the audio and video recordings.

55. I recognise that the memorandum from the General Manager to the applicant dated 21 July 2005 indicates that the QCS FOI Unit had been in contact with AGCC

¹⁰ *Shepherd and Department of Housing, Local Government and Planning* (1994) 1 QAR 464 at paragraphs 18-19

regarding audio and video recordings. Presumably, the QCS FOI Unit had requested that certain audio and video recordings be removed from the recording rotation because the applicant had sought access to them in an FOI application. This indicates, at the least, action on the part of the QCS FOI Unit to request that such recordings be removed from the rotational recording system. It does not, however, provide evidence that such action was taken by AGCC. Further, the memorandum appears to be in response to a letter from the applicant dated 19 July 2005, not the letter dated 15 July 2005 concerning the audio and video recordings sought in Items 1, 2 and 6 of his FOI application which is the subject of this review.

56. In relation to the other pieces of correspondence listed in paragraph 54 of this decision, I acknowledge that they *refer* to the audio and video recordings sought by the applicant in Items 1, 2 and 6 of his FOI application. However, as with the 21 July 2005 memorandum, they do not provide evidence that the recordings were removed from the rotational recording system by QCS.
57. I examined the applicant's 'blue letters' dated 23 February 2005 and 1 March 2005 as documents in issue in external review no. 674/05. Those letters comprise the applicant's requests for audio and video recordings to be removed from the recording rotation. While, on their face, the 'blue letters' generally demonstrate action taken on the *applicant's part* to have the audio and video recordings removed from the recording rotation, they do not demonstrate whether that action was taken *on the part of QCS* in response.
58. The applicant suggested that this Office examine the MSU mail logbook which would provide evidence of the applicant's incoming and outgoing mail. I have not examined the MSU mail logbook for the purpose of this review. I am not persuaded that entries in that logbook which show details of the applicant's incoming and outgoing mail would establish reasonable grounds to believe that the audio and video recordings sought in Items 1, 2 and 6 are in the possession or under the control of QCS— the entries would only demonstrate that the 'blue letters' were sent. This, as I pointed out in paragraph 57 of this decision, is of no probative value to the issue of whether the audio and video recordings are currently in the possession or under the control of QCS.
59. On the information before me in this review, I am satisfied that the audio and video recordings sought by the applicant in Items 1, 2 and 6 of his FOI application were not retained by QCS but that they were reused pursuant to the rotational recording policy set out in the Disposal Authority.
60. Accordingly, I find that:
 - there are no reasonable grounds to believe that the audio and video recordings sought in Items 1, 2 and 6 of the applicant's FOI application are in the possession or under the control of QCS
 - the searches conducted by QCS for those recordings have been reasonable in the circumstances of this review, particularly in light of the statutory declaration of Mr Thomas and the terms of the Disposal Authority.

Item 3

61. In Item 3 of the applicant's initial FOI application, he sought access to all video footage of major breach hearings from 6 July 2004 to 6 July 2005. As stated in paragraph 44 of this decision, the only recordings remaining in issue in this review are those relating to the 6 March 2005 and 17 March 2005 major breaches.

62. By letter dated 30 July 2007, I required QCS to conduct further searches for the 6 March 2005 and 17 March 2005 major breach hearing recordings. By letter dated 17 August 2007, QCS submitted that:
- extensive searches had been conducted at AGCC and the QCS FOI Unit for the 6 March 2005 and 17 March 2005 major breach hearing recordings
 - no recordings relating to these major breach hearings could be located because the video tapes which once contained these recordings had been reused pursuant to the Disposal Authority.
63. Paragraph 1.7 of the Disposal Authority provides that video footage of major breaches of discipline is to be retained for *'12 months after finalization of investigative process or court proceedings or appeal processes, whichever is the later'*.
64. I note that the applicant's initial FOI application was made on 6 July 2005. In the ordinary course of processing an FOI application, this would mean that the breach hearing recordings for 6 March 2005 and 17 March 2005 would have been removed from the recording sequence within 45 days (or longer if third party consultation was required) of receipt of the applicant's FOI application, and thus, prior to the expiration of the 12 month period set out in the Disposal Authority.
65. However, QCS did not respond to the applicant's FOI application within the time specified under the FOI Act. In this review, no evidence has been put before me to indicate that QCS directed AGCC to remove those recordings from the recording rotation. Accordingly, it would appear that QCS did not commence searches for those recordings, until requested to do so by this Office on external review. By that time, the 12 month period had elapsed and therefore, in all likelihood, the video tapes containing those recordings had been reused by AGCC.
66. It appears that QCS' failure to process the application within the timeframe required under the FOI Act also resulted in it failing to secure the responsive recordings prior to them being reused. QCS has since advised this Office that it has established procedures whereby even if an application cannot be immediately processed, any requests for recordings which would be subject to the rotational recording policy, are promptly forwarded to AGCC management to ensure the tape is withdrawn from rotation and not reused. I recognise that this provides no assistance to the applicant in this review, however, it should prevent the situation from occurring in the future.
67. Based on QCS' submissions, the searches undertaken by QCS and the terms of the Disposal Authority, I am satisfied that there are no reasonable grounds to believe that the 6 March 2005 and 17 March 2005 major breach hearing recordings are in the possession or under the control of QCS. I am also satisfied that QCS' searches have been reasonable in the circumstances of this review.

Items 4 and 5

68. In Item 4 of the applicant's initial FOI application, he sought access to all documents relating to all breaches and incidents in which he was involved from the date of his incarceration (30 April 1993) to the date of his FOI application (6 July 2005). In Item 5, the applicant sought access to all documents relating to an incident which occurred on 22 July 2003. During the course of this review, I advised the applicant that the documents sought in Item 5 were captured by the broader terms of his request for documents in Item 4. Therefore, for the purpose of this review, I have dealt with the applicant's Item 5 request as part of Item 4.

69. The documents remaining in issue with respect to those Items are the additional documents which the applicant contended, in his submissions dated 9 November 2006 and 16 October 2007, should exist in relation to 53 breaches and incidents. Documents relating to the breaches and incidents listed in paragraph 45 of this decision are not in issue in this review.
70. My findings with respect to the sufficiency of QCS' searches for documents relating to the 53 breaches and incidents remaining in issue in this review are set out below.

Breaches of discipline

71. A breach of discipline (breach) is defined in section 6 of the *Corrective Services Regulation 2006* (Qld). Examples of a breach of discipline include:
- contravening a lawful direction of a corrective services officer
 - possessing or concealing something not expressly or impliedly approved as something the prisoner may possess
 - using abusive, indecent, insulting, obscene, offensive or threatening language in someone else's presence.
72. The applicant has questioned the sufficiency of searches conducted by QCS for documents relating to 36 breaches which occurred between 18 July 1993 and 17 March 2005.
73. In order to determine whether the searches conducted by QCS for those documents were reasonable, it was necessary for me to have regard to various QCS policies and procedures which prescribe the types of documents required to be prepared by QCS staff in relation to breaches occurring in correctional facilities.
74. Schedule 1 to this decision sets out the following details in relation to the breaches remaining in issue in this review:
- applicable QCS policy or procedure
 - documents required to be prepared pursuant to QCS policy or procedure
 - documents released to the applicant by QCS in this review.
75. Accordingly, my findings set out below in respect of sufficiency of search are to be read in conjunction with the content of Schedule 1. My findings below have been broken down into date ranges that correspond with the dates during which the relevant reporting procedures were in force.

