



Decision and Reasons for Decision

Application Number: 210279, 210349, 210465 and 210466

Applicant: Ms S Scott

Respondent: South Burnett Regional Council

Decision Date: 9 April 2009

Catchwords: **FREEDOM OF INFORMATION – section 42(1)(ca) of the *Freedom of Information Act 1992* – matter relating to law enforcement or public safety – whether disclosure of the matter in issue could reasonably be expected to result in a person being subjected to a serious act of harassment or intimidation**

FREEDOM OF INFORMATION – section 29(4) of the *Freedom of Information Act 1992* – refusal to deal with application – agency’s or Minister’s functions – refusal to deal with the application without having identified any or all of the documents

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REASONS FOR DECISION

Summary

1. For the reasons set out below, I have set aside the decisions of the agency and in substitution have decided:
 - the remaining matter in issue in each of these reviews qualifies for exemption from disclosure under section 42(1)(ca) of the *Freedom of Information Act 1992* (**FOI Act**)
 - to refuse to deal with the sufficiency of search issues under section 29(4) of the FOI Act, on the basis that it appears that any further documents responsive to the freedom of information (**FOI**) applications qualify for exemption under section 42(1)(ca) of the FOI Act.

Background

2. The Office of the Information Commissioner (**the Office**) has eight associated external review applications on foot from the applicant and Ms Leigh Sheridan. The Office has finalised six other associated external review applications.¹
3. The applicant is a friend and supporter of Ms Sheridan. Ms Sheridan worked in the library at the former Nanango Shire Council (**NSC**) (now South Burnett Regional Council) and in 2006, Ms Sheridan's employment with NSC was terminated (**Termination**).
4. As a result of the Termination (and/or related events) Ms Sheridan pursued the remedies available to her in various forums including:
 - the Crime and Misconduct Commission (**CMC**)
 - the Australian Industrial Relations Commission (**AIRC**)
 - the Supreme Court of Queensland
 - Local Government Workcare
 - QComp
 - the Magistrates Court of Queensland.
5. The fact that Ms Sheridan has pursued these remedies has been reported in the media.
6. All of the associated external review applications concern documents related to the Termination and people she perceived to be involved in the Termination.
7. This decision primarily concerns the application of section 42(1)(ca) of the FOI Act in external reviews 210279, 210349, 210465 and 210466. NSC did not submit that section 42(1)(ca) applied to the matter in issue in the external reviews subject of this decision. Such submissions however were received in relation to the other external reviews referred to in paragraph 2.

¹ External reviews 210240, 210241, 210330, 210318, 210377 and 210323.

8. These four external review applications had been substantially dealt with to date. However, based on submissions received and a review of the eight external review applications currently before the Office as a whole, it was appropriate to consider the application of section 42(1)(ca) of the FOI Act in the applicant's four external reviews.
9. The procedures to be followed on external review are within the discretion of the Information Commissioner. Proceedings are to be conducted with as little formality and technicality, and with as much expedition, as the requirements of the FOI Act and a proper consideration of the matters before the Information Commissioner permit. The Information Commissioner is not bound by the rules of evidence and may inform himself or herself on any matter in any way the Information Commissioner considers appropriate.²
10. Section 88(1)(b) of the FOI Act provides that in the conduct of a review, the Information Commissioner has power to decide any matter in relation to the application that could have been decided by an agency or Minister under the FOI Act. The Information Commissioner must also take into account relevant considerations which arise during the investigation and review of a decision.
11. In conducting a review the Information Commissioner is required to adopt procedures that are fair having regard to her obligations under the FOI Act and to ensure that each participant in the review has an opportunity to present their views. To this end the applicant was provided with a very detailed preliminary view which set out the factors that would be taken into account in any decision and afforded the applicant an opportunity to make submissions in relation to the matters the Information Commissioner might rely upon and any other information/evidence the applicant thought might be relevant to any decision.
12. At the request of the Office, Mr Shane Gray, the former Chief Executive Officer (**CEO**) of NSC provided written and oral submissions to the Office in relation to his concerns about the release of documents to the applicant and Ms Sheridan under the FOI Act.

External review 210279

13. By letter dated 2 April 2007 the applicant requested access to 18 categories of documents from NSC under the FOI Act.
14. By letter dated 30 April 2007 NSC requested that the applicant clarify various parts of the FOI application.
15. By letter dated 14 May 2007 the applicant wrote to NSC and provided the necessary clarification. In clarifying the various parts of the FOI application, the applicant also expanded the scope of the FOI application and sought access to approximately 61 categories of documents.
16. By letter dated 15 June 2007 NSC issued a decision in relation to the FOI application.
17. By letter dated 14 July 2007 the applicant applied to the Office for external review of the decision.

² Section 72 of the FOI Act.

External review 210349

18. By letter dated 2 July 2007 the applicant sought access to six categories of documents from NSC under the FOI Act.
19. By letter dated 10 September 2007 NSC issued a considered decision³ in relation to the FOI application.
20. By letter dated 5 October 2007 the applicant applied to the Office for external review of the decision.

External review 210465

21. By letter dated 7 September 2007 the applicant sought access to 16 categories of documents from NSC under the FOI Act.
22. NSC did not make a decision within the time limits set out in the FOI Act and was therefore deemed to have refused the applicant access to the relevant documents.⁴ The applicant was then entitled to apply to the Office for external review of NSC's deemed decision.
23. By letter dated 4 February 2008 the applicant applied for external review of NSC's deemed decision.
24. By letters dated 11 February 2008 the Acting Information Commissioner advised the applicant that:
 - the Office had decided to grant NSC an extension of time until 14 March 2008 to deal with the FOI application⁵
 - if NSC did not advise the applicant of its decision by that time, the applicant would be entitled to make a fresh external review application to the Office.
25. By letter dated 25 March 2008 the applicant advised the Office that NSC had not made a decision on the FOI application and the applicant again applied for external review.

External review 210466

26. By letter dated 16 October 2007 the applicant sought access to ten categories of documents from NSC under the FOI Act.
27. NSC did not make a decision within the time limits set out in the FOI Act and was therefore deemed to have refused the applicant access to the relevant documents.⁶ The applicant was then entitled to apply to the Office for external review of NSC's deemed decision.
28. By letter dated 4 February 2008 the applicant applied for external review of NSC's deemed decision.
29. By letter dated 11 February 2008 the Acting Information Commissioner advised the applicant that:

³ Section 27B(4) of the FOI Act.

⁴ Section 27(5) of the FOI Act.

⁵ Section 79 of the FOI Act.

⁶ Section 27(5) of the FOI Act.

- the Office had decided to grant NSC an extension of time until 14 March 2008 to deal with the FOI application⁷
- if NSC did not advise the applicant of its decision by that time, the applicant would be entitled to make a fresh external review application to the Office.

30. By letter dated 25 March 2008 the applicant advised the Office that NSC had not made a decision on the FOI application and the applicant again applied for external review.

Decisions under review

31. The following decisions of NSC are under review:

- the decision dated 15 June 2007 in external review 210279
- the considered decision dated 10 September 2007 in external review 210349
- the deemed decisions in external reviews 210465 and 210466.

Steps taken in the external review process

External review 210279

32. By letter dated 18 July 2007 the Office advised the applicant that NSC's decision would be reviewed. The First Assistant Commissioner also asked the applicant to confirm the scope of the external review.
33. By letter dated 18 July 2007 the Office advised NSC that the decision would be reviewed and asked NSC to provide certain documents relevant to the review.
34. By letter dated 31 July 2007 the applicant wrote to the Office setting out some of her concerns about NSC's decision.
35. By letter dated 1 August 2007 NSC provided the requested documents.
36. By letter dated 12 August 2008 the Acting Assistant Commissioner provided the applicant with a preliminary view in relation to parts of the FOI application. The applicant was invited to provide submissions in support of her case by 28 August 2008 if she did not accept the preliminary view.
37. By letter dated 12 August 2008 the Acting Assistant Commissioner provided NSC with a preliminary view in relation to other parts of the FOI application. NSC was invited to provide submissions in support of its case by 28 August 2008 if it did not accept the preliminary view.
38. By letter dated 28 August 2008 the applicant requested an extension of time to provide submissions in response to the preliminary view.
39. By letter dated 5 September 2008 the Acting Assistant Commissioner advised the applicant that she had been granted an extension of time to provide submissions in response to the preliminary view.
40. By email on 5 September 2008 NSC provided a response to the preliminary view and indicated that it was prepared to release some documents to the applicant.

⁷ Section 79 of the FOI Act.

41. By email on 9 September 2008 the Acting Assistant Commissioner wrote to NSC to clarify and confirm parts of its submissions and to ask NSC to contact the applicant to arrange access to the documents it had agreed to release to her.
42. By letter dated 23 September 2008 the applicant provided submissions in response to the preliminary view.

External review 210349

43. By letter dated 10 October 2007 the Office advised the applicant that NSC's decision would be reviewed. The Acting Information Commissioner also confirmed the scope of the external review with the applicant.
44. By letter dated 10 October 2007 the Office advised NSC that the decision would be reviewed and asked it to provide certain documents relevant to the review.
45. By letter dated 7 December 2007 NSC provided the requested documents.
46. On 19 August 2008 a staff member of the Office spoke with NSC to clarify certain issues relevant to the review.

External review 210465

47. By letter dated 22 April 2008 the Office advised the applicant that NSC's deemed decision would be reviewed.
48. By letter dated 23 April 2008 the Office advised NSC that the decision would be reviewed and asked NSC to:
 - advise whether it was prepared to release any documents to the applicant
 - provide submissions in support of its case if it claimed that any documents were exempt from disclosure under the FOI Act
 - provide certain documents relevant to the review.
49. By letter dated 8 May 2008 NSC provided the requested information to the Office.
50. By letter dated 5 August 2008 the applicant wrote to the Office setting out some of her concerns about NSC's processing of the FOI application.
51. By letter dated 8 August 2008 the Acting Assistant Commissioner wrote to NSC to confirm some parts of its submissions.
52. By letter dated 20 August 2008 the Acting Assistant Commissioner wrote to the applicant to:
 - convey NSC's submissions to her
 - ask the applicant to indicate whether she sought external review of any aspects of NSC's submissions and if so, to invite her to provide submissions in support of her case.
53. By letter dated 15 August 2008 NSC provided confirmation of parts of its submissions.

54. By email on 22 August 2008 the Acting Assistant Commissioner asked NSC to contact the applicant to arrange access to the documents it had agreed to release to her.
55. By letter dated 28 August 2008 the applicant indicated that she could not make the requested submissions until she had received certain documents that NSC had agreed to release to her.
56. By email on 5 September 2008 the Acting Assistant Commissioner again asked NSC to contact the applicant to arrange access to the documents it had agreed to release to her.
57. By letter dated 5 September 2008 the Acting Assistant Commissioner again asked the applicant to indicate whether she sought external review of any aspects of NSC's submissions and if so, to invite her to provide submissions in support of her case. The Acting Assistant Commissioner advised the applicant that if she did not hear from her to the contrary by 29 September 2008, she would assume that the applicant wished to withdraw her application for external review.
58. By letter dated 23 September 2008 the applicant made general submissions in relation to NSC's processing of the FOI application and the external review process.

