"C" and Department of Tourism, Small Business and Industry

(S 9/97; 23 June 1998, Information Commissioner)

(This decision has been edited to remove merely procedural information and may have been edited to remove personal or otherwise sensitive information.)

REASONS FOR DECISION

Background

5. The applicants in this external review [(to whom I will refer as "persons A, B and C")] were the authors of letters of complaint to the Liquor Licensing Division (the LLD) of the respondent. Two letters, dated 12 August 1996 and 24 August 1996, were written by persons A and B. The other two letters, dated 29 June 1996 and 12 August 1996, were written by person C. They are pursuing this 'reverse FOI' application because they object to the respondent's decision to disclose to the access applicant, Mr R Modin, the bulk of the information contained in three of the letters and the entire contents of the other letter.

6. By letter dated 28 August 1996, Mr Modin, the Nominee of the Rainbow Beach Sports, Recreation and Memorial Club (the Club), applied to the respondent for access to:

> *any information you can supply me regarding any liquor licensing complaints made against this Club in particular those received recently to Dominic TENNISON from your Sunshine Coast Regional Office.*
>
> ...
>
> *Our committee is in the process of taking legal action against any person found defaming any members of this committee.*

7. In accordance with its obligations under s.51 of the FOI Act, the respondent consulted with a number of persons who had made complaints against the Club, including persons A, B and C. By letter dated 14 October 1996, Power & Cartwright, Solicitors, on behalf of persons A, B and C and other persons, objected to the disclosure to Mr Modin of their clients' complaints to the LLD. Power & Cartwright submitted that the documents were exempt under s.42(1)(b), s.42(1)(c), s.42(1)(e), s.44(1), s.45(1)(c), and s.46(1) of the FOI Act. The respondent also sought the views of the Queensland Police Service (the QPS) as to whether the documents, some of which referred to physical assaults at the Club, might be exempt under s.42(1)(a), on the basis that their disclosure could prejudice any police investigations into those matters. The QPS advised that it had no objection to the disclosure of the documents to the access applicant.

8. By a letter dated 18 November 1996, Mr M Jones of the respondent informed persons A and B of his decision that some parts of their complaint letters dated 12 August 1996 and 24 August 1996 were exempt matter but, that the balance of the letters did not comprise exempt matter under the FOI Act. By a letter of the same date, person C was informed of Mr Jones' decision that some parts of the letter dated 12 August 1996 were exempt matter, but that the balance of that letter, and the whole of the letter dated 29 June 1996, were not exempt matter under the FOI Act.

9. Persons A, B and C then sought internal review of Mr Jones' decision to give access to parts of the letters dated 12 and 24 August 1996, and to all of the letter dated 29 June 1996 (the "matter in issue"). Mr Jones' decision was upheld on internal review by Mr S Chapman in his decision dated 6 January 1997. By letter dated 22 January 1997, persons A, B and C applied to me for review, under Part 5 of the FOI Act, of Mr Chapman's decision.

External review process

10. I obtained from the respondent copies of the four complaint letters. I also obtained the respondent's internal records of its consultations in accordance with s.51 of the FOI Act. Mr Modin has not sought to challenge the respondent's decision that parts of three of the complaint letters referred to above are exempt matter, and hence the status of those parts of the complaint letters is not in issue in this external review. On the question for determination in this review, i.e., whether the balance of the matter in issue is exempt matter under the FOI Act, Mr Modin applied for, and was granted, status as a participant in this review, in accordance with s.78 of the FOI Act.

11. Members of my staff interviewed Mr Jones of the respondent and Mr John Roscarel, an investigator employed by the LLD. At that conference, Mr Roscarel explained the process by which investigations are conducted by the LLD, and the particulars of his investigation of a series of complaints made about the Club, including those to which the matter in issue relates. Mr Roscarel subsequently provided this office with a statutory declaration dated 3 March 1998, and a draft Report in respect of the investigation of the various complaints against the Club.

12. The Information Commissioner then wrote to persons A, B and C advising of his preliminary view that the matter in issue was not exempt matter under the FOI Act and inviting their respective written submissions and/or evidence, if they wished to contend that the matter in issue was exempt under the FOI Act.

13. Persons A, B and C responded by letter dated 19 April 1998, rejecting the Information Commissioner's preliminary view. However, because that letter indicated a misapprehension about the role of the Information Commissioner in this external review, the Assistant Information Commissioner wrote to persons A, B and C explaining the situation and allowing further time for the lodging of submissions and/or evidence. By letter dated 3 May 1998, persons A, B and C again rejected the Information Commissioner's preliminary views regarding the matter in issue and sought to rely on the

earlier submissions made by their solicitors, Power & Cartwright, during the respondent's consultation process. It was also requested that further correspondence be addressed to Power & Cartwright. On 7 May 1998, the Assistant Information Commissioner wrote to Power & Cartwright and provided that firm with the opportunity to make additional submissions on behalf of its clients. That opportunity has not been availed of.

