

OFFICE OF THE INFORMATION COMMISSIONER (QLD)

Decision No. 98001

Applications S 20/94 and S 40/94

Participants:

Application S 20/94

L R and L E BOULLY

Applicants

DEPARTMENT OF NATURAL RESOURCES

Respondent

STEVENSON FINANCE CORPORATION PTY LTD and
H I D STEVENSON

Third Parties

Application S 40/94

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DEPARTMENT OF NATURAL RESOURCES

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DECISION AND REASONS FOR DECISION

FREEDOM OF INFORMATION - 'reverse FOI' application - some documents in issue claimed to be reasonably open to public access or reasonably available for purchase by members of the public - whether a 'reverse FOI' applicant is entitled to assert that s.22(a) or s.22(b) of the *Freedom of Information Act 1992 Qld* (which are not exemption provisions) should be invoked in respect of documents of that kind - whether a 'reverse FOI' applicant is confined to arguing that matter in issue is exempt matter under the exemption provisions in Part 3, Division 2 of the *Freedom of Information Act 1992 Qld* - interpretation of s.51(1) and s.51(2) of the *Freedom of Information Act 1992 Qld*.

FREEDOM OF INFORMATION - 'reverse FOI' application - documents relating to an application by a primary producer in south-west Queensland for a licence to build a large dam on private property for the purpose of irrigation and water harvesting - whether "deliberative process" matter within the meaning of s.41(1)(a)(i) of the *Freedom of Information Act 1992* Qld - whether some matter excluded from exemption because it merely consists of factual or statistical matter, or expert opinion or analysis, under s.41(2)(b) and s.41(2)(c), respectively, of the *Freedom of Information Act 1992* Qld - whether disclosure of the matter in issue would, on balance, be contrary to the public interest - application of s.41(1)(b) of the *Freedom of Information Act 1992* Qld.

FREEDOM OF INFORMATION - 'reverse FOI' application - statements prepared for use in litigation, and a letter to an opponent in the litigation - whether documents subject to legal professional privilege - whether privilege waived - application of s.43(1) of the *Freedom of Information Act 1992* Qld.

FREEDOM OF INFORMATION - 'reverse FOI' application - reports by engineering consultants retained by the primary producer to undertake a hazard assessment report in respect of the proposed dam, and other documents relating to assessment of safety aspects of the proposed dam - whether disclosure would disclose matter that has a "commercial value" within the meaning of that term in s.45(1)(b) of the *Freedom of Information Act 1992* Qld - whether disclosure could reasonably be expected to destroy or diminish the commercial value of the information - application of s.45(1)(b) of the *Freedom of Information Act 1992* Qld - whether disclosure would disclose "information ... concerning the business, ... commercial or financial affairs" of the primary producer within the meaning of that phrase in s.45(1)(c) of the *Freedom of Information Act 1992* Qld - whether disclosure could reasonably be expected to have an adverse effect on the business, commercial or financial affairs of the primary producer, or to prejudice the future supply of such information to government - whether disclosure would, on balance, be in the public interest - application of s.45(1)(c) of the *Freedom of Information Act 1992* Qld - whether disclosure would disclose the "purpose or results of research" and could reasonably be expected to have an adverse effect on the primary producer - application of s.45(3) of the *Freedom of Information Act 1992* Qld.

FREEDOM OF INFORMATION - 'reverse FOI' application - witness statement tendered in Land Court proceedings, with hazard assessment reports by engineering consultants attached - whether information of a confidential nature - whether disclosure could reasonably be expected to prejudice the future supply of such information to government - whether disclosure would, on balance, be in the public interest - application of s.46(1)(b) of the *Freedom of Information Act 1992* Qld.

Freedom of Information Act 1992 Qld s.22(a), s.22(b), s.41(1), s.41(1)(a)(i), s.41(1)(b), s.41(2), s.41(2)(b), s.41(2)(c), s.43(1), s.45(1)(b), s.45(1)(c), s.45(1)(c)(ii), s.45(3), s.46(1)(b), s.51(1), s.51(2)(a), s.51(2)(b), s.51(2)(e), s.71(1)(f)(i), s.88(1)

