

OFFICE OF THE INFORMATION)
COMMISSIONER (QLD))

S 193 of 1993
(Decision No. 95002)

Participants:

WENDELL RUBEN HEARL
Applicant

- and -

QUEENSLAND POLICE SERVICE
Respondent

DECISION AND REASONS FOR DECISION

FREEDOM OF INFORMATION - refusal of access - applicant challenging sufficiency of search for documents falling within the terms of his FOI access application, specifically a letter and map relating to a prosecution involving the applicant - whether respondent has satisfied the obligation inherent in the *Freedom of Information Act 1992 Qld* to locate and deal with all documents falling within the terms of a valid FOI access application.

Freedom of Information Act 1992 Qld s.7

Cannon and Australian Quality Eggs Farms Limited, Re (Information Commissioner Qld, Decision No. 94009, 30 May 1994, unreported)

Hearl and Mulgrave Shire Council, Re (Information Commissioner Qld, Decision No. 94012, 27 June 1994, unreported)

Shepherd and Department of Housing, Local Government & Planning, Re (Information Commissioner Qld, Decision No. 94007, 18 April 1994, unreported)

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

DECISION

I affirm the decision under review, being the internal review decision made on behalf of the respondent by Acting Assistant Commissioner P J Freestone on 10 September 1993.

Date of Decision : 3 March 1995

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F N ALBIETZ
INFORMATION COMMISSIONER

Participants:

WENDELL RUBEN HEARL
Applicant

- and -

QUEENSLAND POLICE SERVICE
Respondent

REASONS FOR DECISION

Background

1. The applicant seeks review of a decision made on behalf of the Queensland Police Service (the QPS), under the *Freedom of Information Act 1992* Qld (the FOI Act), because he claims that the QPS has failed to locate and deal with all documents falling within the terms of his FOI access application dated 11 December 1992.
2. The applicant is the same Mr Hearl whose application for access to documents of the Mulgrave Shire Council was dealt with in my reasons for decision in *Re Hearl and Mulgrave Shire Council* (Information Commissioner Qld, Decision No. 94012, 27 June 1994, unreported). The background information contained in paragraphs 7-13 of that decision is also helpful in understanding the context of the present case, in which Mr Hearl is particularly concerned to obtain documents held by the QPS relating to a prosecution brought against him in the Magistrates Court at Cairns in 1987 on a charge of assault: see paragraph 9 of my reasons for decision in *Re Hearl and Mulgrave Shire Council*. Mr Hearl's FOI access application to the QPS manifests the same error as his FOI access application to the Mulgrave Shire Council, in that it is, for the most part, framed as a series of questions. As I indicated at paragraph 30 of my decision in *Re Hearl and Mulgrave Shire Council*:

The FOI Act is not an Act which gives persons a legally enforceable right to obtain answers to questions asked of government agencies, or even to have government agencies extract answers to questions from documents in their possession.

Fortunately, it is not necessary to pursue this problem further since Mr Hearl's application for review under Part 5 of the FOI Act seeks review only in respect of the "sufficiency of search" by the QPS for two documents.

3. The initial decision-maker on behalf of the QPS, Senior Sergeant D R Wright, was able to distil, from the terms of Mr Hearl's letter of 11 December 1992, a valid application for access to:
 - (a) a letter, allegedly held by Constable Dave Scott of the QPS, authorising the removal of fences on property alleged by Mr Hearl to be his property; and
 - (b) a map, which Mr Robert George Ford (the person whom Mr Hearl was charged with assaulting) claimed to have received from the Mulgrave Shire Council, and which shows that the place at which the assault is alleged to have occurred is not Mr Hearl's freehold property but is a Fish Habitat Reserve.

In his initial decision, Senior Sergeant Wright located documents he considered relevant to Mr

Hearl's FOI access application and decided that those documents should be released to Mr Hearl, subject to a number of deletions of matter considered to be exempt under s.44(1) of the FOI Act.