18 July 1993 - 18 June 2000

Relevant reporting procedure

76. By email dated 11 May 2007, I requested QCS to identify and locate copies of any reporting procedures and/or policies in force between 18 July 1993 and 18 June 2000¹¹ that set out the documents required to be produced in relation to breaches.
77. By email dated 14 May 2007, QCS provided copies of emails it had received from officers in the QCS Strategic Policy and Services Unit (SPS Unit) regarding applicable reporting procedures. The SPS Unit was unable to identify the relevant reporting

¹¹ This is the relevant end date because it is the last date upon which a breach involving the applicant occurred prior to the *Breach of Discipline OMP* (version 00) coming into force on 1 July 2001.

procedures but suggested that the documentation required to be produced in relation to a breach would likely have included the following:

- officer report of act/omission constituting breach
- Form 17 given to prisoner advising of breach action
- breach hearing determination sheet
- review (if requested) determination sheet
- entry in CIS database.

78. By letter dated 22 August 2007, I sought further submissions from QCS regarding:

- the reporting procedures and policies in force between 18 July 1993 and 18 June 2000
- the searches conducted by QCS for documents relating to those breaches.

79. By letter dated 6 September 2007, Ms Susan Barker¹² submitted that:

- inquiries were made of the SPS Unit as to the availability of earlier versions of relevant policies or procedures
- the SPS Unit advised that hard copies of superseded policies are retained for five years and then disposed of
- electronic copies of superseded policies are not retained and therefore, no policy document earlier than July 2001 had been retained.

80. QCS also relied on the QCS document titled *Policy Framework* which prescribes a retention period of four years for substantive departmental policies and departmental procedures (or applied policies) to support its submission that reporting procedures in force prior to July 2001 could not be located. QCS further submitted that the Disposal Authority prescribes retention periods of three years and three years from last action, respectively, for superseded versions of operational procedures and records related to their implementation. On that basis, QCS submitted that policies and procedures relating to breaches in force prior to July 2001 could not be located because they had been destroyed.

81. The applicant contended that documents required to be produced in relation to breaches occurring between 18 July 1993 and 18 June 2000 should be the same as those required to be produced pursuant to the QCS Offender Management Procedures¹³ titled *Breaches of Discipline* (versions 00 and 01) which were in force from 1 July 2001 and 7 November 2002, respectively.

82. The applicant based that submission on the fact that the Form 17 provided to him in relation to the 16 February 1995 breach was similar to the Form 23 released to him in relation to later breaches which were governed by *Breaches of Discipline* OMPs (versions 00 and 01). The applicant then submitted that because the *Breaches of Discipline* OMPs required the production of an officer report and question sheet, those documents should also have been prepared in relation to the breaches which occurred between 18 July 1993 and 18 June 2000.

83. I accept that in identifying the documents that should have been created in relation to the breaches which occurred between 18 July 1993 and 18 June 2000, guidance may be taken from the policies that came into force after 18 June 2000. The submission

¹² Current Manager of the FOI & Privacy Unit at QCS.

¹³ Hereafter referred to as 'OMPs'.

from the SPS Unit set out in paragraph 77 of this decision supports the applicant's suggestion that the documentation requirements for breaches which occurred between 18 July 1993 and 18 June 2000 are similar to those prescribed under the later OMPs.

84. Accordingly, I consider that it is reasonable to construe, from the available information, that the following documents should have been created in relation to the nine breaches which occurred between 18 July 1993 and 18 June 2000:

- officer report of act/omission constituting breach
- Form 17
- breach hearing determination sheet
- review (if requested) determination sheet
- entry in CIS database.

85. However, I acknowledge that in the absence of the reporting procedures and/or policies that were in force at the time of the nine breaches occurring between 18 July 1993 and 18 June 2000, the above is conjecture and cannot be conclusively determined.

Sufficiency of search

86. In his submissions dated 16 October 2007, the applicant contended that further documents relating to the nine breaches occurring between 18 July 1993 and 18 June 2000 should exist as set out in the table below:

Table 4	
Breach date	Documents the applicant contends should exist
18 July 1993	All documents
26 August 1993	All documents
4 December 1993	All documents
19 April 1994	Officer's report
16 February 1995	Officer's report and question sheet
21 October 1998	Question sheet
7 April 1999	Question sheet from review hearing
19 May 2000	Question sheet
18 June 2000	Officer J Hodges' report

87. The questions which I must answer in sufficiency of search matters are set out in paragraph 52 of this decision.

88. As stated in paragraph 84 of this decision, I consider it is reasonable to assume that the QCS policies that were in place between 18 July 1993 and 18 June 2000, although they cannot be located, would have required certain documents to be produced in relation to breaches, similar to those that were prescribed under later OMPs.

89. During this review, and as recently as 21 September 2007, QCS advised that it had conducted searches of its records for documents relating to the nine breaches occurring between 18 July 1993 and 18 June 2000 as follows:

- parts 1-5 of the applicant's Professional Management Files (PMFs) were searched by QCS officers

- the Manager of the MSU examined any remaining documents held at AGCC¹⁴
 - the IOMS database was searched for all relevant documents
 - QCS officers had diligently conducted searches of all QCS files involving the applicant in relation to this review.
90. Despite those extensive searches, QCS was unable to locate any further documents in relation to the nine breaches which occurred between 18 July 1993 and 18 June 2000.
91. Accordingly, based on the documents released to the applicant to date, the searches conducted by QCS and in the absence of any conclusive reporting requirements, I am satisfied that:
- there are no reasonable grounds to believe that further documents relating to the nine breaches which occurred between 18 July 1993 to 18 June 2000 are in the possession or under the control of QCS
 - the searches undertaken by QCS have been reasonable in the circumstances of this review.

19 August 2001 - 17 September 2002

Relevant reporting procedure

92. In respect of the five breaches that occurred between 19 August 2001 and 17 September 2002, the relevant QCS procedure which set out the reporting requirements was the *Breach of Discipline OMP* (version 00). That procedure came into force on 1 July 2001. The relevant sections of that procedure provide as follows:

3.6 Documentation

*Observing officers **must** complete the Breach of Discipline Form. The intentions of the officer must be signalled by the completion of the form and the decision is qualified by the signature of the referring officer.*

*The officer **must** complete a full and comprehensive report of events in sequence. The report **must** be attached to the breach form. Supportive statements from other officers observing the breach **may** be attached.*

Detailed particulars of all breaches should be recorded as soon as practicable in the facility breach register by the officer on duty when the breach took place or was discovered.

*On completion of the breach determination process and review as applicable, a nominated person is responsible for **entering all details of the breach on the current offender management system and complete the entries in a Disciplinary Breach Register.***

A hard copy of the Breach Discipline Form and any supporting documentation/reports must be forwarded to sentence management for inclusion on the prisoner's detention file.

3.7 Documentation of Breach to Prisoner

*Officers must furnish a copy of the Breach of Discipline form to the prisoner within 7 days of the breach occurring and before the breach is determined, along with a brief **outline/summary** of the circumstances leading to the breach.*

¹⁴ It is my understanding that all documents relating to offenders are held by QCS. However, duplicates of offender files are also held at the correctional centre at which they are accommodated.

Refer to Circumstances Leading to Initiation of A Breach. This formally commences the breach procedure.

Officers must document in their report the date and time that a copy of the Breach of Discipline form and attachment was given to the prisoner.