External review 210466

59. By letter dated 23 April 2008 the Office advised the applicant that NSC's deemed decision would be reviewed.
60. By letter dated 23 April 2008 the Office advised NSC that the decision would be reviewed and asked NSC to:
 - advise whether it was prepared to release any documents to the applicant
 - provide submissions in support of its case if it claimed that any documents were exempt from disclosure under the FOI Act
 - provide certain documents relevant to the review.
61. By letter dated 18 May 2008 NSC provided the requested information to the Office.
62. By letter dated 5 August 2008 the applicant wrote to the Office setting out some of her concerns about NSC's processing of the FOI application.
63. By letter dated 20 August 2008 the Acting Assistant Commissioner wrote to the applicant to:
 - convey NSC's submissions to her
 - ask the applicant to indicate whether she sought external review of any aspects of NSC's submissions and if so, to invite her to provide submissions in support of her case.
64. By email on 22 August 2008 the Acting Assistant Commissioner asked NSC to contact the applicant to arrange access to the documents it had agreed to release to her.
65. By email on 2 September 2008 the Acting Assistant Commissioner asked NSC to advise whether it was prepared to release a particular document to the applicant and if not, to provide submissions in support of its case.

66. By letter dated 28 August 2008 the applicant indicated that she could not make the requested submissions until she had received certain documents that NSC had agreed to release to her.
67. By email on 5 September 2008 the Acting Assistant Commissioner again asked NSC to contact the applicant to arrange access to the documents it had agreed to release to her.
68. By letter dated 5 September 2008 the Acting Assistant Commissioner again asked the applicant to indicate whether she sought external review of any aspects of NSC's submissions and if so, to invite her to provide submissions in support of her case by 29 September 2008.
69. By letter dated 23 September 2008 the applicant made general submissions in relation to NSC's processing of the FOI application and the external review process.

Steps taken in relation to the question of the application of section 42(1)(ca) of the FOI Act in external reviews 210279, 210349, 210465 and 210466

70. By email on 23 October 2008 NSC provided the Office with a copy of a further FOI application made by the applicant.
71. On 27 October 2008 a staff member of the Office telephoned a staff member of NSC to confirm certain background events relevant to this review.
72. On 20 November 2008 a staff member of the Office telephoned Mr Gray to:
 - clarify submissions he had made to the Office in a previous external review involving Ms Sheridan
 - seek his permission to refer to those submissions in relation to the external reviews involving the applicant
 - invite him to provide further submissions in support of his concerns.

Mr Gray provided submissions in support of his concerns during that telephone conversation.

73. On 4 December 2008 and at the request of the Office, Mr Gray met with the Acting Assistant Commissioner and another staff member of the Office. Mr Gray provided more detail on the previous submissions he had made to the Office.
74. On 17 December 2008 Mr Gray provided the Office with documents in support of his submissions to the Office.
75. By letter dated 22 December 2008 the applicant was provided with a preliminary view in relation to the application of section 42(1)(ca) of the FOI Act in external reviews 210279, 210349, 210465 and 210466. The preliminary view included the following attachments:
 - written submissions made by Mr Gray
 - examples of Ms Sheridan and people claiming to be her supporters having used public notices and the media to publicise their grievances with Mr Gray
 - print-outs from the website www.bunyawatch.com (**Bunya Watch**)
 - FOI applications made to various agencies.

The applicant was afforded an opportunity to provide submissions in support of her case by 19 January 2009 if she did not accept the preliminary view.

76. By letter dated 5 January 2009 the applicant requested an extension of time to provide submissions in support of her case.
77. By letter dated 12 January 2009 the applicant was given an extension of time in which to provide submissions.
78. By letter dated 30 January 2009 the applicant provided submissions in response to the preliminary view and various documents in support of her case.
79. By email on 12 March 2009 NSC provided the Office with a copy of the decision dated 12 November 2008 which was issued to the applicant in response to her recent FOI application to NSC (which is not subject to external review at this time).
80. On 18 March 2009 NSC provided the Office with a copy of the report broadcast on A Current Affair relating to the Termination.
81. On 23 March 2009 a staff member of the Office telephoned Mr Gray to clarify certain information he had provided to this Office.
82. On 25 March 2009 a staff member of this Office made further enquiries with NSC in relation to information Mr Gray provided to the Office.
83. On 27 March 2009 NSC provided further information relevant to these reviews.
84. The following material was taken into account in making this decision:
 - the applicant's FOI applications dated 2 April 2007,⁸ 2 July 2007,⁹ 7 September 2007¹⁰ and 16 October 2007¹¹ and the applicant's letter to NSC dated 14 May 2007 in which she expanded the scope of the FOI application¹²
 - NSC's decision dated 15 June 2007,¹³ considered decision dated 10 September 2007¹⁴ and submissions to the Office dated 8 May 2008¹⁵ and 18 May 2008¹⁶
 - the correspondence and submissions provided to the Office by NSC throughout the course of the external reviews
 - file notes of conversations between staff members of the Office and NSC
 - the correspondence, submissions and supporting documents provided to the Office by the applicant throughout the course of the external reviews, including her submissions dated 30 January 2009
 - the submissions provided to the Office by Mr Gray throughout the course of the external reviews and supporting documents (including the submissions provided to the Office by Mr Gray in external review 210240 as referred to in the decision of *Sheridan and South Burnett Regional Council*¹⁷)

⁸ External review 210279.

⁹ External review 210349.

¹⁰ External review 210465.

¹¹ External review 210466.

¹² External review 210279.

¹³ External review 210279.

¹⁴ External review 210349.

¹⁵ External review 210465.

¹⁶ External review 210466.

¹⁷ (Unreported, Queensland Information Commissioner, 23 June 2008).

- file notes of conversations between staff members of the Office and Mr Gray
- the four associated external review applications before the Office made by Ms Sheridan
- examples of Ms Sheridan and people claiming to be her supporters having used public notices and the media to publicise their grievances with Mr Gray
- print-outs from Bunya Watch referred to in this decision
- the report from A Current Affair relating to the Termination
- the various FOI applications made by the applicant and other associated people
- the matter in issue
- relevant case law and previous decisions of the Information Commissioner
- relevant provisions of the FOI Act.

Issue for determination

85. In light of all the associated external review applications, a threshold question to be answered in these external reviews is whether disclosure of the matter in issue in these reviews could reasonably be expected to result in a person being subjected to a serious act of harassment or intimidation.

Matter in issue

86. The remaining matter in issue in these reviews (**Matter in Issue**) is set out below.

External review 210279

87. In external review 210279, the remaining Matter in Issue in relation to the refusal of access issues is:

Item	Document/s sought
6	a number of emails between Mr Greasley and Mr Gray
15 & 16	correspondence between NSC and the CMC
17	an investigation report including attachments

88. In external review 210279, the remaining Matter in Issue in relation to the sufficiency of search issues relates to the following items of the FOI application:

Item	Document/s sought
1	full accounting of all expenses incurred by the activities of the NSC, Councillors, employees and contracted personnel attached to the process of dismissing Librarian Ms Leigh Sheridan. Together with all documentation (including delegations, authorisations, correspondence, memoranda, etc) relating to same...
2	any and all documentation in whatever form relating to the legal representations of the NSC in the process of dismissing Ms Sheridan and ensuing advice and court representation and the associated costs together with <ul style="list-style-type: none"> • copies of any and all documentation in whatever form, relating to the authorisation of such expenses. Together with ... • the ledger numbers to which these expenses are charged
3	the report of the Counsellor employed to address the management of the

Item	Document/s sought
	Shire library services, his qualifications, the NSC authorisation, the terms of reference for the employment of this person and the total cost to the Shire
7(a)	the memo/report that states items are missing from the Visitor Information Centre
10(b)	the advertisement for the position of rates clerk dated c. 1998 as published in the South Burnett Times (single document)
14(u)	any/all documentation relating to the performance review of the CEO Shane Michael Gray for the duration of his contract with NSC

External review 210349

89. In external review 210349, the remaining Matter in Issue in relation to the refusal of access issues is:

Item	Document/s sought
1	the Notice of Alleged Industrial Dispute filed with the AIRC on 8 February 2006
4	the affidavits provided to the AIRC by Shane Gray, Michael Hunter, Iris Crumpton and Leigh Sheridan
5	the two final staff appraisals for Leigh Sheridan prior to termination of her employment with NSC

External review 210465

90. In external review 210465, the remaining Matter in Issue in relation to the refusal of access issues is:

Item	Document/s sought
5	Ricky Allison's resume
13	the email Kathy Cope sent to staff members on 31 March 2006 at 11:05 am in relation to a proposed public notice, which was later published in the South Burnett Times
14	all documentation for the process of filling the management position(s) of the South Burnett Aquatic Centre

91. In external review 210465, the remaining Matter in Issue in relation to the sufficiency of search issues relates to the following items of the FOI application:

Item	Document/s sought
1	copies of all reports from the Administration Manager to Shane Gray from March 2005 – April 2006 that refer to Nanango Library, Audrey Sampson, Iris Crumpton, Val Hooper, Leigh Sheridan
3	copy of the log book for Kerry Mercer's work vehicle that was used in February and March 2006
12	copies of the minutes of Council staff meetings February – April 2006

External review 210466

92. In external review 210466, the remaining Matter in Issue in relation to the refusal of access issues is:

Item	Document/s sought
9	correspondence from NSC to the Information Commissioner from 2006

93. In external review 210466, the remaining Matter in Issue in relation to the sufficiency of search issues relates to the following items of the FOI application:

Item	Document/s sought
2	any and all documentation (in what ever form) between the State Library of Queensland and NSC in relation to the missing books from the Nanango Library
4	copy of the invoice from the State Library of Queensland issued to NSC in relation to missing books from the Blackbutt Library (c. Jan/Feb/March 2005)
5	any and all documentation (in whatever form) between the State Library of Queensland and NSC in relation to the missing books from the Blackbutt Library
6	copy of the requisition order authorising payment of the above invoice and copy of details concerning the cheque issued to the State Library of Queensland to pay the invoice
8	any and all documentation (in whatever form) in relation to the refurbishment of the Nanango Library shelves (26/27 October 2007)

The law**Section 42(1)(ca) of the FOI Act**

94. Section 42(1)(ca) of the FOI Act provides:¹⁸

42 Matter relating to law enforcement or public safety

(1) *Matter is exempt if its disclosure could reasonably be expected to—*

...

(ca) *result in a person being subjected to a serious act of harassment or intimidation.*

Legislative history of section 42(1)(ca) of the FOI Act

95. Section 42(1)(ca) of the FOI Act is a relatively new exemption provision inserted into the FOI Act by the *Freedom of Information and Other Legislation Amendment Act 2005* with commencement on 31 May 2005. There is no equivalent provision in other Australian jurisdictions, the United Kingdom or Canada, interpretation of which might provide guidance regarding the provision.

¹⁸ Section 42(1) of the FOI Act is subject to section 42(2) which provides that matter is not exempt under subsection (1) if it consists of matter described in paragraph (a) of subsection (2), unless its disclosure would, on balance, be in the public interest. I am satisfied that the Matter in Issue is not of a type described in paragraph (a) and therefore subsection (2) of section 42 does not apply in this matter.