14. I will deal with each of the exemption provisions which have been referred to by Power & Cartwright or by persons A, B and C. I should note that, because the identities of persons A, B and C are in issue, I am constrained from including in my reasons for decision, information which would enable their identities to be ascertained. This necessarily means that discussion of certain aspects of my reasons for decision must be limited.

Application of s.46(1) of the FOI Act

15. Section 46(1) of the FOI Act provides:

> ***46.(1)*** *Matter is exempt if—*
>
> *(a) its disclosure would found an action for breach of confidence; or*
>
> *(b) it consists of information of a confidential nature that was communicated in confidence, the disclosure of which could reasonably be expected to prejudice the future supply of such information, unless its disclosure would, on balance, be in the public interest.*

16. I discussed the requirements for exemption under s.46(1)(a) and s.46(1)(b) in *Re "B" and Brisbane North Regional Health Authority* (1994) 1 QAR 279. As to s.46(1)(a), there is no question of any contractual obligation of confidence arising in the circumstances of this case. To establish an equitable duty of confidence owed by the respondent to the complainants, which would be breached by disclosure of the matter in issue (thus founding an action for breach of confidence), each of the following five criteria must be satisfied:

(a) it must be possible to specifically identify the information in issue, in order to establish that it is secret, rather than generally available information (see *Re "B"* at pp.303-304, paragraphs 60-63);

(b) the information in issue must possess "the necessary quality of confidence"; i.e., the information must not be trivial or useless information, and it must possess a degree of secrecy sufficient for it to be the subject of an obligation of conscience, arising from the circumstances in or through which the information was communicated or obtained (see *Re "B"* at pp.304-310, paragraphs 64-75);

(c) the information in issue must have been communicated in such circumstances as to fix the recipient with an equitable obligation of conscience not to use the confidential

information in a way that is not authorised by the confider of it (see *Re "B"* at pp.311-322, paragraphs 76-102);

(d) it must be established that disclosure to the applicant for access under the FOI Act would constitute a misuse, or unauthorised use, of the confidential information in issue (see *Re "B"* at pp.322-324, paragraphs 103-106); and

(e) it must be established that detriment is likely to be occasioned to the original confider of the confidential information in issue if that information were to be disclosed (see *Re "B"* at pp.325-330, paragraphs 107-118).

17. For s.46(1)(b) of the FOI Act to be made out, each of the following criteria must be satisfied:

(a) the information in issue is information of a confidential nature;

(b) the information was communicated in confidence;

(c) disclosure of the information could reasonably be expected to prejudice the future supply of such information to the LLD; and

(d) disclosure of the information would not, on balance, be in the public interest.

18. In his statutory declaration dated 23 February 1998, Mr Roscarel explained the circumstances of the investigations he conducted for the LLD:

> *2. I became involved in the investigation of these complaints when letters were received by the Liquor Licensing Branch from Person C and other persons concerning a number of perceived problems at the Club which the complainants requested this Branch to investigate.*
>
> *3. On 24 September 1996, in the company of Ms Patrice Costello, I had a meeting with some of the complainants concerning their complaints. Persons A and B were among those present. I wrote down a list of their complaints, a number of which were not liquor licensing complaints. I then explained to the complainants which complaints were within my jurisdiction to investigate and which were not.*
>
> *4. I informed the complainants that because of the very specific allegations raised, in the interests of fairness, I would need to put their names and the specific facts to the Club management if I were to investigate the various complaints. None of the complainants, at the meeting raised any objection to my disclosing the allegations they had made or their names to the Club for the purposes of my investigation.*
>
> *5. Following that meeting, I attended the Club and met with Club committee members, including Rick Modin. The committee provided me with its version of*

the incident involving Person C about which Person C had complained. I do not recall specifically to what extent I disclosed the contents of Person C's letters of complaint in my contact with the Club committee but, in order to be fair, I would have had to have given an outline of Person C's allegations about the incident and the questioning of Person C by the Club committee to see if the committee agreed with Person C's version.

6. *It is required by the Code of Conduct which applies to investigators under the* Liquor Act 1992 *that investigators, such as myself, ensure fairness in our official dealings with the public. None of the letters which are sent to complainants from the Liquor Licensing Division indicate that their identities and their complaint will be kept confidential.*

7. *I do not believe that there was anything in my dealings with Persons A, B or C, or other complainants from which they could have understood that what they told me would be kept confidential from Rick Modin.*

19. The second and third requirements for exemption under s.46(1)(a) involve similar considerations to the first two requirements for exemption under s.46(1)(b).