3.8 Determination

*The deciding officer **must** determine the breach and **complete** Example Determination Question Sheet. ...*

3.10 Review of Decision

*Refer to Corrective Services Act 2000 s 89 and **complete** Example Determination Question Sheet.*

3.11 Videotape of Consideration of Breach and Review of Decision

Refer to Corrective Services Act 2000 s 87(6), 89(5)

*All videotapes must be **archived** in accordance with the Libraries and Archives Act 1988 and Queensland Disposal Authority Number 483 dated 15 March 2000.*

[my emphasis]

93. Based on my analysis of the terms of *Breach of Discipline OMP* (version 00), I find that sections 3.6 and 3.8 of that procedure require the following documents to be prepared in relation to a breach:
- breach of discipline form (Form 23)
 - report of observing officer
 - outline/summary of circumstances leading to breach
 - entry in current offender management system (IOMS printout)
 - entry in disciplinary breach register
 - determination question (DQ) sheet for determination and review (if conducted)
 - videotape of consideration of breach and review (if conducted)
94. Significantly, I find that the procedure only requires one officer, *'the observing officer'*, to prepare a report and that completion of reports by other officers is discretionary, not mandatory.
95. With respect to any videotapes of breach considerations and reviews, the applicant confirmed during the course of this review that he was only seeking access to video recordings of breach hearings in the context of Item 3 of his FOI application.¹⁵

Sufficiency of search

96. The questions which I must answer in sufficiency of search matters are set out in paragraph 52 of this decision.

¹⁵ See pages 12-13 of this decision. In Item 3, the applicant sought access to all video footage of major breach hearings between 6 July 2004 and 6 July 2005. In a letter to this Office dated 5 October 2007, the applicant confirmed that Items 4 and 5 of his FOI application were not concerned with video recordings of breach hearings and that those types of documents were only sought as part of Item 3.

97. With respect to the 22 August 2002 breach, the applicant submitted that a DQ sheet from the initial breach hearing should exist. I have examined the documents provided by QCS to the applicant in relation to this breach and confirm that the DQ sheet from the initial breach hearing was provided to the applicant (PMF Part 2, folio 46).
98. In respect of the 30 August 2002 breach, the applicant submitted that the second page of the breach review preamble was missing. I examined the breach review preamble provided to the applicant by QCS¹⁶ and am satisfied that page 2 of that document was provided to the applicant¹⁷. Although the majority of that page is blank, I am satisfied that that is how the document was created and therefore, all pages of the breach review/preamble have been provided to the applicant.
99. In respect of the 19 August 2001 and 12 September 2002 breaches, the applicant contended that an additional DQ sheet should exist because reviews were conducted of the initial breach decisions. To support that submission, the applicant referred to paragraph 3.10 of the *Breach of Discipline OMP* (version 00). The terms of that provision are set out on page 18 of this decision.
100. I am satisfied that section 3.10 of the *Breach of Discipline OMP* (version 00) requires the production of a DQ sheet where a review of a breach decision is conducted. I consider it is reasonable to expect that a DQ sheet would have been created in relation to reviews of the 19 August 2001 and 12 September 2002 breaches.
101. During this review, QCS advised that it had conducted searches of its records for documents relating to the five breaches occurring between 19 August 2001 and 17 September 2002 as follows:
- parts 1-5 of the applicant's Professional Management Files (PMFs) were searched by QCS officers
 - the Manager of the MSU examined any remaining documents held at AGCC
 - the IOMS database was searched for all relevant documents
 - QCS officers had diligently conducted searches of all QCS files involving the applicant in relation to this review.
102. Despite those searches, QCS stated that it was unable to locate any further documents in relation to the five breaches which occurred between 19 August 2001 and 17 September 2002.
103. While I consider that DQ sheets would have been created in relation to the 19 August 2001 and 12 September 2002 breaches, it is evident from the searches undertaken by QCS that such documents could not be located.
104. Accordingly, on the basis of the documents provided to the applicant by QCS to date, the searches conducted by QCS and the terms of the *Breach of Discipline OMP* (version 00), I am satisfied that:
- there are no reasonable grounds to believe that further documents exist in relation to the five breaches which occurred between 19 August 2001 and 17 September 2002
 - the searches conducted by QCS have been reasonable in the circumstances of this review.

¹⁶ Folios 39-42 on PMF Part 2 and folios 16-19 on PMF Part 3.

¹⁷ Folio 40 on PMF Part 2 and folio 17 on PMF Part 3.

3 January 2003 - 17 March 2005

Relevant reporting procedure

105. In respect of the 22 breaches that occurred between 3 January 2003 and 17 March 2005, the applicable reporting procedure was *Breach of Discipline OMP* (version 01) which came into force on 7 November 2002. The relevant sections of that procedure provide:

3.6 Documentation

*The observing officer **must complete the Breach of Discipline Form 23** and provide a full and **comprehensive report** of events in sequence. The report must be attached to the breach form. Supporting statements from other officers observing the breach may be attached.*

*On completion of the breach determination process and where applicable, review, details of the breach are to be **entered on current offender management system and the Disciplinary Breach Register.***

...

A hard copy of the Breach of Discipline Form and any supporting documentation/ reports must be forwarded to sentence management for inclusion on the prisoner's detention file.

3.7 Documentation of breach to prisoner

*Officers must furnish a copy of the Breach of Discipline form to the prisoner within the time frames required by Corrective Services Act 2000 s. 87(1) and before the breach is determined, along with a **brief outline/summary of the circumstances leading to the breach.***

...

Officers must document in their report the date and time that a copy of the Breach of Discipline Form 23 and attachment were given to the prisoner.

3.8 Determination

*The deciding officer must determine the breach and **complete** Example Determination Question Sheet ...*

...

3.10 Review of Decision

*Refer Corrective Services Act 2000 s.89 and **complete** Example Determination Question Sheet.*

3.11 Videotape of consideration of breach and review of decision

...

*All videotapes must be **archived** in accordance with the Library and Archives Act 1988 and Queensland Disposal Authority Number 483 dated 15 March 2000.*

106. I consider that the terms of *Breach of Discipline OMP* (version 01) require the following documents to be produced:

- breach of discipline Form 23
- officer report
- summary of circumstances leading to breach
- entry in current offender management system (IOMS printout)
- entry in disciplinary breach register
- DQ sheet for determination and review (if conducted)
- videotape of consideration of breach and review (if conducted)

107. Importantly, I consider that the procedure requires only one officer, *'the observing officer'* (as set out in section 3.7 of the procedure) to prepare a report in relation to a breach and that the preparation of a report by every officer involved in or witness to a breach is not mandatory, but discretionary.

108. With respect to the videotapes of breach considerations and reviews, I have dealt with the applicant's requests for those documents as part of Item 3.¹⁸

Sufficiency of search

109. The applicant contended that further documents relating to breaches occurring between 3 January 2003 and 17 March 2005 should exist as set out in the table below:

Table 5	
Breach date	Documents the applicant contends should exist
3 January 2003	IOMS printout from CSOs Taylor and Wilson DQ sheet from review hearing
9 January 2003	DQ sheet from initial hearing CSO Wilson's report
28 April 2003	DQ sheet from review hearing
30 May 2003	DQ sheet from review hearing
22 July 2003	DQ sheet from review hearing
4 December 2003	All documents
7 February 2004	DQ sheet from initial hearing
2 March 2004	DQ sheet from initial hearing
27 April 2004	All documents
29 May 2004	DQ sheet from initial and review hearings
30 May 2004	DQ sheet from initial and review hearings
14 June 2004	DQ sheet from initial and review hearings
15 June 2004	DQ sheet from initial and review hearings
15 November 2004 (2)	DQ sheets from two review hearings
18 November 2004	DQ sheet from review hearing
19 December 2004	DQ sheet from review hearing
21 February 2005	Additional officer reports
6 March 2005	DQ sheet from review hearing

¹⁸ See paragraph 93 and my notes in footnote 11 of this decision.