96. Section 42(1)(ca) of the FOI Act was enacted in response to Report No 32 of the Legal, Constitutional and Administrative Review Committee (**LCARC Report**).¹⁹

97. The LCARC Report referred to section 42(1)(c) of the FOI Act and noted that:²⁰

In some circumstances the disclosure of matter could risk harm to an individual which falls short of endangering their life or physical safety. For example, the disclosure of information could cause a person to apprehend harassment or intimidation. Harassment does not satisfy s42(1)(c) unless there is evidence of a risk that disclosure of the matter in issue would endanger a person's life or physical safety. (Re Murphy and Queensland Treasury (1995) 2 QAR 744 at paras 53, 90-91.) The QIC submitted that, for these reasons, the provision should be extended to also exempt matter which could reasonably be expected to subject a person to acts of serious harassment.

98. The LCARC Report also stated:²¹

The committee agrees that potential harm to an individual, apart from the risk of endangering a person's life or physical safety, justifies the non-disclosure of material under the Act. In particular, people should not be deterred from providing information to investigative authorities, and professionals responsible for preparing reports about individuals should not be deterred from providing full and frank reports. In this regard, s 42(1)(c) should be extended to situations where disclosure of information could be reasonably expected to:

- ◆ *subject a person to serious acts of harassment; or*
- ◆ *substantially prejudice the mental well-being of a person.*

Each of these components is necessary. The first relates to likely possible acts against the person, whereas the second is focussed on any reasonable apprehension of harm which a person may have. Care should be taken in drafting the new provision to ensure that it is no broader than is necessary to protect the well-being of third parties who might be affected.

The definition of 'detriment' for the purposes of the Criminal Code, chapter 33A (Unlawful stalking) appears to provide an appropriate precedent for an amended provision.

99. The LCARC Report contained the following recommendation:²²

In relation to the exemptions contained in s 42 (Matter relating to law enforcement or public safety), s 42(1)(c) should be extended to also exempt matter if its disclosure could reasonably be expected to:

- ◆ *subject a person to serious acts of harassment; or*
- ◆ *substantially prejudice the mental well-being of a person.*

The definition of 'detriment' for the purposes of the Criminal Code, chapter 33A (Unlawful stalking) appears to provide an appropriate precedent for an amended provision.

100. In the explanatory notes to the *Freedom of Information and Other Legislation Amendment Bill*, section 42(1)(ca) of the FOI Act was described as follows:²³

¹⁹ Legal, Constitutional and Administrative Review Committee, *Freedom of Information in Queensland*, December 2001, Report No 32.

²⁰ At page 203.

²¹ At page 204.

²² Committee finding 177 – recommendation, at page 204.

²³ At page 14.

Clause 24 amends section 42 to create a new exemption to prevent disclosure where it is reasonably expected that such disclosure could subject a person to serious acts of harassment or intimidation. Such harassment or intimidation would be a consequence of, for example, the applicant having knowledge of the content of the information or of the provider of the information. For example, potential disclosure of information provided by a victim about the offence, upon the application of an offender, could constitute harassment or intimidation. Harassment or intimidation includes, for example, the threat of violence. This implements LCARC finding 177.

Interpretation of section 42(1)(ca) of the FOI Act

101. Section 4 of the FOI Act relevantly provides:

4 Object of Act and its achievement

- (1) *The object of this Act is to extend as far as possible the right of the community to have access to information held by Queensland government.*
- (2) *Parliament recognises that, in a free and democratic society—*
 - (a) *the public interest is served by promoting open discussion of public affairs and enhancing government’s accountability; and*
 - (b) *the community should be kept informed of government’s operations, including, in particular, the rules and practices followed by government in its dealings with members of the community; and*

...
- (3) *Parliament also recognises there are competing interests in that the disclosure of particular information could be contrary to the public interest because its disclosure in some instances would have a prejudicial effect on—*
 - (a) *essential public interests; or*
 - (b) *the private or business affairs of members of the community about whom information is collected and held by government.*
- (4) *This Act is intended to strike a balance between those competing interests.*
- (5) *The object of this Act is achieved by—*
 - (a) *giving members of the community a right of access to information held by government to the greatest extent possible with limited exceptions for the purpose of preventing a prejudicial effect on the public interest of a kind mentioned in subsection (3); and*

...
- (6) *It is Parliament’s intention that this Act be interpreted to further the object stated in subsection (1) in the context of the matters stated in subsections (2) to (5).*

102. Consistent with Parliament’s intention expressed in section 4(6) of the FOI Act, section 42(1)(ca) of the FOI Act must be interpreted in a way that best achieves the purpose of the FOI Act²⁴ as:

*the primary objective of statutory construction is to construe the relevant provision so that it is consistent with the language and purpose of all the provisions of the statute.*²⁵

²⁴ Section 14A(1) of the *Acts Interpretation Act 1954*.

²⁵ *Project Blue Sky v Australian Broadcasting Authority* (1998) 194 CLR 355 at 381.

103. Section 4(1) of the FOI Act recognises that the community has a right to access information held by the Queensland government. However, sections 4(2)-(5) of the FOI Act provide that the right of access to documents under the FOI Act is subject to a balancing of competing public interests. Accordingly, section 42(1)(ca) should be interpreted in a way that extends as far as possible the right of the community to access information held by agencies whilst recognising that section 42(1)(ca) is one of the limited exceptions that may apply because disclosure '*could be contrary to the public interest*' as it '*would have a prejudicial effect*' on '*essential public interests*' or on '*the private or business affairs of members of the community about whom information is collected and held by government.*'
104. Accordingly, in interpreting section 42(1)(ca) of the FOI Act it is necessary to consider any '*essential public interests*' and '*private or business interests*' that, absent the provision, may be prejudiced by disclosure of documents through the right of access under section 21 of the FOI Act.
105. The LCARC Report specifically addresses the public interest in ensuring that people are not deterred from providing information to investigative authorities and similarly, that professionals are not deterred from providing full and frank reports to agencies through concern that disclosure could lead to serious harassment or intimidation.²⁶ The Committee agreed that potential harm to an individual justifies non-disclosure.
106. In addition to the public interests identified by LCARC, section 42(1)(ca) also works to protect the public interest in disclosure not having a prejudicial effect on the private or business affairs or individuals.
107. Though the term '*personal affairs*' appears throughout the FOI Act, the term '*private affairs*' does not otherwise appear.
108. In *ABC v Lenah Game Meats Pty Ltd*²⁷ Gleeson CJ noted that:

There is no bright line which can be drawn between what is private and what is not. Use of the term "public" is often a convenient method of contrast, but there is a large area in between what is necessarily public and what is necessarily private. An activity is not private simply because it is not done in public. It does not suffice to make an act private that, because it occurs on private property, it has such measure of protection from the public gaze as the characteristics of the property, the nature of the activity, the locality, and the disposition of the property owner combine to afford. Certain kinds of information about a person, such as information relating to health, personal relationships, or finances, may be easy to identify as private; as may certain kinds of activity, which a reasonable person, applying contemporary standards of morals and behaviour, would understand to be meant to be unobserved. The requirement that disclosure or observation of information or conduct would be highly offensive to a reasonable person of ordinary sensibilities is in many circumstances a useful practical test of what is private.

109. In accordance with section 4(6) of the FOI Act, section 42(1)(ca) of the FOI Act may be interpreted as a limited exception to the right of access which allows non-disclosure of information or professional advice provided to an agency where that disclosure could reasonably be expected to result in serious harassment or intimidation of person/s. Such disclosure would therefore be contrary to the public interest in the supply of this information as well as the public interest in protecting such individuals from conduct that would prejudice their private affairs.

²⁶ Section 42(1)(ca) of the FOI Act does not contain a public interest test, however, the public interest considerations discussed above are relevant to how section 42(1)(ca) of the FOI Act is interpreted.

²⁷ (2001) 208 CLR 199 at 226.

110. Section 42(1)(ca) of the FOI Act must be interpreted in the context of the FOI Act as a whole.
111. Paragraph (ca) was inserted into subsection 42(1) of the FOI Act by an amending Act which also inserted section 96A into the FOI Act.
112. Under section 96A of the FOI Act, the Information Commissioner may declare a person a vexatious applicant if the Commissioner is satisfied that the person has made repeated applications under the FOI Act and those applications *'involve an abuse of the right of access, amendment or review'* under the FOI Act. Section 96A(4) gives an example of conduct which amounts to an abuse of the right of access, amendment or review:
- For subsection (3)(b), repeated applications involve an abuse of the right of access, amendment or review if, for example, the applications were made for the purpose, or have had the effect, of –*
- (a) *harassing or intimidating an individual or an employee or employees of the agency or agencies; or*
- (b) *unreasonably interfering with the operations of the agency or agencies.*
113. Considered together, the amending provisions in relation to sections 96A and 42(1)(ca) reflect Parliament's intent to limit, prevent or terminate access applications which are improper or amount to abuse of the rights conferred under the FOI Act.
114. In considering the FOI Act as a whole, the following observations can be made about the operation of section 42(1)(ca):
- a) The conduct contemplated in section 42(1)(ca) is more *'serious'* than some conduct that may be contemplated by section 96A(3)(b).
- b) Some degree of harassment or intimidation is contemplated as permissible before the right to access documents under the FOI Act is removed.
- c) The subjective purpose of the applicant is not a relevant consideration.
- d) Section 42(1)(ca) may apply in respect of a single access application, that is, neither the application nor the applicant need be characterised as vexatious for the provision to apply.
- e) Under section 42(1)(ca) the exemption may be available where it is reasonably expected that disclosure will result in a single serious act of harassment rather than *'repeated attacks'* or *'persistent disturbances'* which may be a requirement under section 96A of the FOI Act.
115. There are no definitions of the words or phrases contained in section 42(1)(ca) in either the FOI Act or the *Acts Interpretation Act 1954*. Therefore, in accordance with the rules of statutory interpretation, this decision gives effect to the ordinary meaning of those words, except where there is relevant interpretation.

‘Could reasonably be expected to’

116. In *Attorney-General v Cockcroft*,²⁸ (**Cockcroft**) which dealt with the interpretation of the phrase ‘*could reasonably be expected to prejudice the future supply of information*’ in the context of the section 43(1)(c)(ii) (business affairs) exemption contained in the Commonwealth FOI Act, Bowen CJ and Beaumont J said:²⁹

*In our opinion, in the present context, the words "could reasonably be expected to prejudice the future supply of information" were intended to receive their ordinary meaning. That is to say, they require a judgment to be made by the decision-maker as to whether it is reasonable, as distinct from something that is irrational, absurd or ridiculous, to expect that those who would otherwise supply information of the prescribed kind to the Commonwealth or any agency would decline to do so if the document in question were disclosed under the Act. It is undesirable to attempt any paraphrase of these words. In particular, it is undesirable to consider the operation of the provision in terms of probabilities or possibilities or the like. To construe s.43(1)(c)(ii) as depending in its application upon the occurrence of certain events in terms of any specific degree of likelihood or probability is, in our view, to place an unwarranted gloss upon the relatively plain words of the Act. It is preferable to confine the inquiry to whether the expectation claimed was reasonably based (see *Jason Kioa v. The Honourable Stewart John West*, High Court, unreported, 18 December 1985 per Mason, J. at p 36; see also per Gibbs, C.J. at p 12).*

117. The Justices’ interpretation of the phrase ‘*could reasonably be expected to*’ and the proposed line of inquiry, while made in the context of the business affairs exemption contained in Commonwealth FOI legislation, is relevant in the context of the exemption contained in section 42(1)(ca) of the FOI Act.
118. Accordingly, the phrase ‘*could reasonably be expected to*’ in this context requires a consideration of whether the expectation that disclosure of the Matter in Issue will result in a serious act of harassment or intimidation is reasonably based.
119. Shepherd J also noted in *Cockcroft* that it is not necessary for a decision-maker ‘*to be satisfied upon a balance of probabilities*’ that disclosing the document will produce the anticipated prejudice.³⁰
120. Depending on the circumstances of the particular review, a range of factors may be relevant in determining whether an act could reasonably be expected to occur. These factors may include, but are not limited to:
- past conduct or a pattern of previous conduct
 - the nature of the relevant matter in issue
 - the nature of the relationship between the parties and/or third parties
 - relevant contextual and/or cultural factors.