Freedom of Information Act 1989 NSW

Water Resources Act 1989 Qld s.2

- Attorney-General (NT) v Maurice* (1986) 161 CLR 475
- "B" and Brisbane North Regional Health Authority, Re* (1994) 1 QAR 279
- Betts and Hill v The Chief Executive, Primary Industries Corporation* (Land Court Qld, Nos. A93-47 and A93-48, Mr R E Wenck (Member), 11 April 1994, unreported)
- Cairns Port Authority and Department of Lands, Re* (1994) 1 QAR 663
- Cannon and Australian Quality Egg Farms Limited, Re* (1994) 1 QAR 491
- Cardwell Properties Pty Ltd & Williams and Department of the Premier, Economic and Trade Development, Re* (1995) 2 QAR 671
- Commissioner, Australian Federal Police and Anor v Propend Finance Pty Ltd and Others* (1996) 141 ALR 545
- Dalleagles Pty Ltd v Australian Securities Commission* (1991) 4 WAR 325
- Eccleston and Department of Family Services and Aboriginal and Islander Affairs, Re* (1993) 1 QAR 60
- Goldberg v Ng* (1995) 185 CLR 83
- Hudson as agent for Fencray Pty Ltd and Department of the Premier, Economic and Trade Development, Re* (1993) 1 QAR 123
- JM and Queensland Police Service, Re* (1995) 2 QAR 516
- Johns v Australian Securities Commission* (1993) 178 CLR 408; 67 ALJR 850; 116 ALR 567
- Nickmar Pty Ltd v Preservatrice Skandia Insurance Ltd* [1985] 3 NSWLR 44
- O'Dwyer and The Workers' Compensation Board of Queensland, Re* (1995) 3 QAR 97
- Packer v DCT (Qld)* [1984] 1 Qd R 275
- Pope and Queensland Health, Re* (1994) 1 QAR 616
- Smith and Administrative Services Department, Re* (1993) 1 QAR 22
- Southern Equities Corporation Ltd v West Australian Government Holdings* (1993) 10 WAR 1
- Stevenson v Wenck* (1994) 85 LGERA 161
- Stevenson v Wenck* [1996] 2 Qd R 84; (1995) 87 LGERA 409
- Trade Practices Commission v Sterling* (1979) 36 FLR 244
- Trustees of the De La Salle Brothers and Queensland Corrective Services Commission, Re* (Information Commissioner Qld, Decision No. 96004, 4 April 1996, unreported)
- Wittingslow Amusements Group v Director-General of the Environment Protection Authority of New South Wales* (Supreme Ct of NSW, Equity Division, No. 1963 of 1993, Powell J, 23 April 1993, unreported)

DECISION

1. In application for review no. S 20/94, I vary the decision under review (being the decision identified in paragraph 5 of my accompanying reasons for decision) by finding that the documents which remain in issue, as listed in Appendix 1 to my reasons for decision, are not exempt from disclosure to the applicants under the *Freedom of Information Act 1992 Qld*.
2. In application for review no. S 40/94, I vary the decision under review (being the decision identified in paragraph 6 of my accompanying reasons for decision) by finding that the segments of matter identified in paragraph 70 of my reasons for decision are exempt matter under s.45(1)(c) of the *Freedom of Information Act 1992 Qld*, but otherwise I affirm the decision under review in respect of the documents which remain in issue, as listed in Appendix 2 to my reasons for decision.

Date of decision: 3 March 1998

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F N ALBIETZ
INFORMATION COMMISSIONER

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REASONS FOR DECISION

Background

1. These two applications for review will be dealt with together, since they stem from the same access application under the *Freedom of Information Act 1992* Qld (the FOI Act) lodged by Mr and Mrs Bouilly. In application for review no. S 20/94, Mr and Mrs Bouilly applied for review of the respondent's decision to refuse them access to certain documents relating to a proposal by the third parties, Hugh Isaac Desmond Stevenson and Stevenson Finance Corporation Pty Ltd (hereinafter referred to as "Stevenson"), to build a large dam on the

third parties' agricultural/grazing property near Dirranbandi in south-west Queensland.

Application for review no. S 40/94 is a 'reverse FOI' application by Stevenson, objecting to the respondent's decision to grant Mr and Mrs Bouilly access, under the FOI Act, to a large number of documents concerning the same subject matter.

2. On 30 June 1993, Mr and Mrs Bouilly applied to the Department of Primary Industries for access under the FOI Act to: "*All documents relating to waterworks licence application no. 49300 Barneedoo Dam - Stevenson Finance Corp and HID Stevenson - including:- hazard reports, licence application, hydrologic data, diary notes, maps and plans and details of the assessment of our objection to this licence and any other available information.*" (The Department of Natural Resources has, during the course of this review, taken over responsibility for the matters dealt with in the documents in issue, which had previously been the responsibility of the Department of Primary Industries and the Water Resources Commission. In these reasons for decision, I will use the term "Department" to refer to the agency which had responsibility, at any particular time, for the matters dealt with in the documents in issue.)
3. By letter dated 21 December 1993, Mr G McLeod informed Mr and Mrs Bouilly of the decision he had made on behalf of the Department to grant them access under the FOI Act to documents comprising more than 2000 folios. Mr McLeod cautioned, however, that access to most of those documents must be deferred, in accordance with s.51(2)(e) of the FOI Act, pending the expected exercise by Stevenson of the rights of review available to Stevenson under the FOI Act. Mr McLeod also conveyed to Mr and Mrs Bouilly his decision to refuse them access to certain matter on the basis that it was exempt matter under s.43(1) of the FOI Act (legal professional privilege), and to refuse access to four documents concerning the business and financial affairs of Stevenson on the basis that they comprised exempt matter under s.45(1)(c) of the FOI Act.
4. Mr McLeod also informed Stevenson of his decision, by means of a letter dated 21 December 1993 to Stevenson's solicitors, John P Kelly & Co. Both Stevenson and Mr and Mrs Bouilly applied for internal review (see s.52 of the FOI Act) of Mr McLeod's decision, insofar as it was, respectively, adverse to them.
5. Mr and Mrs Bouilly's application for internal review dated 2 January 1994 was dealt with on behalf of the Department by Mr A Ernst, who informed Mr and Mrs Bouilly, by letter dated 13 January 1994, that he had decided to affirm Mr McLeod's decision to refuse them access to certain matter.
6. Stevenson's application for internal review dated 19 January 1994 was dealt with on behalf of the Department by Mr W G Clarke, who informed Stevenson's solicitors, by letter dated 1 February 1994, that he had decided to affirm Mr McLeod's decision to grant Mr and Mrs Bouilly access to documents.
7. By letter dated 27 January 1994, Mr and Mrs Bouilly applied to me for review, under Part 5 of the FOI Act, of Mr Ernst's decision.
8. By an application dated 28 February 1994, John P Kelly & Co, acting on behalf of Stevenson, applied to me for review, under Part 5 of the FOI Act, of Mr Clarke's decision.