9 March 2005	DQ sheet from initial and review hearings
17 March 2005	DQ sheet from review hearing

Breaches occurring on 3 January 2003 and 9 January 2003

110. Although the applicant, in his submissions dated 9 November 2006 identified breaches occurring on 3 January 2003 and 9 January 2003 as being complete and did not contend that further documents should exist, he raised sufficiency of search issues in relation to them in his submissions dated 16 October 2007. Accordingly, I have addressed the sufficiency of search issues raised by the applicant in respect of those breaches below.
111. The applicant has submitted as follows:
- three breaches occurred on 3 January 2003
 - the date on the breach form of CSO Wilson (PMF Part 3, folio 28) was *'doctored'* to read 9 January 2003 instead of 3 January 2003 in order to allow the breach to be validly heard
 - a report of CSO Wilson should exist in relation to the 3 January 2003 breach
 - an IOMS printout from CSO Taylor should exist in relation to the 3 January 2003 breach
 - a DQ Sheet should exist in relation to the 9 January 2003 breach.
112. Based on my analysis of the documents released to the applicant to date, I have identified that the applicant was involved in three breaches on 3 January 2003. However, QCS has only located one IOMS printout dated 3 January 2003 and another dated 9 January 2003. The 3 January 2003 IOMS printout classified one of the breaches as *'Acts Contrary to The Security Or Good Order Of the Facility'*. The reporting officer for that breach was CSO Ian McCarthy.
113. The second breach which occurred on 3 January 2003, but for which there is no IOMS printout, involved the applicant using abusive, indecent insulting, obscene, offensive or threatening language against CSO Brenda Taylor. I note that an incident involving the applicant also occurred on 3 January 2003.¹⁹
114. The IOMS printout dated 9 January 2003 categorised that breach as *'Uses Indecent, Insulting, Obscene, Threatening Etc Language'*. The reporting officer for that breach was CSO John Wilson. However, the report prepared by CSO Wilson indicates that the breach was committed on 3 January 2003. The reports of CSOs McCarthy and Taylor relating to the other breaches also confirm that the breach against CSO Wilson occurred on 3 January 2003.
115. As to the question of whether the Form 23 created by CSO Wilson was *'doctored'* as suggested by the applicant, that matter is not within my jurisdiction for the purpose of this review.
116. The questions which I must answer in this review relate to the sufficiency of searches undertaken by QCS for documents relating to breaches that occurred on 3 January 2003 and 9 January 2003. I consider it is reasonable to assume that the following documents should exist:
- an IOMS printout for the 3 January 2003 breach reported by CSO Taylor

¹⁹ This is addressed under the heading 'Incidents' in this decision.

- an additional DQ sheet.

117. However, based on the information available to me and the searches conducted by QCS in this review, I am satisfied that:

- there are no reasonable grounds to believe that additional documents relating to the 3 January 2003 and 9 January 2003 breaches are in the possession or under the control of QCS
- searches conducted by QCS have been reasonable in the circumstances of this review, particularly in light of QCS' submission that a DQ sheet is not always generated for every breach.

DQ Sheets

118. I accept the applicant's submission that a DQ Sheet should have been prepared in relation to the initial hearing of the following breaches:

- 28 April 2003
- 22 July 2003
- 7 February 2004
- 2 March 2004
- 27 April 2004
- 29 May 2004
- 30 May 2004
- 14 June 2004
- 15 June 2004
- 9 March 2005

119. By letter dated 20 April 2007, I requested QCS to undertake further searches for a DQ sheet in relation to the breaches listed in paragraph 118 of this decision. By letter dated 4 May 2007, QCS informed me that it had been unable to locate a DQ sheet in relation to those breaches and submitted that, in practice, a DQ sheet is not always generated for every breach. QCS submitted that it conducted searches of the applicant's PMFs, Detention files and IOMS database and that the Manager of the MSU at AGCC also conducted searches of documents held at that centre.

120. Based on the information available to me, I am satisfied that:

- there are no reasonable grounds to believe that additional DQ sheets relating to the breaches listed in paragraph 118 of this decision are in the possession or under the control of QCS
- searches conducted by QCS have been reasonable in the circumstances of this review, particularly in light of QCS' submission that a DQ sheet is not always generated for every breach.

Additional officer reports

121. In respect of the 15 November 2004 major breach (which occurred at 4.40pm), I note the applicant's contention that page 2 of CSO Roberts' report was missing. By letter dated 20 April 2007, I requested QCS to undertake searches for this document. By letter dated 4 May 2007, QCS informed me that it had located this document and that it had been released to the applicant.

122. In respect of the 21 February 2005 breach, I note the applicant's submission that reports of medical practitioners, Shockley and Brown, should exist. By letter dated 20 April 2007 I requested QCS to undertake further searches for these documents. In response, QCS submitted that:

- it undertook searches of the applicant's PMFs
- made inquiries with AGCC and was advised by staff at that centre that *'it is likely that [Shockley and Brown] did not write a report'*
- inquiries could not be made of these individuals because they are no longer employed by QCS
- neither of the reports could be located.

123. Based on the information available to me, I am satisfied that:

- there are no reasonable grounds to believe that reports of medical practitioners, Shockley and Brown are in the possession or under the control of QCS
- searches conducted by QCS have been reasonable in the circumstances in light of QCS' submission that those reports were most likely, never created.

4 December 2003 breach

124. In a letter to this Office dated 4 May 2007, QCS submitted that the IOMS database did not contain an entry for this major breach and therefore, no documents could be located in relation to this breach.

125. By letter dated 12 September 2007, I requested QCS to undertake further searches for documents relating to this breach in light of the fact that the applicant's breach and incident history printed from CIS (the database which preceded IOMS) listed two breaches on 4 December 2003.

126. By letter dated 21 September 2007, QCS submitted that the reason the applicant's CIS breach and incident history contained listings for 4 December 2003 which did not appear on IOMS was due to a discrepancy in the way breaches are recorded in CIS and IOMS. QCS submitted that the CIS database records the 'awareness date' of the breach whereas IOMS records the date upon which the offence leading to the breach occurred. Accordingly, the two entries in the applicant's CIS breach and incident history for the date 4 December 2003 in fact occurred on 21 November 2003 and 22 November 2003. As set out in Table 3 of this decision²⁰, those breaches were dealt with in the context of external review no. 674/05 and therefore, documents relating to those breaches are not in issue in this review.

127. Based on the information available to me, I am satisfied that:

- there are no reasonable grounds to believe that documents relating to 4 December 2003 breaches are in the possession or under the control of QCS
- searches conducted by QCS have been reasonable in the circumstances in light of the fact that the breaches in question did not actually occur on that date.

²⁰ Refer pages 9-10 of this decision.

Summary

128. I find that it is reasonable to expect that additional documents should have been created in relation to the breaches occurring between 3 January 2003 and 17 March 2005.
129. However, I note QCS' submissions during the course of this review that:
- searches had been conducted of parts 1-5 of the applicant's PMFs
 - the Manager of the MSU examined any documents held at AGCC
 - the IOMS database was searched for all relevant documents
 - QCS officers had diligently conducted searches of all QCS files involving the applicant in relation to this review
 - no further documents could be located in relation to the 22 breaches that occurred between 3 January 2003 and 17 March 2005.
130. Despite my finding at paragraph 128 of this decision, on the basis of QCS' submissions, the documents released to the applicant by QCS to date and the terms of the *Breach of Discipline OMP* (version 01), I am satisfied that:
- the documents released to the applicant accord with the reporting requirements set out in *Breach of Discipline OMP* (version 01)
 - there are no reasonable grounds to believe that further documents exist in relation to the 22 breaches which occurred between 3 January 2003 and 17 March 2005
 - the searches conducted by QCS have been reasonable in the circumstances of this review.