‘Harassment’

121. The plain meaning of the word ‘*harass*’, as defined in the Macquarie Dictionary³¹ includes:

to trouble by repeated attacks, ... to disturb persistently; torment

²⁸ (1986) 64 ALR 97.

²⁹ *Cockcroft*, at 106.

³⁰ *Cockcroft*, at 106.

³¹ *Macquarie Dictionary Online* (Fourth Edition) www.macquariedictionary.com.au.

‘Intimidation’

122. The plain meaning of the word *‘intimidate’*,³² includes:

to make timid, or inspire with fear; overawe; cow ... to force into or deter from some action by inducing fear

‘A serious act of harassment or intimidation’

123. Section 42(1)(ca) of the FOI Act requires that an anticipated act of harassment or intimidation be *serious*.

124. The plain meaning of the word *‘serious’*,³³ includes:

giving cause for apprehension; critical

and in the New Shorter Oxford Dictionary (4th Edition) includes:

having (potentially) important, esp. undesired, consequences; giving cause for concern.

125. As I have noted above, the definition of *‘harassment’* refers to persistent or repeated conduct. However, I consider that section 42(1)(ca) of the FOI Act can apply where what is expected to result from disclosure is a *single* act of serious harassment and it is not necessary for me to consider whether disclosure of the Matter in Issue could reasonably be expected to result in more than one act of serious harassment.

126. Therefore, I am satisfied that a *‘serious act of harassment’* in the context of section 42(1)(ca) of the FOI Act means an action that attacks, disturbs or torments a person and that causes concern or apprehension or has undesired consequences.

127. Accordingly,

- Acts which induce fear or force a person into some action by inducing fear or apprehension are acts of intimidation.
- Acts of intimidation which have undesired consequences or cause concern and/or apprehension are *serious* acts of intimidation.
- Acts which persistently trouble, disturb or torment a person are acts of harassment.
- Acts of harassment which have undesired consequences or cause concern and/or apprehension are *serious* acts of harassment.

³² As above.

³³ As above.

How relevant information is considered

128. The question of whether disclosing the Matter in Issue in these reviews could reasonably be expected to result in a serious act of harassment or intimidation should be considered objectively, in light of all relevant information, including information from and/or about the claimed source of harassment or intimidation.³⁴
129. Section 42(1)(ca) of the FOI Act does not require a causal link to be drawn between a specific person and the conduct; nor does it require the conduct to be that of the applicant.

Submissions and relevant information

Information provided by Mr Gray

130. In telephone conversations with a staff member of the Office and in a meeting with two staff members of the Office on 4 December 2008, Mr Gray provided submissions which can be summarised as follows.
- a) Mr Gray relocated his family from Nanango shortly after the Termination purely because of the incidents associated with the Termination.
 - b) The incidents have caused significant stress to him and his family and have impacted on his personal financial circumstances and career.
 - c) After the Termination, people were driving past his residence at night and yelling obscenities relating to Ms Sheridan. This continued for around two or three months.
 - d) On at least one occasion, Mr Gray was followed by a supporter of Ms Sheridan while driving his car and, in the context of the other incidents, this made him feel anxious.
 - e) Mr Gray received around half a dozen phone calls on his work mobile phone and home phone between the hours of midnight and 3am. Mr Gray's work mobile phone number was not publicly available. All of those phone calls made reference to Ms Sheridan. One of the callers said something like, '*You'll get what you deserve for what you did to Leigh Sheridan*'. Mr Gray started receiving these calls around one or two months after the Termination and he received more calls after any significant decision was made relating to Ms Sheridan. Mr Gray reported a number of these calls to police.
 - f) Around the time of the Termination, Mr Gray received a phone call from an anonymous caller while at work. The caller made a threat against Mr Gray's children with reference to Ms Sheridan. Mr Gray reported the matter to the police.
 - g) The applicant, Ms Sheridan and a number of people claiming to be her supporters appeared on A Current Affair and discussed the Termination and Mr Gray.

³⁴ *Price and Queensland Police Service* (Unreported, Queensland Information Commissioner, 29 June 2007) at paragraph 63; see also the comments of the Information Commissioner at paragraph 47 of *Murphy and Queensland Treasury* (1995) 2 QAR 744 regarding section 42(1)(c) of the FOI Act.

- h) Approximately six to eight weeks after the Termination, Mr Gray was shoulder charged by a man in the street in the presence of his children. The man made an obscene comment to Mr Gray's children about Mr Gray with reference to Ms Sheridan. Mr Gray had never seen the man before.
 - i) Mr Gray has observed that staff of NSC have become visibly upset during the processing of the FOI applications relating to Ms Sheridan and in the context of the circumstances described above. Mr Gray remains concerned for the emotional well being of some NSC employees as a result of the incidents surrounding the Termination.
 - j) Damage was done to NSC wheelie bins located around 200 metres from Ms Sheridan's residence around the time of the CMC complaint. The wheelie bins had offensive comments written on each face including the lid (in the form of homosexual slurs) using the names of two NSC employees who were involved in the CMC complaint.
 - k) Other NSC officers have received threatening phone calls and some have taken periods of stress leave as a result of the incidents surrounding the Termination.
 - l) When information is released to Ms Sheridan or people claiming to be her supporters, the information is used to make new FOI applications. There have been numerous FOI applications made to NSC seeking information in relation to Mr Gray, including seeking information from his previous employers.
 - m) Since the Termination, each year on his birthday, the applicant has sent a card to Mr Gray expressing a sentiment to the effect that she wishes him '*all he deserves*'. Mr Gray considers the cards are linked with Ms Sheridan (for example one card has a picture of a frog on the cover and the frog is a common theme related to Ms Sheridan). The applicant's name and address are written on the back of the envelopes.
131. Mr Gray also provided submissions in external review 210240 (which are set out in the decision *Sheridan and South Burnett Regional Council*).³⁵ With those submissions, Mr Gray provided:
- examples of Ms Sheridan and people claiming to be her supporters having used public notices and the media to publicise their grievances with him
 - print-outs from Bunya Watch.

Information contained on Bunya Watch

132. The applicant describes Bunya Watch as:³⁶

An internet site that draws attention to events occurring in the Bunya Mountains and the South Burnett region of Queensland. It has had nearly 95000 visitors....What I like about it is that this website has a discussion page where people from all around the world can post their comments on a variety of topics ranging from the proliferation of feedlots in the area and their effect on lifestyle and the environment, to the effect that Tarong is having on the area, alternative energy, the state of the roads in the region, the amalgamation.....

133. An anonymous posting on Bunya Watch from 11 April 2007 states in part:

³⁵ (Unreported, Queensland Information Commissioner, 23 June 2008).

³⁶ At page 29.

i have been asked by Leigh to let you all know she hasn't given up ... she has asked that bunyawatchers stick with her. Also she needs help to keep the pressure on. Don't be afraid to call the mongrels that did this to her. night time is best. especially the ceo.

134. A further undated posting from 'observer' states:

Keep up the FOI's and phone calls as it is starting to get to them. Leigh will have her day and it will serve them right.

135. A posting titled 'Re: Freedom of Information Mockery in NSC' by an anonymous person on 21 April 2007 provides:

i have an idea, lets call a public meeting, get dorothy pratt to chair it and ask tarong, feedlotowners, council and bunyawatchers including susan, leigh, pam, godbee, newsonto debate the whole us versus them conspiracy theory ... i for one would like to hear all about the knowledge of the bunyawatchers as they destroy the credibility of the bastards ...

136. The following postings on Bunya Watch are examples of people claiming to be Ms Sheridan's supporters using threatening language to publicly discuss their negative views of Mr Gray and other employees of NSC:

- An undated posting:

What would you do?? You trained someone and that person then stabbed you in the back, and pressed until you were fired, simply because they wanted your job?? Lucky Nanango has a water shortage, otherwise some concrete boots may be on the shopping list!

- An undated posting from 'Darling Jim' about Michael Hunter:

I believe that he is known in some circles as "The Weed". Suits him. Needs spraying.

- A posting dated 15 January 2007 from 'a sad ratepayer':

Mr Gray, if you are so well liked and confident of your position, a true test would be for you to throw open your door and invite those to your abode to discuss their concerns. Only joking, as if the people of Nanango Shire knew where you hide in Kingaroy, they would storm your front lawn like the US marines did at Omaha beach and we all know what happened there.

137. In a number of postings on Bunya Watch, people claiming to be Ms Sheridan's supporters use insulting language to publicly discuss their negative views of Mr Gray and other employees of NSC by, for example, comparing Mr Gray to Adolf Hitler³⁷ and referring to NSC employees as 'mongrels',³⁸ 'wankers',³⁹ 'dickheads',⁴⁰ 'despicable creatures',⁴¹ and 'bastards'.⁴²

³⁷ Posting 15 January 2007.

³⁸ Posting 6 January 2007 from 'Hijau' and anonymous posting on 11 April 2007.

³⁹ Posting 17 January 2007 from 'Spotted Dog' and posting on 8 March 2007 from 'Hijau'.

⁴⁰ Posting 18 December 2006.

⁴¹ Posting 8 March 2007 from 'Hijau'.

⁴² Anonymous posting 21 April 2007.

138. The following postings on Bunya Watch are examples of people claiming to be Ms Sheridan's supporters using insulting and derogatory language to publicly discuss their negative views of Mr Gray and other employees of NSC:

- A posting on 8 January 2007 from 'ex library user':

... Iris, the pathetic and jealous person who had a "history" with the ceo while they were both still at Murgon Council (along with the other slime weed) Micheal Hunter...

- A posting on 11 January 2007 from 'Hijau':

Yeah Leigh, give it a go. I'd love to see the look on scumbag-gray's face when you told him his contract is not being re-newed because of his attitude and unprofessionalism, Maybe you could flush out a few more of the bludgers as well...

- A posting on 14 January 2007 from 'Darling Jim':

Couldn't agree more about snivelling suckhold iris. My God it's sickening to watch. Dump her gray or she will drag you down. But then that might be a good thing, afterall!

- A posting on 15 January 2007 from 'Darling Jim':

Does that mean Michael (slimebag) Hunter would walk out too? Or should I say "ooze out". That I would have to see. What a pathetic slithery little piece of crap he is.