9. Stevenson's waterworks licence application no. 49300 (lodged on 8 March 1991) for a licence to build a "referable dam" (as defined in s.2 of the *Water Resources Act 1989* Qld) aroused considerable opposition from surrounding property owners, concerned at the effect that a dam of the size proposed would have on the scarce water supplies in the region, as well as with the safety aspects of such a large water storage facility. In Stevenson's licence application, the proposed dam was said to have the purpose of irrigation and water harvesting, and was planned to have a perimeter/crest length of 20 kilometres, with a crest width of 8 metres, a base width of 80 metres, a maximum height of 10 metres and a capacity of 100,000 megalitres.
10. The proposed dam has been the subject of extensive litigation. Stevenson obtained approval for the issue of waterworks licence No. G49300 (after a delay of more than 2 years) through a settlement reached after the commencement of the hearing of a Land Court appeal lodged by Stevenson against the Department (Land Court file no. A92-56). The grant of the licence was then successfully challenged in the Land Court by two objectors, who obtained an order on 11 April 1994 from Mr R E Wenck, Member of the Land Court, revoking the decision to grant the licence to Stevenson (see *Betts and Hill v The Chief Executive, Primary Industries Corporation*, Land Court Qld, Nos. A93-47 and A93-48, Mr R E Wenck (Member), 11 April 1994, unreported). Stevenson challenged the order of the Land Court in proceedings brought under Part 5 of the *Judicial Review Act 1991* Qld, but his application was dismissed by Mackenzie J in the Supreme Court (see *Stevenson v Wenck* (1994) 85 LGERA 161). Stevenson was again unsuccessful in an appeal against the judgment of Mackenzie J (see *Stevenson v Wenck* [1996] 2 Qd R 84; (1995) 87 LGERA 409).

External review process

11. The documents in issue in each external review were obtained and examined. In application for review no. S 40/94, the documents in issue comprised more than 2,000 folios, and the schedule required to list them was some 94 pages in length. Fortunately for all concerned, the extent of the documents in issue has been narrowed considerably during the course of the external review process.
12. In the application for review brought by Mr & Mrs Bouilly (S 20/94), it appeared from my initial examination of the documents claimed to be exempt under s.43(1) of the FOI Act, that some of those exemption claims were untenable. The Department accepted my assessment in that regard, and agreed to give Mr and Mrs Bouilly access to some documents which it had previously claimed to be exempt under s.43(1) of the FOI Act. However, Stevenson objected to the disclosure to Mr and Mrs Bouilly of many of the documents that the Department was prepared to release, on the basis that those documents were exempt, or fell outside the scope of Mr and Mrs Bouilly's FOI access application. The documents so identified by John P Kelly & Co, in a letter to my office dated 8 August 1994, and the reasons for objection to disclosure to Mr and Mrs Bouilly asserted by John P Kelly & Co, were as follows:
 - documents no. 1220, 1458-1463, 1482-1532, 2055-2061 - claimed that these documents do not relate to waterworks licence application no. 49300, and hence that they fall outside the scope of Mr and Mrs Bouilly's FOI access application;
 - documents no. 906-909, 1812-1813, 2062-2063, 2243-2244 - claimed to be exempt under s.41, s.43(1) and s.45 of the FOI Act.

13. By letter dated 13 July 1994, the Deputy Information Commissioner conveyed to Mr and Mrs Bouilly his preliminary assessment that -
- (a) some of the documents claimed by the Department to be exempt under s.43(1) of the FOI Act did qualify for exemption under that provision;
 - (b) three of the four documents claimed by the Department to be exempt under s.45(1)(c) of the FOI Act (documents 484, 487 and 2035) did qualify for exemption under that provision; and
 - (c) one document (document 835) appeared to have been misfiled and clearly did not fall within the terms of their FOI access application.

By letter dated 5 August 1994, Mr and Mrs Bouilly confirmed their acceptance of the Deputy Information Commissioner's views, with the result that those documents are no longer in issue.