Incidents

131. An incident can be described as an event which occurs within a correctional centre, not necessarily due to the act or omission of a prisoner, but which requires some level of reporting. Incidents are classified into various categories, depending on their severity. A more detailed explanation of incident levels is set out below.
132. The applicant has questioned the sufficiency of searches conducted by QCS for documents relating to 18 incidents which occurred between 25 August 1993 and 8 January 2005.
133. In order to determine whether the searches conducted by QCS for those documents were reasonable, it was necessary for me to have regard to various QCS policies and procedures which prescribe the types of documents required to be prepared by QCS staff in relation to incidents occurring in correctional facilities.
134. Schedule 2 to this decision sets out the following details in relation to the incidents remaining in issue in this review:
- applicable QCS policy or procedure
 - documents required to be prepared pursuant to QCS policy or procedure
 - documents released to the applicant by QCS in this review.
135. Accordingly, my findings set out below in respect of sufficiency of search are to be read in conjunction with the content of Schedule 2.

25 August 1993 - 20 February 2001*Relevant reporting procedure*

136. During the period 25 August 1993 to 20 February 2001, the applicant was involved in 11 incidents. By letter dated 22 August 2007, I sought submissions from QCS regarding:
- the reporting procedures and policies in force between 25 August 1993 and 20 February 2001
 - the searches conducted by QCS for documents relating to those incidents.
137. By letter dated 6 September 2007, Ms Barker submitted that:
- inquiries were made of the SPS Unit as to the availability of relevant policies or procedures in force prior to July 2001
 - the SPS Unit advised that hard copies of superseded policies are retained for five years and then disposed of
 - electronic copies of superseded policies are not retained and therefore, no policy document earlier than July 2001 had been retained.
138. QCS also relied on the QCS document titled *Policy Framework* which prescribes a retention period of four years for substantive departmental policies and departmental procedures (or applied policies) to support its submission that reporting procedures in force prior to July 2001 could not be located. QCS further submitted that the Disposal Authority prescribes retention periods of three years and three years from last action, respectively, for superseded versions of operational procedures and records related to their implementation. On that basis, QCS submitted that policies and procedures relating to incidents in force prior to July 2001 could not be located because they had been destroyed.
139. Based on the QCS' submissions, the searches undertaken by QCS and the terms of the *Policy Framework* and Disposal Authority, I am satisfied that:
- the reporting procedures and/or policies relevant to the 11 incidents occurring between 25 August 1993 to 20 February 2001 have been destroyed
 - documentation requirements in relation to those incidents cannot be conclusively determined for the purpose of this review.

Sufficiency of search

140. By letter dated 21 September 2007, Ms Barker submitted that QCS officers had diligently conducted searches of all QCS files involving the applicant in relation to this review and that no further documents could be located in relation to the incidents occurring between 25 August 1993 and 20 February 2001.
141. In his submissions dated 16 October 2007, the applicant specifically submitted that the documents listed in the following table should exist in relation to the incidents which occurred between 25 August 1993 and 20 February 2001:

Table 6	
Incident date	Documents the applicant contends should exist
25 August 1993	All documents, including Custodial incident report

20 April 1994	CSO report that led to creation of IOMS document Custodial incident report
9 June 1994	Incident report of CSO Oberg
28 February 1995	Incident report of CSO Kaczuk, Lane, Kerr and Stevenson Custodial incident report
11 January 1999	Incident report from CSOs Video tape of the incident Custodial incident report
20 February 2001	Custodial incident report

142. The questions which I must answer in sufficiency of search matters are set out in paragraph 52 of this decision.

IOMS printouts

143. With respect to all incidents, the applicant submitted that the IOMS printout provided by QCS did not constitute an incident report. The applicant submitted that two separate documents lead to the creation of the IOMS printout, namely, an incident report from a CSO and a Custodial Community Corrections Incident Report and that therefore, those documents should exist in relation to all incidents, in addition to the IOMS printout.
144. By letter dated 4 May 2007, QCS informed this Office that an IOMS printout constitutes an incident report. I have examined the IOMS printouts provided to the applicant by QCS and am satisfied that there is nothing on the face of those documents to indicate that additional documents are required to be produced before an IOMS printout is created. It is my understanding that the information relating to an incident is entered directly into the IOMS database by the CSO involved in the incident and the IOMS entry thereby constitutes the record of that incident. On the information available to me, I am satisfied that an IOMS printout constitutes an incident report.

Custodial Incident Reports

145. In relation to all incidents listed above for which a Custodial Incident Report was not located, the applicant contended that such a document should exist because it was provided to him by QCS in relation to the 9 June 1994, 21 September 1998 and 11 January 1999 incidents. The applicant contends that the creation of that document in relation to those incidents establishes that it was QCS policy to create a Custodial Incident Report in relation to all incidents.
146. I accept that in identifying the documents that may have been created in relation to the incidents which occurred between 25 August 1993 and 20 February 2001, guidance may be taken from the documents which were released to the applicant in relation to other incidents occurring during that period.
147. However, I do not consider that the location of a Custodial Incident Report in relation to the 9 June 1994, 21 September 1998 and 11 January 1999 incidents is sufficient to support the assumption that such documents would have been created in relation to all ten incidents which occurred between 25 August 1993 and 20 February 2001.
148. If a Custodial Incident Report had been created in relation to the majority of incidents which occurred during that period, it may have been reasonable to expect that such a

document would have been created in relation to all ten incidents. However, a Custodial Incident Report was only created in relation to three out of the ten incidents. I do not consider that ratio provides sufficient grounds to support the assumption that a Custodial Incident Report would have been created in relation to all incidents occurring between 25 August 1993 and 20 February 2001.

149. Accordingly, based on the information before me and in the absence of an applicable reporting procedure, I do not consider that there are reasonable grounds to believe that additional Custodial Incident Reports should exist in relation to incidents which occurred between 25 August 1993 and 20 February 2001.

Additional CSO reports

150. I note the applicant's submission that additional CSO reports should exist in relation to the 25 August 1993, 20 April 1994, 9 June 1994, 28 February 1995 and 11 January 1999 incidents.
151. In the absence of an applicable reporting procedure for the period in which those incidents occurred, I am unable to determine whether additional CSO reports should have been created.

11 January 1999 incident

152. In relation to the 11 January 1999 incident, the applicant alleges that the matter under the heading 'Attachments' on the IOMS printout has been 'restricted' and requests that matter be disclosed to him. I have examined this document and am satisfied that no matter has been deleted from the document. I note that certain matter was 'blacked out' from that document pursuant to section 44(1) of the FOI Act, but that matter concerned the name and personal details of one of the applicant's visitors and did not appear in the 'Attachments' section. My findings as to that matter are set out at paragraphs 202 and 209 of this decision.
153. The applicant also alleges that a video tape of the 11 January 1999 incident should exist.²¹ To support that submission, the applicant referred to a memorandum from Peter Drage to the General Manager of Sir David Longland Correctional Centre (SDL) dated 9 January 1998. The applicant alleged that the date on that memorandum was incorrect. I accept that submission on the basis that the circumstances of the incident described in the memorandum exactly reflect those in the IOMS printout for the 11 January 1999 incident. The memorandum contains a handwritten notation in the right hand margin which reads '*on video*'. The IOMS printout for the 11 January 1999 incident states that '*Tape No V25 handed to CSIU Officer DASH*'.
154. As the handwritten notation on the memorandum and the content of the IOMS printout tended to suggest that a videotape of the 11 January 1999 incident was, at that time, in the possession or under the control of QCS, I directed QCS to undertake further searches for that videotape.
155. In its submissions dated 11 December 2007, QCS submitted as follows:
- the Corrective Services Investigation Unit (CSIU) advised that there is no videotape held with the CSIU file in connection with the 11 January 1999 incident

²¹ I note that this video recording differs from the breach hearing video recordings sought in Item 3 of the applicant's FOI application and that is why it is being dealt with separately within Item 4.