Necessary quality of confidence/information of a confidential nature

20. In *Re "B"* at pp.337-338 (paragraph 148), I said:

> *148* *In my opinion,* [the first criterion for exemption under s.46(1)(b)] *calls for a consideration of the same matters that would be taken into account by a court in determining whether, for the purpose of satisfying the second element of the equitable action for breach of confidence, the information in issue has the requisite degree of relative secrecy or inaccessibility. The matters referred to in paragraphs 71 to 72 above will also therefore be relevant to the question of whether this first criterion for the application of s.46(1)(b) is satisfied. It follows that, although it is not a specific statutory requirement, it will for practical purposes be necessary to specifically identify the information claimed to be of a confidential nature, in order to establish that it is secret, rather than generally available, information. The question of whether the information in issue is of a confidential nature is to be judged as at the time the application of s.46(1)(b) is considered. Thus if information was confidential when first communicated to a government agency, but has since lost the requisite degree of secrecy or inaccessibility, it will not satisfy the test for exemption under s.46(1)(b).*
>
> (See also *Re McMahon and Department of Consumer Affairs* (1994) 1 QAR 377, at p.383, paragraph 21.)

21. In his initial decision concerning the complaint letters of person C, Mr Jones found that because person C's actions had clearly indicated to the Club management that person C

wanted the respondent to investigate the complaints, the information contained in the letters, including person C's identity, did not have the requisite degree of secrecy or inaccessibility to make it information "of a confidential nature." I agree with that conclusion.

22. It is clear from Mr Roscarel's declaration, and from his draft Report regarding the investigation, that members of the Club committee, including Mr Modin, have been advised by Mr Roscarel that person C has made a complaint, and have been advised of the nature of the complaint. The identity of the complainant cannot be said to retain any element of confidentiality as against Mr Modin so as to satisfy the second requirement for exemption under s.46(1)(a), and the first requirement for exemption under s.46(1)(b), as set out above.

23. The material before me (including one of the annexures to person C's letter dated 29 June 1996) shows that the details of person C's main complaint, along with other complaints, were revealed to members of the Club committee by Mr Roscarel (in order to allow them to respond, for the purposes of his investigation) and that the complaint made by person C has been raised with the Club committee by person C.

24. While the entire text of person C's complaint letters to the respondent may not have been made available to Mr Modin, there is no information of substance in those letters of which Mr Modin is not already aware. I find that the matter in issue in person C's complaint letters does not have the necessary quality of confidence to satisfy the second requirement for exemption under s.46(1)(a), or the first requirement for exemption under s.46(1)(b), as set out above.

25. As for the complaint letters by persons A and B, Mr Jones found that any identifying information in those letters was exempt matter under s.46(1) but that the remaining parts of those letters (apart from some matter found to be exempt under s.44(1)) should be disclosed to the applicant for access.

26. It does not appear that the identities of persons A and B were revealed to the Club committee during the course of the LLD's investigations. The material before me, including the draft Report of the preliminary investigations of the complaints against the Club, indicates that the complaints raised in the letters from persons A and B were considered to be outside the LLD's jurisdiction and, consequently, were not acted upon by the LLD. It therefore appears that the matter in issue in the letters from persons A and B has not been revealed to the Club and retains the necessary quality of confidence or secrecy to satisfy the second requirement for exemption under s.46(1)(a), and the first requirement for exemption under s.46(1)(b).

Equitable obligation of confidence/Communicated in confidence

27. As to whether there existed an equitable obligation of confidence (for the purposes of s.46(1)(a)) or whether the information in any of the letters in issue was communicated in confidence (for the purposes of s.46(1)(b)), I can find no evidence on the material before

me that any express assurances of confidential treatment were provided to person A, B or C, or any other complainants, either prior to the forwarding of the letters containing the matter in issue or at the meeting with Mr Roscarel, described in his statutory declaration. However, in *Re "B"* at p.318 (paragraph 90), I said (in respect of the third requirement for exemption under s.46(1)(a) of the FOI Act):

> *90 It is not necessary therefore that there be any express consensus between confider and confidant as to preserving the confidentiality of the information imparted. In fact, though one looks to determine whether there must or ought to have been a common implicit understanding, actual consensus is not necessary: a confidant who honestly believes that no confidence was intended may still be fixed with an enforceable obligation of confidence if that is what equity requires following an objective evaluation of all the circumstances relevant to the receipt by the confidant of the confidential information.*

28. In its letter dated 14 October 1996, Power & Cartwright stated:

> *When our clients initially made contact with* [the respondent] *they were advised that, for the matter to be investigated, they would need all complaints in writing. For reasons set out below, our clients were hesitant to do so for fear of their identity being disclosed at a later date. However, they did feel that the matters being complained of were of such a serious nature that they co-operated with the respondent in this regard. They believed that whilst those concerned would discover the nature of the complaints, they did not at any time believe that the actual documents of complaint would be revealed.*

29. In the internal review application lodged on behalf of persons A and B, it was submitted:

> *Government departments must rely on the public providing information of misconduct and therefore should treat all of this information on a confidential basis.*
>
> *Until such time as government departments are able to have officers in every town ... it is imperative that they do not discourage members of the public from providing information.*
>
> *If any of our information is released it will encourage us to turn a blind eye to any misdemeanour that occurs in this town, no matter how big or small....*
>
> *...*
>
> *There is no doubt that even if our names are removed from this letter the management ... will know who wrote the letters and will use this information to degrade us in this very small town.*

The management will turn this information around to make it appear that we are causing problems.....