- A posting from 18 January 2007 from 'A Hole':

It seems Iris is being blamed for the demise of Leigh Sheridan. Are you sure it was all Iris and she wasn't under instructions from the ceo. If you can't find Iris in the library I have heard she can be found in an Adult Shop. Is she picking up a bucket supply of ky jelly for the ceo so he can shaft us. Obviously for-play is not his forte. As appearances go you would swear he was a rock-ape. Sorry animal lovers.

- An anonymous posting from 18 January 2007:

ky jelly and iris hmmm is it true she enjoys sex parties? could this be rumor no ? for capt canary

- A posting on 19 January 2007 from 'Hijau':

And WHAT is going on here now at Nanango? Even an arrogant airheaded wanker like gray must realise that iris is a liability to him. Hope she drags him down with her! We would be ecstatic to be rid of the pair of them. "Go, in God's name go and let us be rid of the lot of your perfidious works" (Oliver Cromwell 1650).

- A posting on 17 April 2007 from 'Pam':

... What a disgraceful clown Reg was-IS. ... By the by, has anyone checked out the size of the CEO lately? He looks like a bloated, ugly toad. When did he become so hideous? The corruption from within is obvious without.

- A posting on 18 April 2007 from 'Darling Jim':

That's because he IS a fat ugly toad, wrong, make that a hideous toad. Are they blaming Leigh for all this? No? It's a wonder. About time we had a cleanout. Get rid of: 1) the clown (reg) 2) the hideous, never wrong toad (s gray) 3) the fool (m hunter) 4) the half-wit (iris) 5) & other assorted arse lickers in (as some-one said) bullying castle. Start fresh with GOOD & HONEST people who have the welfare of their ratepayers at heart. Can we? WILL we? soon!

- An undated posting from 'Hijau':

You are the one who should grow up, mr/mrs/ms head-in-sand council a-licker. The case of Mrs Sheridan can be summed up thus: 1) someone wanted her job (which I believe she was very good at). 2) they and others within the nsc bullied and harassed her for over a year. 3) when she complained (as was her right and within council's policy) she was sacked. Where is the truth and justice in that? I believe that you are probably a nsc plant or one of the bullies or their friends. Remember this "The mills of God grind slowly but they grind exceedingly fine"

Information from the report on A Current Affair

139. A report was televised on the current affairs program A Current Affair after the Termination. The applicant, Ms Sheridan, Ms Sheridan's solicitor and a number of other people claiming to be supporters of Ms Sheridan were interviewed for the report.
140. The report indicated that the applicant and three other individuals who claim to be supporters of Ms Sheridan had started a petition for Mr Gray to be sacked.

Other information

141. Of concern is that at least one other probative source of information has not been prepared to participate and be identified in these external review proceedings because of fear of further serious acts of harassment and intimidation from people claiming to be Ms Sheridan's supporters.

The applicant's submissions

142. By letter dated 30 January 2009 the applicant provided submissions and supporting documents in response to the preliminary view letter dated 22 December 2008. I have summarised those submissions for convenience under a number of sub-headings and address them below.

Information provided to the Office by Mr Gray

143. The applicant makes a range of complaints about the information Mr Gray provided to the Office and submits that the Office:
- adopted a point of view based on Mr Gray's '*unsubstantiated*'⁴³ and '*scurrilous*'⁴⁴ allegations and notes that some of those submissions were provided to the Office verbally
 - regarded his allegations as truth without verifying the information he provided⁴⁵
 - has been unduly influenced by Mr Gray.⁴⁶

⁴³ At pages 2, 26, 28 and 32.

⁴⁴ At page 28.

⁴⁵ At page 2.

⁴⁶ At page 3.

144. The applicant then claims Mr Gray has not provided sufficient details or proof to substantiate his allegations and provides examples of the types of evidence that should be obtained by the Office before accepting his submissions.⁴⁷

145. The applicant also suggests that if Mr Gray objects to disclosure of documents under the FOI Act, one can only assume that he has something to hide.⁴⁸

146. The applicant goes on to suggest that:

- the Office has formed a view without ‘hearing her versions of events’⁴⁹
- has made a flawed decision by accepting the information provided by Mr Gray⁵⁰
- the view of the Office is biased⁵¹
- she has no faith that the external review will be dealt with in a fair and impartial manner.⁵²

Involvement in the alleged incidents

147. In response to the information provided by Mr Gray, the applicant:

- submits that Mr Gray holds her responsible for some of the alleged incidents⁵³
- denies any involvement in or responsibility for most of the incidents Mr Gray refers to⁵⁴
- claims that any belief that she or Ms Sheridan are responsible for the alleged incidents is ‘utter nonsense’⁵⁵
- notes that she has not been interviewed by police in relation to any of the alleged incidents and has not received correspondence from NSC’s solicitors.

148. The applicant submits that she:

- met with Mr Gray to discuss her concerns about staffing in the NSC library⁵⁶
- made requests to speak at NSC meetings⁵⁷
- wrote to Mr Gray, the Mayor of NSC, the Minister for Local Government, the Premier, the Ombudsman, her local Member of Parliament and the CMC in relation to issues involving Ms Sheridan⁵⁸
- wrote a letter to the editor of the South Burnett Times in relation to Ms Sheridan⁵⁹
- was one of the people involved in placing a public notice in the South Burnett Times in relation to NSC and its treatment of Ms Sheridan⁶⁰
- appeared on A Current Affair in relation to the Termination⁶¹
- sent Mr Gray a birthday card on two occasions⁶²

⁴⁷ At pages 17 – 20.

⁴⁸ At page 20.

⁴⁹ At page 28.

⁵⁰ At page 32.

⁵¹ At page 34.

⁵² At page 34.

⁵³ At page 28.

⁵⁴ At pages 16 – 23.

⁵⁵ At page 19.

⁵⁶ At pages 7 - 8.

⁵⁷ As set out in documents attached to her submissions.

⁵⁸ At page 12 and as set out in documents attached to her submissions.

⁵⁹ At page 22.

⁶⁰ At page 12.

⁶¹ At pages 12 and 19.

- made numerous FOI applications which relate to Mr Gray and other NSC officers⁶³
- posted comments relating to Mr Gray and other related issues on Bunya Watch.⁶⁴

149. The applicant also submits that the various articles and public notices which the Office provided to her with the preliminary view letter are a case of a *'community discussing a situation they see unfolding before them'* and trying to *'convey their concerns to the CEO who responded by ignoring them'*. She claims that what was reported in the articles and letters to the editor was the truth.⁶⁵

Public interest considerations

150. The applicant makes the following submissions in relation to general public interest considerations:

- NSC and Mr Gray have failed to make decisions that are seen to be fair and transparent including keeping records that show how decisions are made.⁶⁶
- Release of the Matter in Issue is in the public interest because a number of the documents relate to the disbursement of ratepayer's money.
- As a ratepayer/stakeholder, she has the right to be fully informed as to how money entrusted to Council is used, particularly as it is distributed on behalf of ratepayers and clear and transparent accountability of all actions is a tenet of Council.⁶⁷

Bunya Watch

151. In relation to the Bunya Watch postings, the applicant submits:⁶⁸

- She was not responsible for creating the Bunya Watch website and should not be held responsible for the postings therein.
- The Bunya Watch posting set out at paragraph 133 above, is an anonymous posting and there is no evidence to suggest Ms Sheridan asked this person to make a posting on her behalf. For a short period of time, unknown individuals were submitting postings to Bunya Watch using other people's names, including her name.
- Bunya Watch contains postings from various people, on various topics, which recently have not been about Mr Gray.
- The Bunya Watch postings referred to by the Office are selective and therefore the context of the postings is not established.

⁶² At pages 20 and 27.

⁶³ At pages 20 and 27 – 30.

⁶⁴ At pages 23, 25 and 29.

⁶⁵ At page 21.

⁶⁶ At page 13.

⁶⁷ At page 15.

⁶⁸ At pages 23 – 33.

- She posts under her own name and tries to ensure that her comments are accurate and can be substantiated by documentary evidence.
- The Office is suggesting that she is responsible for what people choose to post on Bunya Watch, which is incorrect and notes that unknown individuals have submitted postings to Bunya Watch using other people's names, including hers.

FOI applications

152. The applicant has made the following submissions in relation to the FOI applications:

- The FOI applications were made in accordance with her democratic rights and obligations under the FOI Act.⁶⁹
- The Office has labelled her as vexatious.⁷⁰
- She has been required to make numerous and repeated FOI applications to access information about how certain events occurred and decisions were made.⁷¹
- She has been forced to make her FOI applications as a series of requests because if she had lodged one application requesting access to everything she wanted, it would have been rejected on the grounds that it would involve an unreasonable use of NSC's resources.⁷²
- She has applied for external review because NSC did not adhere to the time limits in the FOI Act.⁷³
- The FOI applications as they relate to Mr Gray, relate to him as a manager and not as an individual. Anyone can make an FOI application on any subject and they are not required to provide a reason for seeking access to the documents, nor explain what they intend to do with the documents. Individuals have a right to make FOI applications to Mr Gray's employers and if Mr Gray objects then it must be assumed that he has something to hide.⁷⁴
- She would not have been forced to make persistent FOI applications if her applications were treated seriously and processed exactly as the guidelines set out. If NSC wants her to cease making FOI applications, they should provide her with the requested documents.⁷⁵
- The fact that she has made numerous FOI applications should be disregarded as the FOI Act does not require her to limit the number and frequency of applications, nor does it require her to give a context.⁷⁶

⁶⁹ At pages 13 and 14.

⁷⁰ At page 13.

⁷¹ At page 14.

⁷² At page 28.

⁷³ At pages 13 – 14.

⁷⁴ At page 20.

⁷⁵ At page 29.

⁷⁶ At page 35.

- Her FOI applications have not been to torment and wear down the staff of NSC and she cannot see how the FOI applications could have this effect.⁷⁷

Findings

153. During the course of these external reviews, I have carefully considered the information provided by NSC, the applicant, Mr Gray and information from associated external reviews and exempt matter. Where considered necessary, the Office asked Mr Gray to provide further details and documents in support of his concerns. Staff members of the Office also met with Mr Gray to further clarify his submissions. Staff of the Office independently verified those of Mr Gray's submissions where it was possible to do so. Mr Gray's submissions are generally consistent with information contained in matter that I consider is exempt from disclosure. In light of the fact that the Information Commissioner is not bound by the rules of evidence and may inform himself or herself on any matter in any way the Information Commissioner considers appropriate, I consider the information before me is sufficient to enable a proper consideration of the matters and on that basis I do not accept the applicant's submissions that the information provided to the Office by Mr Gray should not be relied upon.
154. On the information available to me, I am satisfied that:
- a) Mr Gray, as CEO of NSC was responsible for management decisions with which Ms Sheridan did not agree and was responsible for the decision to terminate Ms Sheridan's employment.
 - b) A number of employees of NSC were in some way associated with processes that led to the Termination or subsequent events.
 - c) The personal and employment related affairs of each of these employees have been the subject of various FOI applications made by Ms Sheridan and people claiming to be her supporters.
 - d) The applicant is a friend and supporter of Ms Sheridan.
 - e) Ms Sheridan and/or people claiming to be her supporters were and remain highly aggrieved by Mr Gray's decisions despite Ms Sheridan exercising her legal rights with respect to those disputes in various forums.
 - f) Some or all of the incidents, acts of harassment or intimidation by people claiming to be supporters of Ms Sheridan as described in submissions did occur and were directly related to the Termination. In particular I am inclined to accept Mr Gray's version of events that:
 - a threat was made by an unknown caller against Mr Gray's children with reference to Ms Sheridan
 - Mr Gray has received repeated telephone calls at night at his home from people claiming to be Ms Sheridan's supporters
 - Mr Gray was subject, in the presence of his children, to an act of physical violence and a comment was made with reference to Ms Sheridan.
 - g) Mr Gray has relocated his family from Nanango as a result of the events.