4. There then followed an exchange of correspondence and a number of telephone calls between Mr Hearl and the QPS FOI Unit regarding the documents that Mr Hearl sought. This process resulted in Mr Hearl's concerns being refined to a request to obtain two specific documents:
 - (a) a letter from the former Department of Harbours and Marine to Constable Scott, received by Constable Scott on 28 August 1987; and
 - (b) the map described at point (b) in paragraph 3 above.
5. An internal review decision was made on 10 September 1993 by Acting Assistant Commissioner P J Freestone, who decided to grant Mr Hearl full access to the documents which had been previously released with deletions made pursuant to s.44(1) of the FOI Act. Acting Assistant Commissioner Freestone also described the searches that had been made for the two documents specified in the preceding paragraph, but stated that those searches had been unsuccessful, and the documents could not be located. Mr Freestone determined that, as those documents could not be located, access to them could not be granted.
6. In his application for review under Part 5 of the FOI Act, Mr Hearl attached a copy of the internal review decision and said:

I request an external review to supply the letter and maps referred to in the enclosed correspondence. You will notice in the letter from the Police Service that Sergeant Scott advises he has no knowledge of the present location of the letter.

I trust you will have success in locating the letter and maps.

Principles governing "sufficiency of search" cases

7. As I indicated in paragraphs 12-61 of my decision in *Re Smith and Administrative Services Department* (1993) 1 QAR 22 and in paragraphs 14-15 of my decision in *Re Cannon and Australian Quality Egg Farms Limited* (Information Commissioner Qld, Decision No. 94009, 30 May 1994, unreported), I have jurisdiction to conduct an external review where an applicant who applies to an agency for access to documents complains that the searches and inquiries undertaken by the agency to locate requested documents have been inadequate. As I indicated in *Re Smith* and *Re Cannon*, I have jurisdiction to conduct an external review on the question of the "sufficiency of search" conducted by an agency, even if there are no other issues raised (e.g. claims that requested documents are exempt under Part 3, Division 2 of the FOI Act).
8. I explained the principles applicable to "sufficiency of search" cases in my decision in *Re Shepherd and Department of Housing, Local Government and Planning* (Information Commissioner Qld, Decision No. 94007, 18 April 1994, unreported) at paragraphs 18 and 19, as follows:
 18. *It is my view that in an external review application involving 'sufficiency of search' issues, the basic issue for determination is whether the respondent agency has discharged the obligation, which is implicit in the FOI Act, to locate and deal with (in accordance with Part 3, Division 1 of the FOI Act) all documents of the agency (as that term is defined in s.7 of the FOI Act) to which access has been requested. It is provided in s.7 of the FOI Act that:*

"document of an agency" or 'document of the agency' means a

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

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

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

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

and if so,

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

9. The following account details the searches and inquiries that have been undertaken to locate the two documents to which Mr Hearl is particularly concerned to obtain access, and in respect of which the principles set out above are to be applied.

External review process

10. With his application for review under Part 5 of the FOI Act, Mr Hearl enclosed a number of documents which, he submitted, demonstrate the existence of documents (a) and (b) referred to in paragraph 3 above (and hereinafter referred to, respectively, as document (a) and document (b)). As to the existence of document (a), Mr Hearl supplied a copy of an internal QPS report (apparently obtained by Mr Hearl under the FOI Act). The report is by Constable Scott to the District Officer of the Cairns Police District. It is dated 16 January 1988 and displays a QPS reference no. 3153/87. So far as relevant, this report states:

On the 28th August 1987, I received a letter from the Department of Harbours and Marine in Brisbane in respect of the flood mitigation drain situated on Reed Road at Trinity Park.

11. As to the existence of document (b), Mr Hearl supplied a copy of a report by Constable Scott to the District Officer at Cairns, which is dated 21 October 1987 and displays a QPS reference no. 2698/87. (The copy of the report has been stamped to indicate that it was released to Mr Hearl by the Criminal Justice Commission under the FOI Act). So far as relevant, this report states:

... FORD produced a sketch of the area in fact showing the land to be Fisheries Habitat land.