- CSIU believes the videotape would have been returned to SDL at the completion of the investigation in January 1999 although it has not been possible to locate any paperwork to confirm this
- the Disposal Authority would have required the videotape to be retained only until the end of January 2000, that is, one year from the completion of the investigation
- if the videotape was not disposed of it would have been stored in the archived SDL records
- the list of archived SDL records does not individually identify audio-visual records
- there are at least six boxes of archived tapes in which the 11 January 1999 incident videotape may be contained (if it was not destroyed pursuant to the Disposal Authority)

156. In its submissions dated 11 January 2008, QCS further submitted that:

- an entry for a videotape labelled "V25" could not be identified in the list of archived SDL records
- three archive boxes containing eight unmarked or untitled videotapes were requested to be retrieved from archive storage by the company responsible for maintaining QCS' archives, however, it could not locate any of those boxes
- one archive box was retrieved containing material labelled as '*Video Tapes – Archive No 1 to No 12*'
- QCS viewed the twelve videotapes but none of them contained a recording of the 11 January 1999 incident.

157. In light of QCS' submissions set out in paragraphs 155-156 of this decision and the searches undertaken by QCS in this review, I consider there are reasonable grounds to believe that:

- the videotape of the 11 January 1999 incident was destroyed in accordance with the Disposal Authority in or around January 2000, or in the alternative
- the videotape of the 11 January 1999 incident is contained in the missing archive boxes and cannot be located.

158. Accordingly, I am satisfied that:

- there are no reasonable grounds to believe that the videotape of the 11 January 1999 incident is in the possession or under the control of QCS
- the search efforts of QCS have been reasonable in the circumstances of this review.

Summary

159. QCS submitted during the course of this review that:

- searches had been conducted of parts 1-5 of the applicant's PMFs
- the Manager of the MSU examined any documents held at AGCC
- the IOMS database was searched for all relevant documents
- where necessary, searches had been conducted of archived records
- QCS officers had diligently conducted searches of all QCS files involving the applicant in relation to this review
- no further documents could be located in relation to the 11 incidents that occurred between 25 August 1993 and 20 February 2001.

160. Based on the documents released to the applicant to date, QCS' submissions, the searches conducted by QCS and the terms of the Policy Framework and Disposal Authority, I am satisfied that:
- there are no reasonable grounds to believe that further documents relating to the 11 incidents which occurred between 25 August 1993 and 20 February 2001 are in the possession or under the control of QCS
 - the searches undertaken by QCS have been reasonable in the circumstances of this review.

28 August 2002 - 17 September 2002

Relevant reporting procedure

161. During this period, the applicant was involved in three incidents on 28 August 2002, 6 September 2002 and 17 September 2002. The reporting procedure in force at that time was the *Incident Reporting IMP* (version 00). It applied from 1 July 2001 to 1 December 2002.
162. Section 3.5 of the *Incident Reporting IMP* (version 00) sets out the documentation requirements in relation to Level 1 and Level 2 incidents²² and provides as follows:

3.5 Documentation Required for ALL Level 1 and Level 2 Incidents

General Managers/Regional Directors/Director WORC are to ensure that generation of an Incident Report takes place as soon as practicable but no later than; within two (2) hours for Level 1 incident and within 3 hours for a Level 2 incident.

...

General Managers/Regional Directors/Director WORC must ensure that a written briefing Note and updates on all Level 1 incidents is provided to the relevant Executive Director or the Duty Executive.

Briefing Notes for Level 2 incidents will be as requested by the relevant Executive Director or the Duty Executive.

163. Section 3.8 of the *Incident Reporting IMP* (version 00) sets out the documentation requirements in relation to Level 1 and Level 2 incidents²³ and provides as follows:

3.9 Documentation required for Level 3 Incidents

Where a Level 3 incident occurs during the hours of 8am and 5pm Monday to Friday, the faxing of the report is to occur on the day of the incident.

If the incident occurs overnight or on weekends the report is to be faxed to ensure it is received by 9am on the next working day. Briefing notes are to be provided by the person in charge of the facility on request.

164. Following my analysis of the terms of *Incident Reporting IMP* (version 00) and *Notifiable Incidents*, I have identified the following documentation requirements:
- Level 1 incidents - an incident report (IOMS printout) and a ministerial briefing note

²² Examples of Level 1 and Level 2 incidents are set out at paragraphs 160-161 of this decision.

²³ Examples of these incidents are set out in paragraphs 159-160 of this decision.

- Level 2 and Level 3 incidents - an incident report (IOMS printout) and if requested, a ministerial briefing note.

165. The appendix to the *Incident Reporting IMP* (version 00) titled *Notifiable Incidents*, provides examples of Level 1, 2 and 3 incidents. The following are examples of Level 1 incidents:

- death in a corrective services facility
- use of lethal force
- bomb threat.

166. Examples of Level 2 incidents are:

- attempted suicide in a corrective services facility
- serious accidents in a corrective services facility
- significant contraband finds in a corrective services facility.

167. Examples of Level 3 incidents are:

- property damage or loss of equipment
- prepare to escape
- self-mutilation in a corrective services facility
- all other incidents.

Sufficiency of search

168. The questions which I must answer in sufficiency of search matters are set out in paragraph 52 of this decision.

169. The IOMS printouts released to the applicant in relation to these incidents do not indicate their classification level, but describe the incidents as follows:

- 28 August 2002 - threats against staff
- 6 September 2002 - assault (minor) offender on staff
- 17 September 2002 - threats against staff.

170. I am of the view that those types of incidents fall within the category of Level 3 incidents in the *Notifiable Incidents* appendix to *Incident Reporting IMP* (version 00).

171. In his submissions dated 16 October 2007, the applicant submitted that specific documents, as set out in the table below, should exist:

Incident date	Documents the applicant contends should exist
28 August 2002	Incident reports from CSOs Preston, Sullivan, Tisbury and Bodman Custodial Community Corrections Incident Report
6 September 2002	Incident report of CSO Pointon Custodial Community Corrections Incident Report
17 September 2002	Custodial Community Corrections Incident Report

172. With respect to all three incidents, the applicant submitted that the IOMS printout provided by QCS did not constitute an incident report. The applicant submitted that two separate documents lead to the creation of the IOMS printout, namely, an incident report from a CSO and a Custodial Community Corrections Incident Report.
173. As stated in paragraph 144 of this decision I accept QCS' submission that an IOMS printout constitutes an incident report. As set out in paragraph 164 of this decision, I am satisfied that creation of an IOMS printout in relation to Level 3 incidents meets the reporting requirements set out in *Incident Reporting IMP* (version 00) and that no other documents are required to be prepared.
174. With respect to the 6 September 2002 incident, the applicant referred to the QCS Safety and Security Procedure titled *Use of Force* (version 00) (*Use of Force Procedure*). Specifically, the applicant referred to paragraph 3.9 of that procedure which provides:

3.9 Reporting the Use of Force

Reasonable Force

When a corrective services officer has considered it reasonable to apply physical or chemical force to a prisoner or other persons in compliance with the [Corrective Services Act 2000 (Qld)], the officer must, as soon as practicable notify the person in charge of the facility and before proceeding off duty provide a written report to the person in charge detailing the nature of the force used and the reasons for the use of such force.

The person in charge of the facility or General Manager, Operational Support Service Unit must report the event in accordance with the procedure, Incident Reporting.