14. Essentially, this left in issue a large number of documents which the Department was prepared to disclose to Mr and Mrs Bouilly, but in respect of which Stevenson objected to disclosure. A conference was convened by my staff with representatives of the Department and Stevenson on 25 July 1994, in order to discuss the claims for exemption made by Stevenson. Since documents claimed to be exempt from disclosure to Mr and Mrs Bouilly were discussed at that conference, it was not practicable to ask Mr and Mrs Bouilly to participate in that conference. It became apparent at the conference that Stevenson asserted that the Department had incorrectly treated, as falling within the scope of Mr and Mrs Bouilly's FOI access application, many documents that did not concern the referable dam licence application, but concerned other waterworks licence applications.
15. Subsequently, Mrs Bouilly, in her capacity as Secretary of the Culgoa-Balonne Minor Waterusers Association, lodged with the Department an FOI access application seeking documents which concerned those other waterworks licence applications. Apparently as a result of obtaining additional documents in consequence of that FOI access application, Mr and Mrs Bouilly informed me that they no longer wished to press for access to a substantial number of the documents previously in issue, including all of those which Stevenson claimed to be outside the scope of Mr and Mrs Bouilly's FOI access application dated 30 June 1993. Hence, those documents are no longer in issue in the present review, and I do not need to consider the issue raised by Stevenson as to whether they were excluded from the scope of the present review.
16. A concession made by Mr and Mrs Bouilly in respect of one document should be specifically mentioned. Folios 415-444 were described in the schedule prepared by the Department as "diary entry - Cubbie Station". Those folios comprise diary entries by a Regional Engineer or Regional Manager of the Department. While it is clear that some of the diary entries concern the Stevenson referable dam licence application, it is also clear that other entries concern work activities of the relevant officer which are not at all related to the Stevenson referable dam licence application. Mr and Mrs Bouilly have indicated that they do not wish to pursue access to any entries on folios 415-444 that do not concern the Stevenson referable dam licence application, and hence any such entries on folios 415-444 are not in issue in this review.

17. The participants confirmed which documents remained in issue in this external review by making notations on the 94 page schedule of documents which had been prepared by the Department for the purposes of processing Mr and Mrs Bouilly's FOI access application. Stevenson also used that schedule to specify the particular grounds for exemption under the FOI Act that were claimed to apply in respect of each document. The documents remaining in issue in this review are identified in Appendix 1 and Appendix 2 to this decision. Appendix 1 identifies the documents remaining in issue in application for review no. S 20/94. They are documents in respect of which the Department has abandoned its initial claim for exemption, but in respect of which Stevenson, as a third party participant, maintains claims for exemption. Appendix 2 identifies the documents remaining in issue in application for review no. S 40/94. They are documents which the Department initially decided to disclose to Mr and Mrs Bouilly, but in respect of which access has been withheld while Stevenson pursued the rights to seek internal review and external review which are available to a person consulted under s.51(1) of the FOI Act (see in that regard s.51(2)(e) of the FOI Act). In the Appendices, the grounds of exemption relied upon by Stevenson are specified in respect of each document. There are many instances of multiple copies of particular documents being held on the Department's files, and these instances are signified in the Appendices.

Evidence and submissions

18. Each participant was given the opportunity to lodge evidence and written submissions in support of its/their case in these external reviews. Specifically, in a letter to Stevenson's solicitors dated 29 July 1994, I indicated that I was particularly concerned to obtain the assistance of relevant evidence in respect of specific issues arising under several of the exemption provisions which Stevenson claimed to be applicable to the documents in issue. In a further letter to Stevenson's solicitors dated 22 September 1994 (which also addressed concerns raised by Stevenson's solicitors in a letter to my office dated 15 September 1994), I specifically drew attention to the caution I had published for the benefit of 'reverse FOI' applicants in *Re Pope and Queensland Health* (1994) 1 QAR 616 at pp.621-622 (paragraph 17):

Section 81 of the FOI Act provides that in a review under Part 5 of the FOI Act, the agency which made the decision under review has the onus of establishing that the decision was justified or that the Information Commissioner should give a decision adverse to the applicant. In the present case, therefore, the formal onus remains on Queensland Health to justify its decision that the Seawright Report is not exempt under s.45(1)(c). Queensland Health can discharge this onus, however, by demonstrating that any one of the three elements which must be established to found a valid claim for exemption under s.45(1)(c) cannot be made out. Thus, the applicant in a 'reverse-FOI' case, while carrying no formal legal onus, must nevertheless, in practical terms, be careful to ensure that there is material before the Information Commissioner from which I am able to be satisfied that all elements of the exemption provision relied upon (in this case the three elements of s.45(1)(c)) are established.

19. Nevertheless, in a letter to me dated 30 September 1994, Stevenson's solicitors declined the opportunity to lodge formal evidence and additional written submissions in support of Stevenson's case in these reviews. In their earlier letter to my office dated 15 September 1994, Stevenson's solicitors had remarked:

We have reviewed our submissions to [the Department], particularly our letter dated 1 October 1993. We suggest to you that the information provided therein, together with the further information provided in the course of the conferences on the 25th July 1994 ... should enable you to make decisions on whether or not the access sought should be granted.