30. Similar submissions were made in person C's internal review application.

31. In *Re McEniery and the Medical Board of Queensland* (1994) 1 QAR 349, at pp.359-364 (paragraphs 24-34) and at p.371 (paragraph 50), I considered the factors relevant to determining whether information has been supplied to an agency on the implicit mutual understanding that the identity of the supplier of the information would remain confidential. In particular, I said, at p.361 (paragraph 26) that a relevant issue is whether the supplier and the recipient of the information could reasonably have expected that the supplier's identity would remain confidential given the procedures that must be undertaken if appropriate action is to be taken by the recipient, in respect of the information, for the purposes of the enforcement or administration of the law. Further (at pp.361-362 (paragraph 28)), I said that the legal requirement that government agencies observe the rules of procedural fairness, or the duty to act fairly, will affect the question of whether a supplier of information to a government agency, and the agency itself, could reasonably expect the confidentiality of the supplier's identity to be preserved while taking appropriate action in respect of the information conveyed.

32. In relation to the matter in issue in person C's letters, I find that the situation is quite similar to that which I dealt with in *Re McMahon*. In *Re McMahon*, a complaint was made by the applicant to a regulatory authority about a specific incident that had transpired between the applicant and the subject of the complaint, and it was impossible for the applicant's identity to be treated in confidence if the complaint were to be investigated. At p.364 (paragraph 23), I said that neither the applicant nor the respondent agency in that case could reasonably have expected that the applicant's identity, and the substance of his complaint, could remain confidential from the subject of the complaint, if appropriate action was to be taken in respect of that complaint.

33. Where a person is the subject of an investigation by a government agency, particularly a regulatory body such as the LLD, the duty of fairness will at least require that a person, against whom specific adverse allegations are made, be given an effective opportunity to know the substance of the case against the person (so that he/she can answer it). Sometimes it is possible for a person to be given an effective opportunity to know the substance of adverse allegations, without revealing the identity of the source of information. *Re McEniery* was a case of that kind, and other examples are given in *Re McEniery* at p.361 (paragraph 27). However, as I said in *Re McEniery* at pp.363-364 (paragraph 32):

Where the substance of the case against a person is dependent on the direct observation and testimony of a source of information, or on the disclosure of the identity of a source of information as the person against whom a wrong is alleged to have been committed, then the source and the government agency could not reasonably expect that the source's identity could remain confidential, if appropriate action is to be taken on the information conveyed by the source ...

34. Both of person C's letters strongly urge the LLD to investigate the matters raised in the letters, and the letter dated 12 August 1996 asks for investigations of specific incidents involving Mr Modin. I do not consider that person C could reasonably have expected that the matters raised by person C's letters could be properly acted upon by the LLD without the substance of the complaints being disclosed to Mr Modin. The specific nature of the complaints was such that they could not have been properly investigated without disclosing the identity of the complainant.

35. On the material before me, I do not accept that there was an express or implicit mutual understanding that person C's identity, or the contents of person C's complaint letters, would be treated in confidence by the respondent. Nor are the circumstances of the communications such as to warrant a finding that there is an equitable obligation of confidence binding the respondent not to disclose person C's identity, or the contents of the complaint letters, to Mr Modin.

36. Turning to the letters from persons A and B, Mr Jones' initial decision was that the identities of persons A and B were capable of being preserved by the LLD while investigating the substance of their complaints. While that may be the case, persons A and B cannot have reasonably expected that action could have been taken on their complaints unless the substance of those complaints was made known to the Club management. As explained above, the procedures that were adopted by the LLD in order to investigate, and, if necessary sanction, the Club were such that the rules of procedural fairness required that the substance of the complaints be put to the Club in order for the management to answer the adverse allegations raised in the complaints.

37. As Mr Roscarel stated (at paragraphs 3 and 4 of his statutory declaration), it was made clear at his meeting with the complainants, which included persons A and B, that if the complaints were to be acted upon, the identities of the complainants and the detail of their complaints would be made known to the Club. Even if persons A and B had had some understanding as to confidentiality up to that time, there could have been no doubt afterwards, that there was no understanding on the part of the respondent that the details of their complaints were to be treated in confidence. The complainants still had the opportunity at that stage, before Mr Roscarel commenced his investigation, to withdraw the complaints, but they chose not to do so. Indeed, the overwhelming inference from the material before me is that persons A and B desired the intervention of the LLD.

38. The wording of the complaint letters makes it clear that persons A and B wanted action to be initiated on their word alone. However, they could not have expected that where the matters complained of could not be independently verified by the LLD investigators, that they would not be raised with the Club. In fact, it appears that the LLD considered that the matters were not within its power to investigate, thus obviating the need to raise them with the Club. However, all of the circumstances indicate disappointment by persons A and B in the LLD's perceived inaction in relation to those matters. In order for those matters to have been properly investigated by the LLD, the investigators would necessarily have had to make known the detail of the complaints to the Club.