175. The applicant contended that CSO Pointon used force on him during the 6 September 2002 incident and therefore, should have prepared a report pursuant to section 3.9 of the *Use of Force Procedure*.
176. In my decisions in external review no. 674/05 and no. 025/06, I found that while the *Use of Force Procedure* establishes a requirement to report the use of force, it does not require every officer involved in an event in which force is used to prepare a written report. In those decisions, I concluded that for each event involving the use of force, the *Use of Force Procedure* requires at least one, but not every CSO involved, to prepare a written report. I remain of that view.
177. In this matter, reports from CSOs Jones, Duncan, Taylor and Warshawsky were provided to the applicant by QCS in relation to the 6 September 2002 incident. In light of my finding in external review no. 674/05 and no. 025/06 that the *Use of Force Procedure* requires at least one, but not every CSO involved, to prepare a written report, I am satisfied that CSO Pointon was not required to prepare a report in relation to the 6 September 2002 incident.
178. Accordingly, in light of the fact that an IOMS printout has been provided to the applicant for all three incidents and based on the terms of *Incident Reporting IMP* (version 00), I find that:
- there are no reasonable grounds to believe that CSO reports or any other additional documents should exist in relation to these Level 3 incidents
 - the searches conducted by QCS have been reasonable in the circumstances of this case.

3 January 2003 - 22 July 2003

Relevant reporting procedure

179. In respect of the four incidents which occurred between 3 January 2003 and 22 July 2003, the applicable reporting procedure was the *Incident Reporting IMP* (version 01). That procedure was in force from 2 December 2002 to 19 April 2004.

180. Section 3.2 of *Incident Reporting IMP* (version 01) relevantly provides:

Documentation required for Level 1 incidents

The Person in Charge, Regional Director or Director, Community Custody must ensure that generation of an Incident Report takes place as soon as practicable ...

If a level 1 incident involves an injury the relevant workplace health and safety forms must be completed ...

...

The relevant Person in charge, Regional Director or the Director, Community Custody must ensure that written information/briefing note (as appropriate, and updates on all level 1 incidents are prepared and faxed to the relevant operational Executive Director.

181. Section 3.3 of *Incident Reporting IMP* (version 01) relevantly provides:

Documentation required for Level 2 incidents

For an incident occurring during business hours the Person in Charge, Regional Director or Director, Community Custody must ensure that generation of an Incident Report takes place within three (3) hours of the incident occurring. ...

...

If a level 2 incident involves an injury the relevant workplace health and safety forms must be completed ...

...

The relevant operational Executive Director may request that written information/briefing note (as appropriate) be prepared for a Level 2 incident ...

182. Section 3.4 of *Incident Reporting IMP* (version 01) relevantly provides:

Documentation required for Level 3 incidents

Where a Level 3 incident occurs during the hours of 8am and 5pm Monday to Friday, the faxing of the Incident Report must occur on the day of the incident.

...

If requested, the relevant Person in Charge, Regional Director or Director, Community Custody will provide written information/briefing note (as appropriate) in relation to an incident ...

183. Following my analysis of the terms of *Incident Reporting IMP* (version 01), I have identified the following documentation requirements:

- Level 1 incidents - an incident report (IOMS printout), a briefing note and workplace health and safety forms (if an injury is involved)
- Level 2 incidents - an incident report (IOMS printout), a briefing note (if requested) and workplace health and safety forms (if an injury is involved)
- Level 3 incidents - an incident report (IOMS printout) a briefing note (if requested) and workplace health and safety forms (if an injury is involved).

184. Examples of Level 1, 2 and 3 incidents are set out in the appendix to *Incident Reporting IMP* (version 01) titled *Notifiable Incidents*. The following are examples of Level 1 incidents:

- death of a person in a corrective services facility
- major assault in a corrective services facility
- hostage taking in a corrective services facility.

185. Examples of Level 2 incidents are:

- attempted suicide in a corrective services facility requiring transportation to hospital
- a drug overdose in a corrective services facility requiring transportation to hospital
- sexual assault in a corrective services facility.

186. Examples of Level 3 incidents are:

- minor assault
- theft of property from staff or prisoners
- all other incidents.

Sufficiency of search

187. The questions which I must answer in sufficiency of search matters are set out in paragraph 52 of this decision.

188. The documents released to the applicant in relation to the 3 January 2003 incident describe it as a Level 3 incident. The IOMS printouts for the 28 April 2003, 24 May 2003 and 22 July 2003 incidents do not indicate the classification level of those incidents. However, having examined the nature of those incidents and surrounding circumstances, I have concluded that they would have been classified as Level 3 incidents.

189. In submissions dated 16 October 2006, the applicant contended that additional documents as set out in the table below should exist in relation to these incidents:

Table 8	
Incident date	Documents the applicant contends should exist
3 January 2003	Incident report of CSO Bull
28 April 2003	Custodial Community Corrections Incident Report
24 May 2003	Incident reports of CSOs Cockfield, B. Warwick, W. Warwick and Anderson
22 July 2003	Incident reports of CSOs Debenham, Londy, Rubins, Slade and Roberts Photographs taken of the day room relating to evidence of blood Video evidence Investigation documents

190. With respect to the 3 January 2003, 24 May 2003 and 22 July 2003 incidents, the applicant contends that the CSOs listed in Table 8 above used force upon him and

therefore, pursuant to section 3.9 of the Use of Force Procedure, they were required to prepare a report.

191. In relation to the 3 January 2003 incident, QCS released reports of CSOs Wilson, McCarthy and Taylor to the applicant. With respect to the 24 May 2003 incident, reports of CSOs Bull, Brown, Gordon and McCarthy were released. No CSO reports were located by QCS in relation to the 22 July 2003 incident. In light of my finding that the Use of Force Procedure requires at least one, but not every CSO involved, to prepare a written report²⁴, I am satisfied that additional CSOs were not required to prepare reports in relation to the 3 January 2003 and 24 May 2003 incidents.
192. With respect to the 22 July 2003 incident, I note that no CSO reports were located by QCS. The IOMS printout in relation to that incident does not make any reference to the use of force upon the applicant by any of CSOs Debenham, Londy, Rubins, Slade or Roberts. The description of the incident states that officers responded to the MSU but by that time, the applicant had returned to his cell. Accordingly, on the information available to me, it appears that no force was used on the applicant and therefore, the Use of Force Procedure was not enlivened. Thus, I do not consider that CSO reports regarding the use of force should exist in relation to the 22 July 2003 incident.
193. In terms of the photographs and video evidence which the applicant contends should exist in relation to the 22 July 2003 incident, QCS submitted that thorough searches of AGCC records were conducted and no video recordings or photographs in relation to the incident could be located.
194. QCS submitted during the course of this review that:
 - searches had been conducted of parts 1-5 of the applicant's PMFs
 - the Manager of the MSU examined any remaining documents held at AGCC
 - the IOMS database was searched for all relevant documents
 - QCS officers had diligently conducted searches of all QCS files involving the applicant in relation to this review
 - no further documents could be located in relation to the 11 incidents that occurred between 25 August 1993 and 20 February 2001.
195. Accordingly, based on the documents released to the applicant, QCS' submissions, searches undertaken by QCS and the terms of *Incident Reporting IMP* (version 01) I find that:
 - the documents released to the applicant satisfied the reporting requirements set out in the *Incident Reporting IMP* (version 01)
 - there are no reasonable grounds to believe that further documents exist in relation to this incident
 - the searches conducted by QCS have been reasonable in the circumstances of this review.

Section 44(1) of the FOI Act

196. QCS claimed that parts of documents released to the applicant qualified for exemption under section 44(1) of the FOI Act. In the applicant's submissions dated 9 November 2003, the applicant contested the application of section 44(1) of the FOI Act only in respect of the documents set out in the table below:

²⁴ See paragraph 170 of this decision.