I have included this sketch on to this file for further information.

12. An addendum made on that report by Constable Scott's senior officer says:

The position shown on the attached sketch map indicates where FORD claims the assault took place.

13. Mr Hearl also supplied a copy of a letter to Mr Hearl from District Officer F C Wagner of the Cairns District Office, which is dated 11 November 1987 and displays a QPS reference no. 87/5408. (The document bears a marking which indicates that it was an exhibit tendered before the Land Court of Queensland sitting at Cairns.) The relevant part of the District Officer's letter to Mr Hearl is the following:

I am in possession of documentation presented to Police by FORD at the time that FORD made a complaint of assault against you, which complaint resulted in the court proceedings on 23 September 1987. The documentation includes a photostat enlargement of a portion of a map. Ford had indicated on the map the position where the assault occurred. That position is on Fisheries Habitat Reserve.

14. Finally, Mr Hearl also provided me with a page of the transcript of his trial on the charge of assault, where Mr Ford gave evidence as follows:

I went to Mulgrave Shire Council and picked up a copy of the maps that showed that where we were in fact was Fisheries Habitat Reserve.

15. Since the two reports by Constable Scott, referred to in paragraphs 10 and 11 above, displayed references to particular QPS file numbers, the QPS FOI Unit was requested to make inquiries as to the whereabouts of those files, and whether the documents sought by Mr Hearl were contained on those files. Further, since the report by Constable Scott dated 21 October 1987 (see paragraph 11 above) was obviously in the possession of the Criminal Justice Commission (the CJC), the QPS FOI Unit was requested to make inquiries of the CJC as to whether document (b) was in the physical possession of the CJC.

16. The QPS FOI Unit responded to this request in a letter dated 30 November 1993 from the QPS FOI Co-Ordinator, Superintendent J B Doyle. Superintendent Doyle stated that inquiries had been made of Sergeant Scott (formerly Constable Scott) now stationed at Roma Police Station, and further inquiries had been made of the Cairns District Office and Smithfield Police Station, where Constable Scott was stationed when he wrote the report dated 16 January 1988.

17. In relation to document (a), Superintendent Doyle indicated that the inquiries had revealed that:

Cairns District Office is not in possession of a copy of the file for which the reference is 3153/87.

Smithfield Police Station located a copy of file 3153/87 which consisted only of the report of Constable Scott (i.e. the same report, a copy of which had been obtained by Mr Hearl and forwarded to me). The letter from the former Department of Harbours and Marine was not attached or located.

Sergeant Scott stated that he was not in possession of any of the documents sought nor could

he offer any further assistance.

18. As to document (b), Superintendent Doyle indicated that:

File reference 2698/87 is a Smithfield Police Station reference. This file does not contain a copy of either the map (document (b)) or letter (document (a)).

The Cairns District Office file which has the reference number 87/5408 (see paragraph 13 above) does not contain a copy of the letter or map.

The FOI Co-ordinator of the CJC stated that he had never sighted a copy of the map during his dealings with the Hearl file.

The original file held by the Central Registry of the QPS had been searched, but no copy of the map or letter was attached or could be located.

19. Superintendent Doyle stated that the map referred to by Mr Ford in the transcript of trial is believed to be a map that Mr Ford obtained for himself. Superintendent Doyle informed me that, following inquiries with the Clerk of the Magistrates Court at Cairns, it was ascertained that the map was not tendered in evidence during the trial. Superintendent Doyle forwarded to me a copy of a letter from Mr Hearl to Inspector Wagner dated 13 November 1987, in which Mr Hearl acknowledged that the map was not produced in court during the trial.

20. In respect of the map referred to by Inspector Wagner in his letter to Mr Hearl dated 11 November 1987 (see paragraph 13 above), Superintendent Doyle indicated that inquiries were made with Superintendent Wagner (now of the Sunshine Coast District Office) and a Sergeant Moran. Superintendent Doyle indicated that both of those Officers were involved with the relevant file in November 1987, and had advised that the map referred to in Inspector Wagner's letter to Mr Hearl dated 11 November 1989 was a map, or copy of a map, obtained from the Department of Lands, as a means of reference. Sergeant Moran stated that he later returned the map to the Department of Lands. Superintendent Doyle stated that it was not known if a copy of that map was made, but in any event it was not in the custody or possession of the QPS.