20. I have therefore had regard to that material, together with the evidence and written submissions lodged with me (and exchanged between the participants for reply) by the participants during the course of this review, which consist of the following:
- statutory declaration of Gregory Kenneth Claydon (Regional Manager, Water Resources (South Region) of the Department), dated 1 July 1994;
 - statutory declaration of Allan Thomas Wallwork (District Manager, Water Resources, St George District, of the Department), dated 29 August 1994;
 - statutory declaration of Leith Bouilly, dated 27 September 1995;
 - written submissions of the Department, dated 11 July 1995;
 - points of reply lodged by John P Kelly & Co on behalf of Stevenson, dated 7 September 1995;
 - points of reply lodged by Mr and Mrs Bouilly, dated 2 February 1996.

Claim regarding application of s.22 of the FOI Act

21. In the letter to my office dated 15 September 1994 from Stevenson's solicitors, it was suggested that s.22 of the FOI Act should be applied to refuse access under the FOI Act to documents reasonably open for public access, specifically material available for public search in the Land Court Registry, the Supreme Court Registry, and the St George District Office of the Department. Section 22(a) and s.22(b) of the FOI Act provide -

22. An agency or Minister may refuse access under this Act to—

- (a) a document that is reasonably open to public access (whether or not as part of a public register) in accordance with another enactment, whether or not the access is subject to a fee or charge; or*
- (b) a document that is reasonably available for purchase by members of the community in accordance with arrangements made by an agency; ...*

22. In my view, it is not open to a 'reverse FOI' applicant to seek review of an agency decision not to invoke s.22(a) or s.22(b) of the FOI Act against an applicant for access under the FOI Act. Nor is it open to a 'reverse FOI' applicant to assert a case for the application of s.22(a) or s.22(b) where an agency has not adverted to the possible application of those provisions. I will briefly explain why.
23. Section 22(a) and s.22(b) of the FOI Act are not exemption provisions. The exemption provisions of the FOI Act are those which appear in Part 3, Division 2 of the FOI Act. The purpose and effect of s.22(a) and s.22(b) (which appear in Part 3, Division 1 of the FOI Act) are explained in my reasons for decision in *Re JM and Queensland Police Service* (1995) 2 QAR 516 at pp.524-529 (paragraphs 21-43). Briefly, those provisions are intended to ensure the continued efficacy of specialised schemes of access to information, established

under legislation other than the FOI Act or established pursuant to an agency's administrative arrangements (usually at a charge intended to recoup the costs of administering the specialised scheme of access). They do so by permitting agencies a discretion to refuse access under the FOI Act (pursuant to which the information may be available to an applicant at no cost or at a lesser charge) where the requested information is available under a specialised scheme of access, thereby forcing the applicant to use the specialised scheme of access to obtain the desired information.

24. A decision as to whether or not it is appropriate to invoke s.22(a) or s.22(b) (assuming the preconditions to invoking either provision are satisfied) is a decision committed by the legislature to the relevant agency (or, on a review under Part 5 of the FOI Act, to the Information Commissioner - see s.88(1) of the FOI Act), but not to a 'reverse FOI' applicant. The right to pursue a 'reverse FOI' application at the stage of external review by the Information Commissioner is provided for in s.71(1)(f)(i) of the FOI Act, which confers jurisdiction on the Information Commissioner to review decisions of agencies and Ministers "to disclose documents contrary to the views of a person obtained under section 51". The terms of s.51(1) and s.51(2)(a) and (b) make it clear that the scope of consultation under s.51 is confined to obtaining the views of an affected person about whether matter proposed for disclosure under the FOI Act is exempt matter. The possible application of s.22(a) or s.22(b) of the FOI Act is irrelevant in that regard (since they are not exemption provisions) and I consider that it is not open to a 'reverse FOI' applicant, at the stage of external review by the Information Commissioner, to raise issues concerning the application of s.22(a) or s.22(b) of the FOI Act.

25. There would be no logic or utility, in any event, in permitting a 'reverse FOI' applicant to raise such issues since, as I made clear in *Re JM* at p.525 (paragraph 28):

... s.22(a) and s.22(b) are not capable of being invoked in respect of a particular document requested by a particular applicant, unless it is certain that the particular document is reasonably open to access by the particular applicant under another enactment on payment of any applicable fee or charge (s.22(a)), or the particular document is reasonably available for purchase by the particular applicant under arrangements made by an agency (s.22(b)).

26. 'Reverse FOI' applicants are afforded rights to seek internal and external review of agency decisions to grant access to particular information, because of the interest they might have in opposing disclosure of that information. They do not have a relevant interest in seeing that an applicant for access incurs inconvenience or additional expense by being made to obtain access, otherwise than under the FOI Act, to information that is available for access in any event. Issues of that kind should properly be left to the judgment of the agency processing the relevant FOI access application.
27. In the present case, the Department has indicated that it does not wish to rely on s.22(a) or s.22(b) of the FOI Act in respect of any of the documents in issue, and I consider that the 'reverse FOI' applicant is not entitled to ask for consideration of the possible application of s.22(a) or s.22(b) of the FOI Act. In the circumstances, I decline to exercise the discretion available to me under s.88(1) of the FOI Act to consider the application of s.22(a) or s.22(b) of the FOI Act to the documents in issue.