Table 9	
Document description	Matter in issue
11 January 1999 incident - IOMS printout	Name of visitor and details of detected drug
3 January 2003 incident – IOMS printout	Name and date of birth of other prisoner involved in the incident and comments made by that prisoner
3 January 2003 major breach – IOMS printout	Name of other prisoner involved
24 May 2003 incident – IOMS printout	Name of officers involved in the incident and details of injuries suffered by these officers
24 May 2003 incident – report of CSO Bull	Details of injuries suffered by officers involved
24 May 2003 incident – report of CSO Brown	Details of injuries suffered by officers involved and comments by officer regarding impact of incident on him
24 May 2003 incident – report of CSO McCarthy	Details relating to other prisoners

197. Section 44(1) of the FOI Act provides:

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.

198. 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.

199. The Information Commissioner discussed in detail the meaning of the phrase 'personal affairs of a person' (and relevant variations) as it appears in the FOI Act in *Stewart and Department of Transport*.²⁵ In particular, the Information Commissioner 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

²⁵ (1993) 1 QAR 227 at paragraphs 79-114. Hereafter referred to as *Stewart*.

200. In *Stewart*, the Information Commissioner also confirmed the approach taken in *Re Lapidos and Office of Corrections (No.2)*²⁶ that information concerning what happens to a prisoner while in prison concerns the 'personal affairs' of a prisoner.
201. 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 of section 44(1) of the FOI Act

202. The name and date of birth of one of the applicant's visitors and the matter concerning the injuries suffered by CSOs constitutes matter which falls within the core meaning of personal affairs as set out in *Stewart* and therefore, is *prima facie* exempt pursuant to section 44(1) of the FOI Act. I also find that the names and details of other prisoners are *prima facie* exempt under section 44(1) of the FOI Act because disclosing this matter would reveal what has happened to a prisoner while in prison, ie. the personal affairs of a prisoner (see *Re Lapidos*).

Public interest

203. Once the initial test for exemption under section 44(1) of the FOI Act is satisfied, a public interest consideration, accepted by Parliament as weighing against disclosure of the relevant information, is established. Specifically, it is the public interest in protecting the privacy of information concerning the personal affairs of identifiable individuals.²⁷
204. As I have formed the view that certain matter in the documents listed in Table 9 above falls within the exemption provided for in section 44(1) of the FOI Act, I must now determine whether there are sufficient public interest considerations favouring disclosure of the matter in issue to justify a finding that disclosure would, on balance, be in the public interest. A significant consideration in this balancing exercise is that disclosure of matter under the FOI Act is considered to be disclosure to the 'world at large'.
205. The term 'public interest' refers to considerations affecting the good order and functioning of community and governmental affairs, for the well-being of citizens. In general, a public interest consideration is one that is common to all members of the community (or a substantial segment of them), and for their benefit.
206. The public interest is usually treated as distinct from matters of purely private or personal interest. However, some recognised public interest considerations may apply for the benefit of individuals in particular cases, including for example, the public interest in individuals receiving fair treatment in accordance with the law in their dealings with government.
207. I recognise that the following public interest considerations may favour disclosure of the matter in issue:
- greater access to government held information
 - enhanced government accountability in decision making.

²⁶ Unreported, Victorian Administrative Appeals Tribunal, Jones J, 19 February 1990. Hereafter referred to as *Re Lapidos*.

²⁷ *Williamson and Queensland Police Service and Anor* (2005) 7 QAR 51.

208. However, I am not persuaded that providing greater access to government held information is a consideration that outweighs the public interest in protecting the privacy of the applicant's visitors' personal details, details of injuries suffered by CSOs and information concerning other prisoners. Nor am I persuaded that the release of the matter in issue would enhance government accountability in decision making.
209. Accordingly, I am satisfied that the following matter is exempt from disclosure under section 44(1) of the FOI Act:
- personal details of one of the applicant's visitors
 - details of injuries suffered by CSOs
 - information concerning other prisoners.

Investigation documents

210. In the applicant's submissions dated 9 November 2006, he contended that documents relating to the investigations undertaken by the QPS CSIU should exist in relation to incidents which occurred on 9 June 1994, 21 September 1998 and 3 January 2003.
211. The applicant's submissions in relation to investigation documents give rise to sufficiency of search issues. As previously noted, the questions which I must answer with respect to sufficiency of search are set out in paragraph 52 of this decision.
212. By letter dated 12 September 2007, I requested QCS to undertake further searches for any CSIU investigation documents relating to those incidents that were in the possession or under the control of QCS. By letter dated 21 September 2007, QCS submitted in relation to the 9 June 1994 incident as follows:

The CSIU ... was contacted in relation to this matter ... [and] has advised that on the Unit's file there is a file note of a telephone call between QCS and the CSIU, which states that 'Management is happy not to proceed with investigation'.

Had the matter been investigated a Determination ... would have been provided to QCS, or a copy of the Incident Report would have been returned with a CSIU stamp and any relevant comment/s. As no investigation was undertaken no such documents were created. There is nothing on the CSIU file to indicate that anything was in fact provided to QCS from CSI in writing in relation to this matter, and no relevant document has been located on QCS file.

213. In relation to the 21 September 1998 incident, QCS submitted as follows:

... CSIU also advised that the investigation of this incident did not proceed. On the CSIU file there are several CSIU forms entitled Request to cease investigation/withdrawal of complaint which were signed by various complainants in the matter, including the applicant ... There is nothing on the CSIU file to indicate that anything was provided in writing to QCS from CSIU in relation to this matter, and as there was no investigation, there would be no Determination or stamped Incident Report.

214. In relation to the 3 January 2003 incident, QCS submitted that the CSIU Determination relating to this incident was provided to the applicant on 18 May 2006. That document shows that the matter was referred back to QCS to be dealt with as a breach of discipline.
215. Essentially, QCS' position in relation to CSIU investigation documents relating to these three incidents is as follows:

- CSIU investigations into these incidents did not proceed
- additional documents relating to the decision not to proceed with these investigations are held by QPS on the CSIU files relating to these incidents
- no further documents relating to these incidents are held by QCS.

216. I understand that incidents occurring in correctional centres are referred by QCS to the QPS CSIU for investigation where there are grounds to believe that criminal charges may be necessary in relation to an incident. However, it is within the discretion of the QPS CSIU to decide whether or not to proceed with an investigation based on the evidence and surrounding circumstances. As the applicant's FOI application was made to QCS, it was only necessary for searches to be conducted for documents in the possession or under the control of that agency. It was not necessary to conduct searches of QPS records.

217. Based on the searches conducted by QCS, the documents released to the applicant, the responses provided by the QPS CSIU and QCS' submissions dated 21 September 2007, I am satisfied that:

- there are no reasonable grounds to believe that CSIU investigation documents relating to the 9 June 1994, 21 September 1998 and 3 January 2003 incidents are in the possession or under the control of QCS
- the searches undertaken by QCS for such documents have been reasonable in the circumstances of this review.

DECISION

218. I vary the decision under review, being QCS' deemed refusal of access to all documents sought in the applicant's initial FOI application and find as follows:

- there are no reasonable grounds to believe that the following documents are in the possession or under the control of QCS:
 - the recordings sought in Items 1, 2 and 6 of his FOI application
 - the 6 March 2005 and 17 March 2005 major breach hearing recordings
 - further paper documents responsive to Items 4 and 5 of his FOI application
 - documents relating to investigations into the 9 June 1994, 21 September 1998 and 3 January 2003 incidents conducted by the QPS CSIU
- the searches conducted by QCS for the documents sought by the applicant have been reasonable in the circumstances of this review
- parts of documents released to the applicant by QCS in relation to the 11 January 1999 incident, 3 January 2003 major breach and incident and 24 May 2003 are exempt from disclosure under section 44(1) of the FOI Act.

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

V Corby
Assistant Commissioner

Date: 30 January 2008