21. Superintendent Doyle enclosed a copy of three cadastral maps (maps which delineate land ownership) of the subject land which had been located during the course of inquiries made in response to Mr Hearl's FOI access application. Mr Hearl had advised the QPS that none of those was the map that he required. Superintendent Doyle submitted that:

From our inquiries at the Land Court it is evident that countless hours have been spent in dealing with Mr Hearl's numerous letters, requests, subpoenas and applications. The letter and map he requests are not in the custody or possession of the Queensland Police Service.

22. Following further examination of the available relevant matter, I forwarded a letter to the QPS dated 8 December 1993 requesting further inquiries in respect of the indication contained in Constable Scott's report of 21 October 1987 (see paragraph 11 above) that Mr Ford had produced a sketch of the area, when Ford first made the complaint of assault. I requested that the following specific inquiries be made:

- (a) whether a Criminal Offence Report, containing the sketch/map made by Mr Ford, was made into a file with a specific Criminal Office Report number under either Mr Ford's name as complainant, Mr Hearl's name as the offender, or the name of Constable Scott as the investigating officer; and

(b) whether either of documents (a) and (b) was contained in a prosecution brief prepared for the police prosecutor who appeared at Mr Hearl's trial.

23. Superintendent Doyle responded by a letter dated 9 February 1994. Superintendent Doyle forwarded to me a copy of a letter dated 27 April 1989 written by Mr Hearl to the then Minister for Police, Mr R Cooper MLA, and directed my attention to the final paragraph on page 1 of that letter, which states:

Please find enclosed:

(1) *Copy of the Mulgrave Shire Council map. This map referred to by Ford was not allowed to be produced in court as your Police Officers arranged for photographs to be taken by the Police as they intended from the beginning to have this false evidence presented to the court.*

24. Superintendent Doyle informed me that this letter of complaint was referred to the (now defunct) Police Complaints Tribunal. Superintendent Doyle stated that he had inspected the file created by the Police Complaints Tribunal in response to Mr Hearl's complaint, which file was in the possession of the CJC. A copy of the map referred to in Mr Hearl's letter dated 27 April 1989 to the Minister for Police was attached to that file. That map is different from the three cadastral maps earlier located, and had an area shown as "Fisheries Habitat Reserve". Superintendent Doyle observed that Mr Hearl had had access to this map since at least 1989. Superintendent Doyle also informed me that Mr Hearl had not sought access to document (a) from the Department of Transport, which had absorbed the former Department of Harbours and Marine.

25. On 7 March 1994, I wrote to Mr Hearl informing him of the results of the further inquiries made by the QPS. In respect of document (a), I informed Mr Hearl that it may be possible for him to obtain access to that letter from the Department of Transport. In respect of document (b), I explained the inquiries made by the QPS and noted that if the map he sought is a copy of the Mulgrave Shire Council map referred to in his letter dated 27 April 1989 to the Minister for Police, then it appeared that the map was not in the possession of the QPS, but in the possession of the CJC in its capacity as custodian of the files of the former Police Complaints Tribunal. I noted that Mr Hearl was entitled to make a fresh FOI access application to the CJC for that map.

26. I explained the principles applicable to "sufficiency of search" cases (see paragraph 8 above) and asked Mr Hearl if he was prepared to withdraw his application for external review, on the basis that he was satisfied as to the searches made by the QPS and the inquiries undertaken at the behest of my office. In the alternative, I invited Mr Hearl to provide additional evidence or submissions which would indicate what further reasonable searches and inquiries might be undertaken in order to establish whether documents (a) and (b) could be located in the possession or control of the QPS.