28. I turn now to consider each of the exemption provisions claimed by Stevenson to be applicable to documents in issue.

Application of s.41 of the FOI Act

29. Section 41(1) and s.41(2) of the FOI Act provide:

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

(a) would disclose—

(i) an opinion, advice or recommendation that has been obtained, prepared or recorded; or

(ii) a consultation or deliberation that has taken place;

in the course of, or for the purposes of, the deliberative processes involved in the functions of government; and

(b) would, on balance, be contrary to the public interest.

(2) Matter is not exempt under subsection (1) if it merely consists of—

(a) matter that appears in an agency's policy document; or

(b) factual or statistical matter; or

(c) expert opinion or analysis by a person recognised as an expert in the field of knowledge to which the opinion or analysis relates.

30. A detailed analysis of s.41 of the FOI Act can be found in *Re Eccleston and Department of Family Services and Aboriginal and Islander Affairs* (1993) 1 QAR 60 at pp.66-72, where, at p.68 (paragraphs 21-22), I said:

21. *Thus, for matter in a document to fall within s.41(1), there must be a positive answer to two questions:*

(a) would disclosure of the matter disclose any opinion, advice, or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, (in either case) in the course of, or for the purposes of, the deliberative processes involved in the functions of government? and

(b) would disclosure, on balance, be contrary to the public interest?

22. *The fact that a document falls within s.41(1)(a) (ie. that it is a deliberative process document) carries no presumption that its disclosure would be contrary to the public interest. ...*

31. An applicant for access is not required to demonstrate that disclosure of deliberative process matter would be in the public interest; an applicant is entitled to access unless an agency can establish that disclosure of the relevant deliberative process matter would be contrary to the public interest. In *Re Trustees of the De La Salle Brothers and Queensland Corrective Services Commission* (Information Commissioner Qld, Decision No. 96004, 4 April 1996, unreported), I said (at paragraph 34):

The correct approach to the application of s.41(1)(b) of the FOI Act was analysed at length in my reasons for decision in Re Eccleston, where I indicated (see p.110; paragraph 140) that an agency or Minister seeking to rely on s.41(1) needs to establish that specific and tangible harm to an identifiable public interest (or interests) would result from disclosure of the particular deliberative process matter in issue. It must further be established that the harm is of sufficient gravity when weighed against competing public interest considerations which favour disclosure of the matter in issue, that it would nevertheless be proper to find that disclosure of the matter in issue would, on balance, be contrary to the public interest.

32. As noted above at paragraph 19, Stevenson did not take advantage of the opportunity to lodge detailed evidence and submissions in support of its case in this review. In the letter to the Department from Stevenson's solicitors dated 1 October 1993, and in Stevenson's points of reply dated 7 December 1995, there were some brief comments directed to the application of s.41(1) of the FOI Act. They identified the relevant deliberative processes of government as being the consideration of Stevenson's waterworks licence application no. 49300. Unsurprisingly (given the volume of documents in issue), no detailed attempt was made to differentiate between matter in the documents in issue which answers the description in s.41(1)(a)(i) of the FOI Act, and matter which does not. More surprisingly, however, no attempt was made to explain how the public interest would be harmed by disclosure of any of the matter in issue; rather, it was merely asserted that disclosure would, on balance, be contrary to the public interest.
33. The Department has put its case under s.41(1) of the FOI Act on two bases; firstly, that most of the matter contained in the documents in issue does not answer the description set out in s.41(1)(a)(i) of the FOI Act, and, secondly, that disclosure of the documents in issue would not be contrary to the public interest (the following passage is extracted from the Department's written submission dated 11 July 1995):

[Stevenson] maintains that the following classes of documents contain matter relating to the deliberative processes of government:

- *intra and inter-departmental memoranda and briefing notes;*
- *records of meetings;*
- *correspondence;*
- *various opinions, advice and recommendations.*

It is ludicrous to suggest that every document of a kind mentioned above would be a document relating to the deliberative processes involved in the functions of government. It was pointed out in [Re Eccleston at p.70] that for a document to be exempt under this section, it requires to be more than an opinion, advice, recommendation, consultation or deliberation. The document must be involved in the deliberative processes of government. Furthermore, the document must be more than purely procedural or administrative.

In Re Waterford and Department of Treasury (No. 2) (1984) 5 ALD 588 at 606, the definition of 'deliberation' as proffered by The Shorter Oxford Dictionary was adopted. There it was said 'deliberation' means 'the action of deliberating: careful consideration with a view to decision'. ...

A majority of the documents claimed to be exempt under this section relate to administrative or procedural issues concerning the waterworks licence application by [Stevenson]. A legitimate function of this agency is to process applications for waterworks licences. This function is purely administrative and procedural. The only aspect which comes under the ambit of deliberative is the process leading to the actual decision to issue, or refuse to issue, the licence.

This view is supported by Re Eccleston at 71 where it was said that "(n)ormally, deliberative processes occur toward the end stage of a larger process, following investigations of various kinds, establishing facts, and getting inputs from relevant sources, perhaps obtaining expert opinion or analysis from a technical expert". It is further stated in Re Eccleston at 71 that section 41 "is not intended to protect the 'raw data' or evidentiary material upon which decisions are made".