39. The material before me leads to the conclusion that there was no express or implicit mutual understanding that the matter in issue in the letters written by persons A and B, would be treated in confidence by the respondent agency. I also find that the circumstances of the communication of the information in those letters were not such as to impose on the respondent an equitable obligation of confidence binding the respondent not to disclose the matter in issue to Mr Modin.

Findings on s.46(1)

40. I therefore find that the matter in issue does not qualify for exemption under s.46(1)(a) or s.46(1)(b) of the FOI Act.

Application of s.42(1)(a) of the FOI Act

41. Section 42(1)(a) of the FOI Act provides:

> ***42.(1)*** *Matter is exempt matter if its disclosure could reasonably be expected to—*
>
> *(a) prejudice the investigation of a contravention or possible contravention of the law (including revenue law) in a particular case; or*

42. In *Re "B"* at pp.339-341 (paragraphs 154-160), I analysed the meaning of the phrase "could reasonably be expected to", by reference to relevant Federal Court decisions interpreting the identical phrase as used in exemption provisions of the *Freedom of Information Act 1982* Cth. Those observations are also relevant here. In particular, I said in *Re "B"* (at pp.340-341, paragraph 160):

> *The words call for the decision-maker ... to discriminate between unreasonable expectations and reasonable expectations, between what is merely possible (e.g. merely speculative/conjectural "expectations") and expectations which are reasonably based, i.e., expectations for the occurrence of which real and substantial grounds exist.*

43. The ordinary meaning of the word "expect" which is appropriate to its context in the phrase "could reasonably be expected to" accords with these dictionary meanings: "to regard as probable or likely" (Collins English Dictionary, Third Aust. ed); "regard as likely to happen; anticipate the occurrence ... of" (Macquarie Dictionary, 2nd ed); "Regard as ... likely to happen; ... Believe that it will prove to be the case that ..." (The New Shorter Oxford English Dictionary, 1993).

44. In Power & Cartwright's letter dated 14 October 1996, it was stated:

> *...Our clients believe that the investigation into the activities of the club may be prejudiced by the disclosure of the documents at this point. They feel that if*

the details of the complaint are revealed, then the relevant parties shall have sufficient notice to be able to "cover their tracks".

45. In his initial decision, Mr Jones said:

> *I have discussed this issue with licensing investigators and am satisfied that given the investigations are close to finalisation and the fact the club has been made aware of the allegations, this exemption cannot be relied upon in this particular case.*

46. Mr Roscarel's statutory declaration states that he and another Investigator met with a number of the complainants to discuss their complaints, and to determine what their main concerns were. Mr Roscarel then attended at the Club and met with members of the Club committee. One of the matters raised with the Club was the circumstances surrounding the main complaint raised by person C. The Club's version of those events was obtained.

47. Having perused those documents, I wrote to persons A, B and C on 30 March 1998, conveying my preliminary view that it appeared that the investigations into the complaints at the Club had been concluded and that any concerns about prejudice to the LLD's investigations were no longer relevant.

48. In response, persons A, B and C, in a letter to me dated 19 April 1998, stated:

> ....*you have been supplied with the wrong information by John Roscarel of* [the LLD], *in that he has declared the investigation over.*
>
> *This is far from the truth. Mr Roscarel might think he could wash his hands of the whole matter because it is too hard, however, we have, via the Minister, questioned what has happened to our original complaint.*
>
> *After complaining, the Minister then directed Mr Ross Bearkley to come to Rainbow Beach and meet with us. Many matters are not yet resolved and until* [the LLD] *has addressed our concerns and complaints we will not accept that any of our information is released.*
>
> *After meeting with Mr Bearkley in late February, we are still waiting for a response of his investigations.*

49. Subsequently, in late April 1998, a member of my staff contacted Mr Bearkley, the manager of the LLD. Mr Bearkley said that he had regarded the investigations of the Club as having been finalised after Mr Roscarel's investigations. However, because of the approach made to the responsible Minister by one of the complainants, some matters were further investigated. Mr Bearkley said that the investigations were finalised, apart from a minor procedural matter that does not require actual investigation.

50. From my examination of Mr Roscarel's statutory declaration, his draft Report, and the record of conversation with Mr Bearkley, it is clear that the Club management was made aware of complaints made against it, including that of person C. Even if an investigation was still under way, I do not consider that disclosure of the matter in issue could reasonably be expected to prejudice such an investigation. It is also clear that Mr Roscarel considered the complaints made in the letters from persons A and B were not complaints which the LLD had power to investigate. I find that the matter in issue does not qualify for exemption under s.42(1)(a) of the FOI Act.