27. Mr Hearl did not withdraw his application for external review, but responded by letter dated 14 March 1994 enclosing a copy of documents that he had already forwarded to me, apparently for the purpose of again demonstrating the existence of the documents in issue. Mr Hearl also said:

My complaint to the Police Complaints Tribunal covered the matter of the map and letter from the Department of Harbours and Marine.

The Police Complaints and subsequently C.J.C. both found the Maps and letter were correct and I was wrong. The Map and Letter were both available for the investigation by both these bodies and no mention was made after a thorough investigation of these not being able to be located.

I should also make it clear that the Police Pilot and Photographer must have been shown these Maps so they could take aerial photos of the correct property.

28. A number of additional inquiries were then undertaken by my office, commencing with a telephone interview with Sergeant Scott of the Roma Police Station.
29. In relation to document (a), Sergeant Scott indicated that the purpose of the letter which he received from the former Department of Harbours and Marine on 28 August 1987 was to clarify ownership of the land in question. He said that he forwarded a copy of that letter to the District Officer, Cairns, with his report dated 16 January 1988 (see paragraph 10 above) and expected that the letter would have remained in the Cairns District Office. (I note, however, that the report of 16 January 1988 does not contain any words which indicate that the letter from the former Department of Harbours and Marine was attached to that report). Sergeant Scott said that he would have kept a copy of the letter from Harbours and Marine for his own purposes, but since that time he had been transferred to three other centres throughout Queensland, and that at each move he had culled documents which he no longer required or which he considered to have no continuing relevance. He said that he had earlier searched his own records for a copy of the letter from Harbours and Marine, following a request by the QPS FOI Unit, but could not find a copy of it. Sergeant Scott considered that it was most likely that he had destroyed his copy of the letter. Sergeant Scott said that he could only surmise that it was possible that the District Office at Cairns may have retained a copy of the letter.
30. In relation to document (b), Sergeant Scott stated that he was involved in the investigation and preparation of the prosecution case against Mr Hearl for the charge of assault upon Mr Ford, although he could not claim a perfect recollection of events given the length of time that had passed since the prosecution. Sergeant Scott's recollection was that he would have completed a Criminal Offence Report upon receiving Mr Ford's complaint, and attached to it the map produced by Mr Ford. He said that the map should subsequently have been sent with the court brief to the police prosecutions staff in Cairns. He said that, as far as he was aware, the map was not tendered in evidence at the trial, although he was not present at the trial. He said that, after the trial, the most likely scenario was that the original map would have been returned to him as surplus material from the prosecution brief, along with other statements and surplus material. He said that Mr Hearl had subsequently made a complaint that Mr Ford had perjured himself during the course of the trial. He said that he was asked to prepare a report on this complaint, resulting in the report dated 21 October 1987 (see paragraph 11 above). He said that it was obvious to him from the text of that report that he had kept the original map, or at least had it at that time, and then attached the original map to his report of 21 October 1987. He said that he was aware of the significance, for the purposes of the laws of evidence, of the difference between an original and a copy of a document, and that if he had been forwarding a copy of the map with his report of 21 October 1987, he would have described the document being attached to his report as a copy. Sergeant Scott therefore considered that he must have forwarded the original map to the District Office at Cairns, where he expected it would have remained.
31. The QPS was subsequently asked to forward to my office the Smithfield Police Station files 3153/87 and 2698/87, and Cairns District Office file 87/5408. On 11 August 1994, the QPS forwarded to me Cairns District Office file 87/5408 together with a Smithfield Police Station file (contained in a manila folder). The officer in charge of Smithfield Police Station advised that a thorough search of the files held at Smithfield had failed to disclose files numbered 3153/87 and 2698/87. Instead, the file forwarded was a copy of all correspondence held at Smithfield Police Station concerning Mr Hearl. After examination of the files, it was clear that neither document (a) nor document (b) was contained within the files forwarded to me. However, those files did contain clues as to the whereabouts of those two documents.
32. The report by Constable Scott dated 16 January 1988 (see paragraph 10 above) was not located on

the Cairns District Office file 87/5408, although perusal of that file did seem to indicate that it is a general District Office file concerning Mr Hearl and his complaints. In a letter to the QPS FOI Unit dated 29 August 1994, the QPS was asked to make inquiries as to whether Constable Scott's report of 16 January 1988 could have been placed on some other Cairns District Office file.