⁷⁷ At page 29.

- h) The applicant, Ms Sheridan, and people claiming to be her supporters have directly or indirectly used a petition, the internet, public notices and the media to publicise their grievances with Mr Gray.
- i) Bunya Watch has been used by the applicant and other people claiming to be Ms Sheridan's supporters as a forum to publicly discuss their negative views of Mr Gray and other employees of NSC. Some of the postings by people other than the applicant use threatening and insulting language.
- j) The applicant, Ms Sheridan and another person have made 23 FOI applications⁷⁸ to agencies where Mr Gray has been employed and other agencies concerning:
- the personal and employment affairs of employees associated with the Termination
 - Mr Gray's decision-making
 - a workplace grievance involving Ms Sheridan (**Grievance**)
 - the AIRC proceedings
 - the Termination
 - the CMC complaint.
155. On the basis of Mr Gray's submissions and the applicant's admission that she sent them, I find that Mr Gray received a malicious birthday card each year from the applicant since the Termination.
156. On the basis of Mr Gray's submissions and verbal verification by the FOI decision maker in these reviews, I find that NSC staff involved in processing the FOI applications have become visibly upset when dealing with FOI applications from Ms Sheridan and the applicant.
157. On the basis of Mr Gray's submissions and verification by way of legible photographs, I find that offensive comments about two NSC employees who were involved in the Termination and the CMC complaint were painted onto NSC wheelie bins.
158. I have carefully considered the applicant's submissions, including that Mr Gray has not provided sufficient details or proof to substantiate his allegations and his submissions should not be accepted by the Office.
159. To ensure procedural fairness, the applicant was provided with a preliminary view which set out in detail the factors that would be taken into account in any decision. The applicant was afforded the opportunity to provide submissions to the Office in support of her case and in response to the information provided by Mr Gray. As a result, the applicant provided extensive submissions and supporting documents which I have considered. In her response, the applicant denies knowledge of many of the events reported by Mr Gray. It follows that the applicant is unable to provide any evidence about those events. The fact that the events are unknown to the applicant does not make it any more likely that the events did not occur or that Mr Gray's information about the events is unreliable.

⁷⁸ Ms Sheridan advised the Office that an additional four FOI applications have been made (bringing the total to 27 FOI applications) however the Office is only aware of the content of 23 of those applications and therefore this decision refers only to the 23.

160. While I note that the applicant does not accept the veracity of the information provided by Mr Gray, there is nothing in the applicant's submissions that suggests that the information provided by Mr Gray is unreliable or that the information he has provided is inaccurate. The acceptance of information which cannot be confirmed or contradicted by an applicant, is not a basis for apprehending prejudice on the part of a decision-maker. The information provided by Mr Gray has been tested by requests for further details and particulars. I have found that information to be consistent with and to some extent corroborated by independent evidence in the form of the postings on Bunya Watch and that contained in exempt material.
161. I accept the applicant's submissions that she has not been involved in most of the incidents outlined by Mr Gray.
162. The applicant has not been accused of any criminal wrongdoing by any person. At no stage has that proposition been considered or put to the applicant by the Office. With the exception of one or two acts, it is not suggested the applicant is responsible for the incidents Mr Gray has described.
163. I accept the applicant's submissions that her Bunya Watch postings and media involvement in the main have not been personally derogatory of Mr Gray or other NSC employees and that she has, by and large, confined herself to her broader concerns. The applicant however did post information on Bunya Watch following access to information obtained under the FOI Act in relation to the expenses that NSC has incurred in relation to the Termination and related matters.⁷⁹ In commenting on the information, the applicant publicly expresses the supposition that Mr Gray acted outside his lawful authority in approving the expenditure related to the Termination.
164. I do not accept the applicant's submission that the birthday cards she sent to Mr Gray were sent in a spirit of good will. The applicant submitted that:⁸⁰

In a spirit of good will I have sent him 2 birthday cards with generic messages. He actually thanked me for the first birthday card the first time I sent it to him. (This was at a Council meeting of which I was a regular unrecorded attendee.) As I said I have not been alone with him since that last awful appointment. He did not say to me that he found it offensive or intimidating or harassing. He did not act as though he was frightened of me. He acted like he was really amused, quite patronizing really. He did not send me a letter from Edgar & Wood telling me to cease and desist. He did not make a complaint to the police about the fact that I dared to send him a birthday card on his birthday.

The second birthday card also contained a generic message. Would he have expected me to sign them "love from Sue x." I think not.

To date I have not been interviewed by the police nor have I been charged either for harassment or for breaching the Australia Post guidelines. Based on the fact that he seemed amused, I sent him the second birthday card the following year.

165. Through her submissions the applicant variously described Mr Gray as 'impatient and quite rude', and says:⁸¹

... he spoke over me... I found [the conversation] to be so distressing that I broke down in tears... I have not had another appointment [with] Mr Gray since that first appointment and I will NEVER be alone in a room with him again. My faith in him, as a decent human being, has been totally shattered. As I found this experience to be quite traumatic, all communication between me and Mr Gray has subsequently been in writing...

⁷⁹ Bunya Watch posting dated 13 January 2008.

⁸⁰ At page 20.

⁸¹ At page 8.

166. Given the applicant's active involvement in supporting Ms Sheridan and her attitude towards Mr Gray, the possibility the birthday cards were sent in a spirit of good will is a rather remote one. The form of greeting used by the applicant in the card wishing him '*all he deserves*' can only be characterised in the circumstances as malicious although I do not consider this act, if considered in isolation, to be a *serious* act of harassment or intimidation.
167. My findings in paragraphs 154 to 157 do not suggest that either the applicant or Ms Sheridan were responsible for each of the incidents. As previously indicated it is not necessary for the purposes of section 42(1)(ca) of the FOI Act to make a finding as to who posted each of the relevant entries on Bunya Watch or who may have prompted or carried out each of the acts. While the applicant has been directly involved to some degree in some of the acts which I consider constitute harassment or intimidation, it is the cumulative effect and the ongoing, sequential and encouraging (though not necessarily orchestrated) nature of some of those acts by people claiming to be Ms Sheridan's supporters that is of concern and is the subject of my findings in this decision.
168. One of the purposes served by the preliminary view letter was to provide the applicant with an opportunity to respond to the information provided by Mr Gray. The applicant's contention that the forming of a preliminary view raises an apprehension of bias is incorrect. The presentation of a preliminary view is a step often and properly taken to clarify issues and test possible conclusions.⁸² As noted elsewhere, the applicant denies any personal knowledge of most of the events reported by Mr Gray. It follows that the applicant is unable to provide any relevant evidence as to those events. To reiterate, the fact that the events are unknown to the applicant does not make it more likely that the events did not occur or that Mr Gray's information about the events is unreliable. Contrary to the applicant's contention, I am not prevented from accepting information provided by Mr Gray merely because it is not verified or accepted by the applicant. This is particularly so where the information is not within the applicant's knowledge.
169. I am cognisant that a possible result of the application of section 42(1)(ca) of the FOI Act is the potential for third parties, over which an applicant may exercise little or no control, to put into jeopardy an applicant's access rights. However, an overriding public interest contemplated by Parliament was the protection of individuals from serious acts of intimidation and harassment.
170. The applicant suggests that the reason Mr Gray is objecting to release of documents under the FOI Act is because he has something to hide and he has unduly influenced the Office.
171. It would be unacceptable for an agency not to meet its statutory obligations because the content of documents may embarrass it or staff. There is nothing in the deliberations of the FOI decision makers to suggest that this irrelevant factor was taken into account by them and it is not a factor taken into account in this review.

⁸² *Community Care Inc v Taylor* [2007] QSC 148 at [21].

Serious acts of harassment and intimidation

172. To reach a decision on whether the requirements of the exemption provision are made out, it is unnecessary for me to make a finding with respect to each and every past act of alleged harassment and intimidation. However, it is necessary for me to consider whether it is reasonable to expect that disclosure of the information sought could result in a person being subjected to a serious act of harassment or intimidation.

173. Mr Gray has pointed to a number of incidents related to the Termination which in my view amount to serious acts of harassment and/or intimidation of Mr Gray and/or NSC staff. These include:

- his receipt of a threatening telephone call
- the act of physical violence
- numerous postings on Bunya Watch
- multiple FOI applications in the context of the above.

174. These incidents are dealt with in more detail under the corresponding headings below.

Threatening phone call and act of physical violence

175. The threatening phone call and the act of physical violence are acts of intimidation. These acts have caused Mr Gray a level of concern and apprehension sufficient for him to relocate his family from Nanango. I am satisfied that these acts amount to serious acts of intimidation.

Bunya Watch postings

176. I accept the applicant's submissions that she is not responsible for creating the Bunya Watch website or for all of the postings on that website. These propositions were never considered or put to the applicant by the Office. The applicant forwarded the Office copies of the postings she says she made about Mr Gray and issues related to the Termination. These postings do not contain the derogatory and threatening comments of some of the postings.

177. However the Office provided the applicant with a copy of a posting dated 13 January 2008 posted by one S. H. Scott. That posting contained details of the response NSC gave to the author's FOI application and contained the following comment:

ONE of my FOI requests to NSC was for a full and proper accounting of just what it had cost us ratepayers to implement the CEO's campaign to replace our former librarian of 15 years excellent service with his "very good friend".

...

It is also interesting to note that the Local Government Act and NSC's Local Laws both insist that these expenses are outside the "Normal day-to-day matters of Councils delegation to the CEO, and therefore must be authorised by the FULL Council" – There is No record of this in any of the NSCs minutes. Does this mean that we can expect Reimbursement of these questionable expenditures and supposedly made on our behalf, rather than favouritism benefiting an acknowledged "very good friend"

178. On the basis of the detailed knowledge about the FOI application held by the author, I find that the person posting this comment was the applicant. I also find that the comment contains an unsubstantiated allegation that Mr Gray acted unlawfully.