Application of s.42(1)(b) of the FOI Act

51. Section 42(1)(b) of the FOI Act provides:

> ***42.(1)*** *Matter is exempt matter if its disclosure could reasonably be expected to—*
>
> ...
>
> *(b) enable the existence or identity of a confidential source of information, in relation to the enforcement or administration of the law, to be ascertained; ...*

52. In *Re McEniery* at pp.356-357 (paragraph 16), I said that matter will be eligible for exemption under s.42(1)(b) if the following three requirements are satisfied:

(a) there exists a confidential source of information;
(b) the information which the confidential source has supplied (or is intending to supply) is in relation to the enforcement or administration of the law; and
(c) disclosure of the matter in issue could reasonably be expected to -

(i) enable the existence of a confidential source of information to be ascertained; or
(ii) enable the identity of a confidential source of information to be ascertained.

53. At pp.358-359 (paragraphs 20-35) of *Re McEniery*, I considered the concept of a "confidential source of information" for the purposes of s.42(1)(b) of the FOI Act, and found that it referred to a person who supplies information on the express or implied understanding that the person's identity will remain confidential (citing Keely J in *Department of Health v Jephcott* (1985) 62 ALR 421 at p.426).

54. For the reasons stated at paragraphs 21-22 and 32-35 above, I find that person C is not a confidential source of information for the purposes of s.42(1)(b). I do not consider that there was ever an express or an implicit understanding, on the part of the respondent (nor could there reasonably have been, in the relevant circumstances), that person C's identity would be kept confidential. It is clear from the material before me, including an attachment to one of person C's letters of complaint, that the identity of person C as a complainant is known to Mr Modin.

55. Turning to persons A and B, the respondent contends that it has refused access to all matter in their complaint letters which could reasonably be expected to identify them as sources of complaint. I agree. Therefore, even if requirements (a) and (b) above, were satisfied, disclosure of the matter remaining in issue in their complaint letters could not reasonably be expected to identify the complainants.

56. I therefore find that the matter in issue is not exempt matter under s.42(1)(b) of the FOI Act.

Application of s.42(1)(c) of the FOI Act

57. Section 42(1)(c) of the FOI Act provides:

> ***42.(1)*** *Matter is exempt matter if its disclosure could reasonably be expected to—*
>
> ...
>
> *(c) endanger a person's life or physical safety; ...*

58. In *Re Murphy and Queensland Treasury & Ors* (1995) 2 QAR 744 at p.760 and p.761 (paragraphs 45 and 47), I said that the question of whether disclosure of information could reasonably be expected to endanger a person's life or physical safety is to be examined objectively by the decision-maker authorised to determine questions of access under the FOI Act, in light of the relevant evidence, including any evidence obtained from or about the claimed source of danger, and not simply on the basis of what evidence is known to persons claiming to be at risk of endangerment.

59. In *Re Murphy*, at pp.767-777 (paragraphs 86-91), I expressed the view that evidence of intemperate verbal abuse does not necessarily mean that the person guilty of such conduct would commit acts that would endanger the life or physical safety of another person. I also observed that harassment does not fall within the terms of s.42(1)(c), unless it is harassment which endangers a person's life or physical safety.

60. In the internal review application lodged on behalf of persons A and B, it was contended that they had "*a very real fear that ourselves and our family ... will suffer severe victimisation if any information is released.*" They stated that there had already been violence at the Club and that the release of information "*will only spur matters on*." It was also submitted by persons A and B that they have been subjected to threatening and abusive language by a club employee.

61. Person C's internal review application states that person C has been assaulted at the Club on a couple of occasions, but then goes on to say that person C would be prepared to go to Court to give evidence if necessary.

62. The initial and internal review decisions by the respondent's authorised decision makers did not consider that the circumstances of the case warranted a finding that endangerment

to life or physical safety could reasonably be expected to follow from the disclosure of the matter in issue.

63. In its letter dated 14 October 1996, Power & Cartwright asserted that the complainants all feared for their physical safety if the documents in issue were disclosed. Amongst correspondence on the respondent's internal review file is a record of conversation between Mr Jones of the respondent, and a solicitor from Power & Cartwright, during which the solicitor said that there was a real and serious risk that the complainants would be harmed if the information was released. He told Mr Jones that the clientele of the Club were noted for their aggressive nature and the Club had a history of fights.

64. On the other hand, the draft Report by the Investigation and Complaints Unit states that, on making contact with the local police regarding complaints at the Club, Mr Roscarel was informed that the Club had not posed a real problem to the police, although there had been an incident of assault that same year to which the police were called and charges were laid.

65. In my letter to persons A, B, and C dated 30 March 1998, I expressed the preliminary view that there was insufficient evidence to make out a claim for exemption under s.42(1)(c) of the FOI Act. In the case of persons A and B, the fact that their names and other identifying details had been removed from the letters made it difficult to find a reasonably based expectation of harm. Persons A, B and C did not offer any further evidence to establish a reasonably based expectation of physical harm.