33. As to document (b), several documents in the Cairns District Office file 87/5408 indicated that this map was in the original brief prepared for the police prosecutor in respect of Mr Hearl's trial. A memorandum by Acting District Officer Wagner of 15 May 1992 to the Assistant Commissioner, Far Northern Region, indicates that such a map was attached to the original brief. Also contained in that file was an affidavit sworn by Inspector Wagner on 8 December 1989 (for the purposes of a response to a subpoena to produce documents to the Land Court) which at paragraph 5 states that Inspector Wagner had:

... perused the Police Brief including a map prepared by Mr Ford which indicated where the assault occurred.

34. The QPS was requested to make inquiries as to where the police prosecution brief may be located, in view of the possibility that the original map was still contained on that brief. It was indicated that, given the complaints made by Mr Hearl, it was possible that the prosecution brief was held by the CJC. The QPS asked for an extension of time to make these further inquiries, since the initial decision-maker, Inspector Wright (formerly Senior Sergeant Wright), was to visit Cairns during the period 16-21 October 1994. An extension of time was given accordingly. By letter dated 9 November 1994, Superintendent Doyle informed me of the results of the additional inquiries made by the QPS, as follows:

- (a) The possibility of Constable Scott's report of 16 January 1988 being placed on some other Cairns District Office file.

35. During the period 16-21 October 1994, Inspector Wright visited the Cairns District Office, the far Northern Regional Office and the Smithfield Police Station. Inspector Wright personally perused all remaining files held at all three locations concerning Mr Hearl and discussed with QPS staff the likelihood of Constable Scott's report having been placed on another file. The QPS informed me that the relevant indices were again checked to seek to identify any associated files, however no other relevant documents were located.

- (b) The whereabouts of the police prosecution brief

36. The outcome of inquiries was that the whereabouts of the original, and any copy, of the police prosecution brief was unknown. Copies of the brief were not held at any of the three locations referred to in paragraph 35 above, nor at the prosecutions section at Cairns. The QPS informed me that it is not a policy or procedure for the prosecutions section at Cairns to retain such a copy.

37. Superintendent Doyle's letter informed me that the original court brief would ordinarily have been forwarded to the Police Information Centre (previously called the Information Bureau and Information Management Bureau). Superintendent Doyle stated that a copy of a Form QP9 (which is a pro-forma document containing blank spaces to be completed so as to identify a particular offender, details of the alleged offence, and the results of proceedings in court) concerning the assault charge against Mr Hearl was forwarded to the Police Information Centre. Superintendent Doyle provided me with a copy of that QP9 form.

38. Superintendent Doyle referred to earlier inquiries conducted with the prosecutions section, Cairns Police Station, which established that there was no prosecution brief, as such, prepared for the proceedings against Mr Hearl, rather the original of the police file was used for that purpose. (I note

that one is then left with an initially contradictory position being presented by the QPS that no prosecutor's brief was prepared for the charge against Mr Hearl, but District Officer Wagner refers to perusing a "Police Brief" concerning the prosecution of Mr Hearl. I consider that the best explanation is that what District Officer Wagner was referring to as a "Police Brief" was the QP9 form, together with the original police file that was used for the purpose of prosecuting Mr Hearl. Superintendent Doyle indicated that the procedure used by the police prosecutor's office was to use the file provided to them, and that upon the completion of any proceedings, the file was forwarded to the Information Management Bureau for filing.)