179. Bunya Watch has been used as a public forum in which site users have discussed and commented on Mr Gray and other NSC officers in insulting and threatening language and prompted others to *'keep up the pressure'*. There are instances in which the language used to describe officers involved in the Termination on Bunya Watch (for example, *'mongrels'* and *'bastards'*) is aggressive and derogatory.
180. The criticism and derision of Mr Gray and other NSC officers on Bunya Watch takes the form of personal attacks and is not confined to matters relating to the substantive workplace issues involving Ms Sheridan. The threats made in some of the postings in my view go further than an acceptable level in the 'rough and tumble' of public debate.
181. The context of the postings, that is, the discussion threads which show the postings before and after the cited postings, does not in my view change the characterisation I have given to those postings that have been selected as examples. In any context, the postings identified in this decision are aggressive and derogatory.
182. While I accept that being subject to community action and public comment in the media and other forums is an accepted part of public administration for many public officials and more importantly exemplifies the shared value of freedom of expression and in some cases the implied constitutional freedom of freedom of political communication, I am of the view that Mr Gray has been subject to a campaign of ongoing harassment and denigration by virtue of his employment with NSC which goes beyond what is reasonable and acceptable in the circumstances.
183. I am satisfied that:
- Many past Bunya Watch postings publicly deride Mr Gray and others and may have effected their reputations.
 - The personal nature of the criticism of Mr Gray and others and the aggressive and threatening tone of them goes beyond what is reasonably acceptable in the public discussion of public officials and matters of public interest.
 - The postings on Bunya Watch have persisted over a period of time and included relatively recent entries.⁸³
 - Some of the postings contain threats directed at staff associated with the Termination.
 - Some entries encourage and have already led to further entries and other harassing and intimidating conduct.
 - The postings have given Mr Gray and undoubtedly others, cause for concern.
184. Accordingly, I consider the numerous postings on Bunya Watch directed at Mr Gray and other employees associated with the Termination to be serious acts of harassment because they comprise attacks which have disturbed and tormented the subject of the attack and given cause for concern or apprehension.

⁸³ The most recent entry relating to Ms Sheridan and Mr Gray is the posting by S. H. Scott dated 4 July 2008.

FOI applications

185. In relation to the FOI applications, the applicant expresses the view that the Office has labelled her as vexatious. The proposition that the applicant is vexatious was not put to the applicant in the preliminary view letter and no finding to that effect is made in this decision.
186. The applicant states she has been forced to make her FOI applications as a series of requests because if she had lodged one application requesting access to everything she wanted, it would have been rejected on the grounds that it would involve an unreasonable use of NSC's resources.
187. The applicant also states she applied for external review because NSC did not adhere to the time limits in the FOI Act and that she would not have been forced to make persistent FOI applications if her applications were treated seriously and processed exactly as the guidelines set out.
188. I do not entirely agree with these statements. Later in this decision examples are provided of the applicant making an FOI application as a result of information obtained under the FOI Act, and making an FOI application on the basis of shared information with the associated applicants.
189. The applicant's initial FOI application to NSC dated 2 April 2007 contained a request for 18 separate categories of documents. NSC wrote to the applicant seeking clarification of parts of the FOI application. In response, the applicant expanded her request to approximately 61 categories of documents. By that time, NSC had received at least two other associated FOI applications. It did not refuse to deal with the FOI application on the basis that it would involve an unreasonable use of NSC's resources. NSC provided the applicant with a decision just outside the 60 day statutory time frame from the initial date of receipt of the FOI application and within the statutory time frame from the date the applicant expanded the scope of that FOI application. NSC provided the applicant with access to a number of the documents sought, advised that certain other documents were publicly available or did not exist, and refused access to some documents on the basis that they were exempt under the FOI Act. The decision was made by the CEO and was therefore reviewable by the Office.⁸⁴ There is nothing in the decision that suggests the FOI application was not treated seriously.
190. The applicant lodged a second FOI application with NSC on 15 June 2007, apparently prior to the applicant receiving NSC's decision with respect to her first FOI application. Although NSC did not make its decision within the 45 day statutory timeframe, it continued to deal with the FOI application as provided for in the legislation and made a considered decision on 6 August 2007 (a matter of days outside the statutory time frame). NSC provided the applicant with access to a number of the documents sought, advised that certain other documents were publicly available and refused to provide access to one document as access had already been provided under the initial FOI application. The decision was made by the CEO and was therefore reviewable by the Office.⁸⁵ There is nothing in the decision to suggest that the FOI application was not treated seriously. In that external review, the Office sought submissions from the applicant in relation to the documents NSC said were publicly available documents however the applicant made no submissions and the Office finalised its review.

⁸⁴ External review 210279.

⁸⁵ External review 210318.

191. The applicant lodged a third FOI application with NSC on 2 July 2007. Although NSC did not make its decision within the 45 day statutory timeframe, it continued to deal with the FOI application and made a considered decision on 10 September 2007. NSC decided to grant full access to one document and refuse access to other documents because they concerned the personal affairs of another, were publicly available, did not exist or had been previously provided to the applicant under a previous FOI application. The decision was made by the CEO and was therefore reviewable by the Office.⁸⁶ There is nothing in the decision to suggest that the FOI application was not treated seriously.
192. NSC did not make decisions with respect to the applicant's following two FOI applications prior to the applicant seeking an external review.⁸⁷ In these circumstances, the FOI Act provides a right of external review, as exercised by the applicant.
193. The applicant in her submissions stated that the release of the Matter in Issue was in the public interest because a number of the documents relate to the disbursement of ratepayer's money and as a ratepayer she has the right to be fully informed as to how money entrusted to Council is used. She also submits that NSC and Mr Gray have failed to make decisions that are seen to be fair and transparent including keeping records that show how decisions are made.
194. While I accept that these are the reasons for the applicant's FOI applications, and while the motivation of FOI applicants is irrelevant in making decisions with respect to them, consideration of the applicant's FOI applications and submissions shows that the applicant is also utilising FOI laws to investigate the performance and/or conduct of Mr Gray and other staff involved in the Termination on the off chance those records show any prejudicial information about them. For example, the applicant has requested '*any/all documentation relating to the performance review of the CEO Shane Michael Gray for the duration of his contract with NSC*'⁸⁸ and the '*copy of the log book for Kerry Mercer's work vehicle that was used in February and March 2006*'.⁸⁹ Furthermore, as noted above, on ascertaining information about expenses associated with the Termination, the applicant publicly alleged that Mr Gray approved the expenditure without lawful authority.
195. Risk and performance management are important to the public service being managed in an ethical, efficient, effective and economical way. Formal mechanisms are in place to protect workers from unfair treatment in these processes. There is an essential public interest in ensuring that managers are not deterred from carrying out this aspect of their duty by being subject to multiple FOI applications from members of the community conducting their own investigations into personnel to attempt to uncover information that points to wrongdoing or poor performance and which is essentially unrelated to the merits of the decision by which they are aggrieved. There are appropriate authorities to impartially deal with such concerns circumventing the need for citizens to take matters into their own hands.

⁸⁶ External review 210349.

⁸⁷ FOI applications dated 7 September 2007 (external review 210465) and 16 October 2007 (external review 210466).

⁸⁸ External review 210279.

⁸⁹ External review 210465.

196. My consideration of the use of the FOI applications in the application of section 42(1)(ca) of the FOI Act relates to the nature and effect of all the FOI applications, not just the applicant's, on Mr Gray and other officers of NSC. In this regard, it is relevant for me to consider the 23 FOI applications made by the associated people, not just those the applicant has made.
197. Section 21 of the FOI Act gives a person a legal right (subject to the provisions of the FOI Act) to access documents of an agency and to have access to information held by Queensland government. In decision-making, my role is to ensure that a person's right to access information is extended as far as possible, in accordance with the FOI Act. In that regard, FOI laws may be legitimately used by an individual to try to uncover a reason, other than the one given to them by government, for a decision affecting them. I also have a duty, in accordance with section 4(6) of the FOI Act, when interpreting the provisions of the FOI Act, to identify and consider any prejudicial effect that disclosure of the information may have by reason of the right of access under the FOI Act. As a result, the right to access information can be fettered in certain circumstances as discussed at paragraphs 103 - 109 above.
198. Parliament recognises that the public interest is served by enhancing government's accountability and keeping the community informed of government's operations, including the rules and practices followed by government in its dealings with members of the community.⁹⁰ Parliament also recognises that there are limited exceptions to a person's legal right of access to information. While multiple FOI applications by various individuals will not always constitute an abuse of access rights, Parliament considered through the amendments discussed above that access rights may be fettered in certain circumstances where harassment and/or intimidation could reasonably be expected to occur.
199. In *Australian Competition and Consumer Commission v Maritime Union of Australia*,⁹¹ Hill J considered the meaning of 'undue harassment or coercion' in the context of section 60 of the *Trade Practices Act 1974* (Cth). His Honour said:⁹²

60. The word "harassment" in my view connotes conduct which can be less serious than conduct which amounts to coercion. The word "harassment" means in the present context persistent disturbance or torment. In the case of a person employed to recover money owing to others, as was the first respondent in McCaskey, it can extend to cases where there are frequent unwelcome approaches requesting payment of a debt. However, such unwelcome approaches would not constitute undue harassment, at least where the demands made are legitimate and reasonably made. On the other hand where the frequency, nature or content of such communications is such that they are calculated to intimidate or demoralise, tire out or exhaust a debtor, rather than merely to convey the demand for recovery, the conduct will constitute undue harassment: see per French J in McCaskey at [48]. Generally it can be said that a person will be harassed by another when the former is troubled repeatedly by the latter. The reasonableness of the conduct will be relevant to whether what is harassment constitutes undue harassment. Like French J in McCaskey at [47] I get little assistance from cases in the context of sexual harassment where the word has almost taken on a technical meaning.

[my emphasis]

⁹⁰ Section 4(2) of the FOI Act.

⁹¹ 114 FCR 472.

⁹² At paragraph 60.

200. The processing of a high volume of FOI applications or FOI applications that seek access to a large range of documents may be considered an annoyance or inconvenience for some agencies. However, an act of annoyance or inconvenience does not amount to a serious act of harassment or intimidation and it would be inappropriate to apply section 42(1)(ca) of the FOI Act in that circumstance. As indicated earlier, it is apparent that section 42(1)(ca) of the FOI Act contemplates that some degree of inconvenience, annoyance and even a certain level of harassment should be tolerated before a curtailment of access rights is considered.
201. The applicant submits that her FOI applications have not been to torment and wear down the staff of NSC and she cannot see how the FOI applications could have this effect.⁹³ Although the applicant asserts that it was not her intention or purpose to torment or wear down NSC staff by making numerous FOI applications, I am satisfied that this has resulted from the combined effect of the repeated and persistent use of FOI applications by the applicant and associated people. This is an undesirable consequence and one that might lead to the application of section 42(1)(ca) of the FOI Act.
202. The Bunya Watch posting referred to at paragraph 134 above suggests that the people claiming to be supporters of Ms Sheridan understand the FOI applications are being used as a tool to wear staff of NSC down. Such a characterisation is reasonable. Only three people have made FOI applications to NSC in relation to the Termination and related events – Ms Sheridan, the applicant and one other associate. Having accepted the applicant's submission⁹⁴ that there is no evidence before me that proves Ms Sheridan asked this person to make the posting on her behalf, these circumstances tend to suggest that:
- either one of the three applicants may be responsible for the Bunya Watch posting referred to at paragraph 134 above or alternatively, information provided by one of those individuals led to the posting by another
 - information about the processing of the FOI applications is being shared by one of those individuals with a supporter who is responsible for the postings.
203. The 23 FOI applications from the applicant, Ms Sheridan and another associated person all concern similar matter: the personal and employment affairs of employees associated with the Termination, Mr Gray's decision-making, the Grievance and AIRC proceedings, the Termination and the CMC complaint. The most recent FOI application was made by the applicant on 19 September 2008 to NSC. The Office is not aware of the four FOI applications Ms Sheridan has made additional to the 23 FOI applications considered in this decision.
204. Many of the FOI applications run to several pages of detailed requests for documents. In a number of instances, repeated requests have been made by the applicant, Ms Sheridan and another associated person to NSC for similar documents. There have also been requests made to different agencies for the same documents/types of documents. A number of requests seek Mr Gray's employment records from his employers prior to NSC.