66. A great deal of the information in person C's letters has already been investigated by the LLD and, in the course of such investigations, has been put to the Club management. There is no evidence of physical violence against any person because of that disclosure by the LLD. Person C's identity as a complainant to the LLD and the substance of those complaints is already well known to the Club. On an objective evaluation of all of the circumstances of person C's situation, including the information remaining in issue, I am not satisfied that disclosure of the matter remaining in issue, or the identity of person C, could reasonably be expected to endanger any person's life or physical safety. In respect of the matter in issue contained in the letters provided by persons A and B to the LLD, I am not satisfied, having regard to the nature of the matter in issue, and all of the relevant circumstances, that disclosure could reasonably be expected to endanger any person's life or physical safety. My view would be the same whether or not the identities of persons A and B were to be revealed.

67. I therefore find that the matter in issue does not qualify for exemption under s.42(1)(c) of the FOI Act.

Application of s.42(1)(e) of the FOI Act

68. In its letter dated 14 October 1996, Power & Cartwright referred to s.42(1)(e), but in a context which suggested it was discussing s.42(1)(a). For the sake of completeness, I record my finding that the matter in issue is not exempt under s.42(1)(e).

69. Section 42(1)(e) of the FOI Act provides:

> ***42.(1)*** *Matter is exempt matter if its disclosure could reasonably be expected to—*
>
> ...
>
> *(e) prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law (including revenue law); ...*

70. The correct approach to the interpretation and application of s.42(1)(e) was explained in *Re "T" and Queensland Health* (1994) 1 QAR 386.

71. I discussed the submission by Power & Cartwright in dealing with s.42(1)(a). The matter in issue does not disclose any secret or unusual investigative method or procedure of the LLD. It merely comprises letters of complaint. The material before me does not afford a reasonable basis for an expectation that disclosure of the matter in issue could prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law.

Application of s.44(1) of the FOI Act

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

> ***44.(1)*** *Matter is exempt matter if its disclosure would disclose information concerning the personal affairs of a person, whether living or dead, unless its disclosure would, on balance, be in the public interest.*

73. In applying s.44(1) of the FOI Act, one must first consider whether disclosure of the matter in issue would disclose information that is properly to be characterised as information concerning the personal affairs of a person. If that requirement is satisfied, a *prima facie* public interest favouring non-disclosure is established, and the matter in issue will be exempt, unless there exist public interest considerations favouring disclosure which outweigh all identifiable public interest considerations favouring non-disclosure, so as to warrant a finding that disclosure of the matter in issue would, on balance, be in the public interest.

74. In *Re Stewart and Department of Transport* (1993) 1 QAR 227, I identified the various provisions of the FOI Act which employ the term "personal affairs", and discussed in detail the meaning of the phrase "personal affairs of a person" (and relevant variations thereof) as it appears in the FOI Act (see pp.256-257, paragraphs 79-114, of *Re Stewart*). In particular, I said that information concerns the "personal affairs of a person" if it concerns the private aspects of a person's life and that, while there may be a substantial grey area within the ambit of the phrase "personal affairs", that phrase has a well accepted core meaning which includes:

1. family and marital relationships;
2. health or ill health;
3. relationships and emotional ties with other people; and
4. domestic responsibilities or financial obligations.

75. Whether or not matter contained in a document comprises information concerning an individual's personal affairs is essentially a question of fact, to be determined according to the proper characterisation of the information in question.

76. In *Re Byrne and Gold Coast City Council* (1994) 1 QAR 477, I held that the fact that a person made a complaint to an elected representative about a matter of concern was information concerning that person's personal affairs, for the purposes of s.44(1) (see, in particular, at p.487, paragraphs 26-27, and pp.488-490, paragraphs 33-38). I consider that the fact that persons A, B and C made complaints to the LLD is information which concerns their respective personal affairs.

77. Turning first to the matter in issue in the complaint letters by persons A and B, the respondent has deleted identifying information from the letters, and other information of a personal nature concerning persons A and B. The information comprising the matter in issue in the complaint letters by persons A and B is not of a particularly sensitive or personal nature. It relates to observations made by those persons of activities and possible breaches of rules at the Club concerning the conduct of others, and contains criticisms of the LLD's investigations of the matters. In *Re Stewart* at p.258 (paragraph 81) I said:

> *For information to be exempt under s.44(1) of the FOI Act, it must be information which identifies an individual or is such that it can readily be associated with a particular individual. Thus deletion of names and other identifying particulars or references can frequently render a document no longer invasive of personal privacy, and remove the basis for claiming exemption under s.44(1). This is an expedient (permitted by s.32 of the Queensland FOI Act) which has often been endorsed or applied in reported cases: see, for example,* Re Borthwick and Health Commission of Victoria *(1985) 1 VAR 25 where the applicant sought disclosure of the names and medical history (clearly "personal affairs" information) of intellectually handicapped children who had been the subject of a Health Commission inquiry. Rowlands J (President) held that the applicant's interest in the documents, and the privacy of the children, could both be accommodated by substituting letters of the alphabet for the children's names.*

78. The matter in issue in the complaint letters by persons A and B merely discloses the substance of the complaints made against the Club and the action (or alleged inaction) of the LLD in respect of those complaints. I have found above that disclosure of the matter in issue could not reasonably be expected to disclose the identities of persons A and B. I do not consider that the disclosure of the matter in issue from the letters written by persons A and B, would associate that information with the personal affairs of identifiable individuals, so as to be invasive of their personal privacy. I find that the matter in issue in

the complaint letters by persons A and B is not exempt matter under s.44(1) of the FOI Act.