The Water Resources Act 1989 (WR Act) provides the authority for issuing waterworks licences. If the issuance of a licence affects or is likely to affect a person other than the applicant for the licence, then section 4.17(1) of the WR Act requires the Chief Executive of this agency to request from the applicant for the licence plans, details and other information with respect to the proposed works. Furthermore, section 4.18 of the WR Act requires the Chief Executive to conduct an inquiry into a waterworks licence application if an objection against the licence has been made. In effect, these sections cause the Chief Executive to proceed through a series of procedural and administrative actions. The Chief Executive exercises a discretion in respect to section 4.17(1), however any inquiry under section 4.18 is mandatory.

It is conceded, though, that some documents could be classified as 'deliberative'. However, these documents must successfully pass a public interest test. The term "on balance" in section 41 requires this agency to consider the competing public interests - those favouring disclosure and those favouring non-disclosure. One must bear in mind that disclosure of the documents must be contrary to the public interest.

...

It is right and proper, and certainly in the public interest, that persons affected by the issuance of a licence, and who were involved in the objection processes, have access to selected documents concerning the issuance of licence ...

34. A careful examination of the large number of documents claimed to be exempt under s.41(1) of the FOI Act discloses that they contain some matter which answers the description in s.41(1)(a)(i) of the FOI Act, but mostly they comprise matter which does not answer that description and/or is excluded from eligibility for exemption under s.41(1) by the operation of -
 - s.41(2)(b), because it merely consists of factual or statistical matter, according to the principles explained in *Re Eccleston* at p.71 (paragraphs 31-32), and more fully in *Re Hudson as agent for Fencray Pty Ltd and Department of the Premier, Economic and Trade Development* (1993) 1 QAR 123 at pp.144-147 (paragraphs 49-58); or

- s.41(2)(c), because it merely consists of expert opinion or analysis (see *Re Cairns Port Authority and Department of Lands* (1994) 1 QAR 663 at pp.687-688, paragraphs 48-50).

35. Thus, for example, folios 296-340 comprise a Hazard Assessment Report by Sinclair Knight (a firm of consulting engineers retained by Stevenson) that was provided to the Department by Stevenson in support of the relevant licence application, and parts of which comprise opinion, *et cetera*, obtained or prepared for the purposes of a deliberative process involved in the functions of government. But the report substantially consists of matter which is either merely factual or statistical matter (falling within the terms of s.41(2)(b) of the FOI Act) or expert opinion or analysis (falling within the terms of s.41(2)(c) of the FOI Act).
36. I will refrain from adding to the length of this decision by specifying the matter which I consider to be excluded from eligibility for exemption under s.41(1) of the FOI Act, by the operation of s.41(2)(b) and/or s.41(2)(c). That is not necessary, since I am satisfied that (even if I were mistaken as to its characterisation as matter covered by the terms of s.41(2)(b) and/or s.41(2)(c) of the FOI Act), none of it is matter the disclosure of which would, on balance, be contrary to the public interest. It would not, therefore, satisfy the test for exemption posed by s.41(1)(b) in any event.
37. I have referred above to the Department's submission, which briefly addressed the public interest balancing test in s.41(1)(b) of the FOI Act. Mr and Mrs Bouilly also addressed this issue. They contended that the effect of the proposed dam would be that water on Stevenson's upstream property would be denied to those further downstream; i.e., the dam would have the effect of monopolising available water from seasonal flooding, to the detriment of those further downstream. Paragraphs 1 and 2 of the statutory declaration of Leith Bouilly, dated 27 September 1995, are relevant:
1. *The Commissioner of Water Resources argued that he only had the power to investigate aspects of safety when dealing with Referable Dam Licence Applications. Downstream and down floodplain landholders did not agree and were concerned that the size of the proposed storage was such that it could significantly deprive them of water for stock and domestic purposes as well as reducing the area of beneficial flooding. The Department had indicated at an early stage that an Impact Assessment Study would be required before the licence was issued. The Department subsequently made no effort to conduct the IAS and could give no assurance that they would attempt to regulate the sharing of floodplain flows. In other words people on the floodplain felt that they had no security and they could not trust the Department to do the right thing. Downstream landholders were forced to take matters into their own hands and seek redress through the Courts. ...*
 2. *We were provided with very limited information when we objected to the issue of the licence. This information related to the conditions the Department intended to impose on the applicant. There was no information which allowed us to form any opinion about the quantitative impacts of the dam.*
38. Similarly, in the points of reply lodged by Mr and Mrs Bouilly dated 2 February 1996, the following is relevant:

The only document provided to people objecting to the original licence application was a copy of the licence when it was issued. This was despite a number of assurances by DPI personnel that a full Impact Assessment Study would be carried out on the proposal.

...

There was no attempt by the DPI and/or Stevenson to provide evidence that the issuance of the licence would not impact on us or the other objectors except in respect to safety. Surely the onus is on the developer to demonstrate that his actions will have a minimal impact on others.

...

Individuals have the right to determine whether or not a development will impact adversely on them. It is not possible to do this without the facts. In this case it was assumed that the facts would be contained in the documents relating to the referable dam.