⁹³ At page 29.

⁹⁴ At page 26.

205. The applicant submits that her FOI applications relate to Mr Gray in his professional capacity and not in his personal capacity. While the applicant's requests largely relate to Mr Gray in his professional capacity, many of the requested documents contain information relating to the personal affairs of Mr Gray and other NSC officers. For example, one of the FOI applications requests access to Mr Gray's superannuation beneficiary forms, which clearly do not relate to Mr Gray as a manager.
206. These FOI applications and their subsequent external reviews conducted in relation to FOI applications by the applicant and Ms Sheridan have required and would continue to require the significant involvement of Mr Gray, the agency and a number of NSC officers.
207. Because of the volume, pattern of requests, the encouragement of the making of FOI applications on Bunya Watch, the posting of information obtained under the FOI Act on Bunya Watch and the fact that the applicant and Ms Sheridan are known to each other, I am satisfied that the FOI applications are associated with each other and that, despite any other legitimate purpose they may serve, they have resulted in the wearing down of the staff of the agencies and the staff involved in the Termination. The FOI applications themselves became persistent or repeated conduct with undesirable consequences. For example, staff of NSC involved in the processing of the FOI applications have been visibly upset.
208. In the context of the other acts of intimidation which have occurred, it would not be unreasonable for NSC staff to see the FOI applications as another vehicle through which they are being harassed. For these reasons I am satisfied that the FOI applications made to date constitute serious acts of harassment.
209. In some instances, I also consider that serious acts of harassment or intimidation including further FOI applications and/or postings on Bunya Watch have occurred as a result of:
- an agency's refusal to grant the applicant or Ms Sheridan access to documents under the FOI Act
 - the disclosure of documents under the FOI Act.
210. An example of an agency's refusal to grant the applicant or Ms Sheridan access to documents under the FOI Act resulting in further FOI Applications is as follows:
- By letter dated 30 May 2006, Ms Sheridan requested access to *'the memo [Kathy Cope] wrote to all Council staff requesting their signature to a public notice supporting the Chief Executive Officer published in April 2006'* and *'documented responses or emails relating to the memo'*. By letter dated 17 April 2007, NSC advised Ms Sheridan that access to the requested documents was refused under the FOI Act.
 - By letter dated 12 June 2007, Ms Sheridan again sought access to the *'email from Kathy Cope dated 31.03.07 sent at 11.05 am with attachment'*.
 - By letter dated 7 September 2007, the applicant sought access to the *'email Kathy Cope sent to council staff members on 31st March 2006 at 11:05 am in relation to a proposed public notice, which was later published in the South Burnett Times'*.

211. An example of the disclosure of documents under the FOI Act leading to the posting of information on Bunya Watch is as follows:

- The applicant posted information on Bunya Watch in relation to the expenses that NSC has incurred in relation to the Termination and related matters.⁹⁵ This information was contained in documents released under the FOI Act. In commenting on the information, the applicant publicly insinuates that Mr Gray has acted outside his lawful authority.

212. An example of the disclosure of documents under the FOI Act leading to a further FOI application is as follows:

- In an FOI application dated 2 July 2007, the applicant requested access to a *'copy of the library policy for Nanango Shire introduced 17th May 2005 with the added PLS suggestions (as stated on page 1 of 4 – "Notes compiled by Audrey and Iris following CLS training in Brisbane 11 to 17 July 2005" – and also numbered 000022 in documents obtained from you under FOI'* [my emphasis].

Could disclosure of the Matter in Issue reasonably be expected to result in a person being subjected to a serious act of harassment or intimidation?

213. Under the above sub-heading *'Serious acts of harassment and intimidation*, I have found there to have been past acts of serious harassment and intimidation related to the Termination against Mr Gray and staff of NSC. I consider the past occurrences of serious acts of harassment and intimidation alone provide a reasonable basis for Mr Gray and the staff of NSC to expect to be subjected to a further serious act of harassment or intimidation. However, for matter to be exempt under section 42(1)(ca) of the FOI Act, I must be satisfied that the disclosure of the Matter in Issue could reasonably be expected to result in a person being subjected to a serious act of harassment or intimidation.

214. In these reviews, I consider the following factors relevant to determining that issue:

- the nature of the relevant Matter in Issue
- the likely effect of disclosure of the Matter in Issue
- the past conduct of people claiming to be Ms Sheridan's supporters
- the nature of the relationship between the parties and/or third parties.

Nature of the Matter in Issue and likely effect of disclosure

215. The Matter in Issue in each external review concerns the matters related to the Termination, including the personal and employment affairs of people involved in the Termination, and more particularly work processes/decision-making involving Mr Gray. The categories of documents sought by the applicant in these reviews fall into the same categories of documents sought in the other associated FOI applications.

216. The previous disclosure of documents falling within these categories has resulted in serious acts of harassment and intimidation, being further FOI applications and the use of public forums to personally denigrate Mr Gray and/or NSC officers, examples of which are set out at paragraphs 211 - 212 above.

⁹⁵ Bunya Watch posting dated 13 January 2008.

217. I am mindful of the fact that disclosure under the FOI Act is, minimally, disclosure to the applicant. Once information is disclosed, there is no way of controlling the ultimate extent of the disclosure. While the disclosure of information under the FOI Act is not always to be regarded as disclosure to the world,⁹⁶ I am reminded of this possibility by:
- the recent publication on Bunya Watch of selected excerpts of a decision of the Information Commissioner concerning a related external review application involving Ms Sheridan⁹⁷
 - the applicant posting information she obtained under the FOI Act on Bunya Watch in relation to costs associated with the Termination.⁹⁸
218. As explained above, the applicant has made a serious allegation against Mr Gray in a public forum based on supposition in the context of her posting information obtained under the FOI Act. It is reasonable to expect she will do so again. I consider the release of even innocuous information to the applicant is likely to be shared with Ms Sheridan and/or other people claiming to be her supporters. It is likely further postings will be made on Bunya Watch. The further dissemination of the information is likely to result in further acts of serious harassment and/or intimidation against Mr Gray or staff of NSC, namely further FOI applications and postings on Bunya Watch.
219. Further FOI applications and further use of public forums will involve Mr Gray and officers of NSC in further consultation in relation to the administration of the FOI Act, and are likely to involve further adverse publicity giving them cause for concern - an undesirable consequence of the FOI applications.
220. A significant amount of the information sought about Mr Gray concerns his former places of employment. In view of the nature of the discussion on Bunya Watch, that is, participants encouraging one another to contribute further '*information*' to the discussion as a means of further publicly deriding Mr Gray and others, I consider that disclosure of even innocuous information may be used by Bunya Watch participants to further this end.

Past conduct

221. As expressed earlier, I consider that Mr Gray and other employees involved in the Termination have been subjected to serious acts of harassment and intimidation in the past and these acts have all been linked to the Termination. Though past conduct is not necessarily indicative of future conduct, I consider in these reviews it provides a reasonable basis to expect that further serious acts of harassment or intimidation could reasonably be expected to occur. Some of the serious acts of harassment or intimidation that have occurred in the past have resulted from the disclosure of matter that falls within the same categories as the Matter in Issue in these reviews.

Nature of the relationship between the parties

222. As explained above, I consider the people claiming to be Ms Sheridan's supporters, including the applicant, remain highly aggrieved by Mr Gray's decisions and have been actively involved in expressing their negative views about Mr Gray and officers of NSC in public forums.

⁹⁶ *Victoria Police v Marke* [2008] VSCA 218.

⁹⁷ External review 210240.

⁹⁸ Posting by S.H. Scott on 13 January 2008.

223. While I accept the applicant's submissions that she has not been involved in any way with the physical acts of violence and intimidation directed at Mr Gray by some of the other people claiming to be Ms Sheridan's supporters, the applicant has engaged in her own acts of harassment:

- sending malicious birthday cards
- posting on Bunya Watch an allegation of unlawful conduct based on supposition
- making repeated and numerous FOI applications for documents which may assist in her personal investigation into the performance and/or conduct of Mr Gray and other staff involved in the Termination and which are largely unrelated to the substantive merit of Mr Gray's decisions in relation to Ms Sheridan.

224. The applicant's FOI applications, like the associated FOI applications, are aimed at 'investigating' the staff of NSC involved in the Termination.

225. The personalised nature of the Bunya Watch entries, the threatening phone call and the act of physical violence suggest that the conduct which amounts to serious acts of harassment and/or intimidation is not directly linked to any objective assessment of the substantive merit of the decisions in relation to the Termination or a respect for the rule of law which provides appropriate avenues of redress for Ms Sheridan.

226. Therefore, on the information available to me, I am satisfied that:

- Disclosure of the Matter in Issue in these reviews could reasonably be expected to result in further FOI applications by the applicant and people claiming to be Ms Sheridan's supporters.
- The further FOI applications would themselves be acts of serious harassment.
- Disclosure of the Matter in Issue in these reviews could reasonably be expected to result in further public vilification of Mr Gray and other people by people claiming to be Ms Sheridan's supporters.
- Any further public vilification would constitute acts of serious harassment and/or intimidation.
- Disclosure of the Matter in Issue in these reviews could reasonably be expected to result in a serious act of physical violence, threats or other acts of intimidation in relation to Mr Gray and staff of NSC.

227. Accordingly, I am satisfied that the Matter in Issue is exempt from disclosure in its entirety under section 42(1)(ca) of the FOI Act.

Sufficiency of search

228. Section 29(4) of the FOI Act provides:

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

...

(4) If—

- (a) *an application is expressed to relate to all documents, or to all documents of a stated class, that contain information of a stated kind or relate to a stated subject matter; and*

(b) it appears to the agency or Minister that all of the documents to which the application relates are exempt documents;

the agency or Minister may refuse to deal with the application without having identified any or all of the documents

229. On the information currently available to me, I am satisfied that the documents the applicant claims have not been located by NSC concern:

- Mr Gray's decision-making
- the Grievance & the AIRC proceedings
- the Termination
- the CMC complaint
- the employment or personal affairs of employees associated with the Termination, including Mr Gray.

230. This matter, if it exists, falls within the classes of matter that I consider could reasonably be expected to result in a person being subjected to a serious act of harassment and/or intimidation if disclosed. I am satisfied that this matter, if it exists, is exempt under section 42(1)(ca) of the FOI Act and therefore the documents to which the applicant's sufficiency of search concerns pertain are exempt documents.

231. On this basis I am satisfied that I should, under section 29(4) of the FOI Act, decline to deal with these parts of the external review applications without directing NSC to undertake further searches.

DECISION

232. For the reasons set out above, I set aside the decisions under review and decide:

- the remaining Matter in Issue in each of these reviews qualifies for exemption from disclosure under section 42(1)(ca) of the FOI Act
- to refuse to deal with the sufficiency of search issues under section 29(4) of the FOI Act, on the basis that it appears to me that any further documents responsive to the FOI applications qualify for exemption under section 42(1)(ca) of the FOI Act.

Julie Kinross
Acting Information Commissioner

Date: 9 April 2009