79. I consider that disclosure of the matter in issue in the complaint letters by person C would identify person C as a complainant to the LLD, or a person who has assisted the LLD with the enforcement of the laws it administers. I consider that the matter in issue is information concerning the personal affairs of person C, and is *prima facie* exempt under s.44(1) of the FOI Act. I turn now to the application of the public interest balancing test incorporated in s.44(1).

80. There is considerable evidence before me, including an attachment to person C's letter dated 29 June 1996, which warrants a finding that the relative weight of the public interest in protecting the privacy of the information concerning the personal affairs of person C has been significantly reduced. I do not consider that the public interest in non-disclosure of the identity of person C as a complainant to the LLD can be given any substantial weight, since the applicant has already been made aware by person C, that person C was going to complain to the LLD.

81. In addition, it is clear from the evidence before me that the substance of the information provided by person C to the LLD has already been made known to the Club committee, not only by the LLD, but by person C directly. Person C's own conduct with respect to disclosure of this personal affairs information to the Club committee (which includes Mr Modin) indicates that no substantial weight should be accorded, in all the relevant circumstances, to the public interest consideration which tells against disclosure of information concerning the personal affairs of a person other than the applicant for access.

82. I have previously held that there may be a public interest in a person having access to information which involves or concerns the person to such a degree as to give rise to a justifiable 'need to know' which is more compelling than for other members of the public, and that the public interest in fair treatment of an individual may favour an applicant being given the opportunity to see and to answer any allegations that are adverse to him or her (see *Re Pemberton and The University of Queensland* (1994) 2 QAR 293 at pp.368-377, paragraphs 164-193).

83. Although it appears that the investigations by the LLD of the Club are all but complete, the complaints are still retained on the files of the respondent as information adverse to Mr Modin and the Club management in general. I consider that there is a public interest consideration which favours a subject of adverse information held on government records, having access to the information in order to know what has been said about him and enable him to respond to it, if necessary.

84. I am satisfied that disclosure to Mr Modin of the complaint letters written by person C would, on balance, be in the public interest.

85. I therefore find that none of the matter remaining in issue is exempt from disclosure to Mr Modin under s.44(1) of the FOI Act.

Application of s.45(1)(c) of the FOI Act

86. Section 45(1)(c) of the FOI Act provides:

> ***45.(1)*** *Matter is exempt matter if—*
>
> *...*
>
> *(c) its disclosure—*
>
> *(i) would disclose information (other than trade secrets or information mentioned in paragraph (b)) concerning the business, professional, commercial or financial affairs of an agency or another person; and*
>
> *(ii) could reasonably be expected to have an adverse effect on those affairs or to prejudice the future supply of such information to government;*
>
> *unless its disclosure would, on balance, be in the public interest.*

87. The correct approach to the interpretation and application of s.45(1)(c) is explained in *Re Cannon and Australian Quality Egg Farms Limited* (1994) 1 QAR 491, at pp.516-523 (paragraphs 66-88). In summary, matter will be exempt under s.45(1)(c) of the FOI Act if I am satisfied that:

(a) the matter in issue is properly to be characterised as information concerning the business, professional, commercial or financial affairs of an agency or another person (s.45(1)(c)(i)); and

(b) disclosure of the matter in issue could reasonably be expected to have either of the prejudicial effects contemplated by s.45(1)(c)(ii), namely:

(i) an adverse effect on the business, professional, commercial or financial affairs of the agency or other person, which the information in issue concerns; or

(ii) prejudice to the future supply of such information to government;

unless I am also satisfied that disclosure of the matter in issue would, on balance, be in the public interest.

88. In *Re Cannon* at p.516 (paragraph 67), I said that the word "concerning", as it is used in the context of s.45(1)(c), means "about, regarding". It is not sufficient for the matter in issue merely to have some connection with the business, commercial or financial affairs of (in

this case) persons A, B or C. The matter in issue must itself comprise information about their respective business, commercial or financial affairs.

89. Persons A, B and C contend that disclosure of their complaint letters may prejudice their respective business affairs. However, even if there was sufficient evidence to support a finding that disclosure could reasonably be expected to prejudice the business affairs of one or more of them (which there is not) the matter in issue does not concern the business, commercial or financial affairs of any of them. The information in issue concerns personal aspects of the lives of persons A, B and C, and the management of the Club. It has nothing whatsoever to do with their business affairs.

90. I find that neither criterion (a) nor criterion (b) above is satisfied, and that the matter in issue does not qualify for exemption under s.45(1)(c) of the FOI Act.

DECISION

91. For the foregoing reasons, I affirm the decision under review (being the decision made by Mr Chapman on behalf of the respondent dated 6 January 1997).