39. Superintendent Doyle informed me that he had personally inspected the microfilm record at the Police Information Centre and that, apart from the QP9, no copies of statements, maps or other notes are recorded. Superintendent Doyle expressed the view that, given the formal complaints made by Mr Hearl, it was possible that the brief was diverted, or taken possession of, by an investigator. It is my conclusion that examination of the Cairns District Office file would certainly indicate this to have been the case, given the comments by District Officer Wagner that he was able to inspect the "Police Brief" as late as 1989, and document (b) was located on that file at that time. Superintendent Doyle indicated that it is not QPS policy to retain original copies of court briefs. Generally, copies of selected documents are microfilmed, and originals are destroyed, and this has occurred with original documents from the 1987 period.
40. Superintendent Doyle was subsequently questioned as to the utility of pursuing inquiries as to the existence of any Criminal Offence Report prepared as a result of Mr Ford's initial complaint of assault by Mr Hearl. Superintendent Doyle indicated that, in 1987, the practice was to prepare a single document (a QP9), where an offender in relation to a criminal offence was able to be identified and had been charged. In effect, the QP9 had absorbed within it all the information required of a Criminal Offence Report, and in fact made completion of a Criminal Offence Report redundant. In cases where the offender was unknown at the time the QPS received the complaint, only a Criminal Offence Report was created, with a QP9 produced if an offender was subsequently identified. The two documents would then be cross-referenced.
41. The copy of the QP9 (concerning the charge of assault against Mr Hearl) provided to me by the QPS contains a blank space in the section provided for cross-reference to any previous Criminal Offence Report. Taking that fact, together with the date of the QP9 (19 August 1987), compared to the date of the offence (9 August 1987), I find that it is more probable than not that only a QP9 was prepared for the assault charge against Mr Hearl, and that a separate Criminal Offence Report was not prepared. Further, Superintendent Doyle advised that the records system of the QPS was such that any documents prepared in relation to any Criminal Offence Report (assuming such a separate document existed) would have been forwarded to the Police Information Centre, and held with the QP9. Superintendent Doyle had in fact conducted such a search, without locating the documents in issue.
42. Superintendent Doyle advised that he had again visited the CJC on 7 November 1994, and apart from the copy of the QP9, no copies of the police prosecution brief are on file at that location, nor is there any evidence to suggest that this was ever the case.

(c) Smithfield files 3153/87 and 2698/87
43. Superintendent Doyle informed me that even though the original files could not now be located for forwarding to me, his records indicate that both those files consisted of one page reports, copies of which had already been released to Mr Hearl (and which would appear to be the documents referred to in paragraphs 10 and 11 above).
44. By letter dated 5 December 1994, I informed Mr Hearl of the additional inquiries undertaken by the

QPS by forwarding to him a copy of Superintendent Doyle's letter of 9 November 1994. I conveyed to Mr Hearl my preliminary view that there were reasonable grounds to believe that documents (a) and (b) did exist but that neither of those documents could be found in the possession or under the control of the QPS at the present time, despite reasonable searches and inquiries being made to locate those documents. I also conveyed to Mr Hearl my preliminary view that the searches undertaken by the QPS for the documents in issue had been reasonable, and indeed exhaustive. I asked Mr Hearl to indicate, by 16 December 1994, whether or not he wished to withdraw his application for external review. No response was received to that letter.

Conclusion

45. Having detailed the nature and extent of the searches and inquiries undertaken by the QPS, and by my staff, in respect of the documents in issue, I turn to the consideration of the principles applicable to "sufficiency of search" cases as set out in *Re Shepherd* (see paragraph 8 above). In answer to the first question posed in paragraph 19 of *Re Shepherd*, I consider that the evidence establishes that the documents in issue did, at one time, exist within the possession or control of the QPS, but that it is most likely that they have since been destroyed or lost. In any event, in respect of the second question posed in paragraph 19 of *Re Shepherd*, I am satisfied that the search efforts made by the QPS to locate the documents in issue have been reasonable in all the circumstances of this case; indeed they may be described as exhaustive, but they have ultimately been unsuccessful. I am unable to suggest any other avenues of search and inquiry within the QPS that might have reasonable prospects of success.
46. Given these conclusions, I affirm the decision made on behalf of the QPS by Acting Assistant Commissioner P J Freestone on 10 September 1993.

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F N ALBIETZ
INFORMATION COMMISSIONER