... It is in the public interest that DPI act properly with regard to water resource development. It is a scarce commodity and the whole community depend on it. The process employed by agencies in determining whether or not a licence should be issued should be open to public scrutiny regardless of who the applicant is.

39. I accept the general thrust of those submissions. I note that the Supreme Court judges, who dealt with Stevenson's challenges to the decision of the Land Court revoking the licence for the referable dam, were sensitive to the interests of surrounding property owners. Thus, Mackenzie J said (at p.162):

The dilemma involved is that the grazing potential of the river country is largely dependent on natural irrigation of the flood plain by seasonal flooding. Interference to the natural flow of water, diminishing the flood water available and diverting the flow paths may have a deleterious effect by decreasing or increasing the flow of water over particular parts of the flood plain. Denial of natural flooding causes degeneration of natural pastures which causes stress on lands normally free from flooding because they become overused.

On the other hand uncontrolled natural flooding is deleterious to those flood plain lands redeveloped from grazing use to agricultural use and relying on water supplies for irrigation. The learned member of the Land Court said:-

There is obvious conflict of primary production interests between the use of the natural flooded country for the original grazing pursuits on the one hand and on the other the cultivation of such land for irrigated cropping.

40. In the joint judgment of the Court of Appeal, Fitzgerald P, Pincus JA and McPherson JA observed (at p.89):

... the chief executive wrongly thought himself to be restricted, in considering the appellants' proposed dam, to "issues of safety and the protection of life and property." There is no warrant for that view in [the Water Resources Act 1989 Qld]. Further, it would be odd if a referable dam, however vast, may be built as long as it is safe; surely there must be a limit to the extent to which a property owner would be licensed to "impound, divert or control water" (see the definition of referable dam ...) which might otherwise benefit the licensee's neighbours.

41. I have referred in paragraph 9 above to the dimensions of the referable dam proposed in waterworks licence application no. 49300. In my view, it is clearly in the public interest that documents concerning such a massive undertaking be available to any interested member of the public, particularly to landowners surrounding the site of the proposed dam. The public interest in favour of disclosure takes on added weight given the location of the project, in a part of the country where water is scarce, apart from the seasonal flooding on which many property owners on the flood plain are reliant for satisfactory water supplies.
42. I consider that all of the documents in issue claimed to be exempt under s.41(1) of the FOI Act fall squarely within the principle which I stated in *Re Cardwell Properties Pty Ltd & Williams and Department of the Premier, Economic and Trade Development* (1995) 2 QAR 671 at p.685, paragraph 29:

I consider that there is a significant public interest in enhancing the accountability of government agencies and officials in respect of the performance of their functions in dealing with a proposal for a large scale development which is likely to have substantial social, economic and environmental effects on the region surrounding the development, by providing access to documents relating to the development. I consider that the public interest in disclosure extends not only to reports of experts about the possible effects of such a development but also to the factors which may have influenced government agencies and officials in deciding whether to approve a particular land use and what conditions should apply to that land use. In my view this will usually extend to disclosure of communications from the developer to government agencies and officials. This will be necessary in order to fully appreciate the inputs on which government agencies and officials have based their decisions. The emphasis is therefore on the scrutiny of government agencies and officials in the performance of their functions on behalf of the people of Queensland, but there is also a public interest which lies in the community simply being able to obtain access to details of a development project of this scale, and information about its projected impacts on the surrounding region.

43. I find that none of the matter claimed to be exempt under s.41(1) of the FOI Act qualifies for exemption under that provision because I am not satisfied that its disclosure would, on balance, be contrary to the public interest.

Application of s.43(1) of the FOI Act

44. Section 43(1) of the FOI Act provides:

43.(1) Matter is exempt matter if it would be privileged from production in a legal proceeding on the ground of legal professional privilege.

45. The s.43(1) exemption turns on the application of those principles of Australian common law which determine whether a document, or matter in a document, is subject to legal professional privilege. The grounds on which a document attracts legal professional privilege are fairly well settled in Australian common law. In brief terms, legal professional privilege attaches to confidential communications between lawyer and client for the sole purpose of seeking or giving legal advice or professional legal assistance, and to confidential communications made for the sole purpose of use, or obtaining material for use, in pending or anticipated legal proceedings. (For a more detailed analysis of legal professional privilege, see *Re Smith and Administrative Services Department* (1993) 1 QAR 22 at pp.51-52 (paragraph 82), which sets out a summary of the principles established by the High Court authorities of *Grant v Downs* (1976) 135 CLR 674, *Baker v Campbell* (1983) 153 CLR 52, *Attorney-General (NT) v Kearney* (1985) 158 CLR 500, *Attorney-General (NT) v Maurice* (1986) 161 CLR 475, and *Waterford v Commonwealth of Australia* (1987) 163 CLR 54. Valuable analysis/discussion of legal professional privilege can also be obtained from *Trade Practices Commission v Sterling* (1979) 36 FLR 244, *Packer v DCT (Qld)* [1984] 1 Qd R 275, *Nickmar Pty Ltd v Preservatrice Skandia Insurance Ltd* [1985] 3 NSWLR 44, *Dalleagles Pty Ltd v Australian Securities Commission* (1991) 4 WAR 325, *Southern Equities Corporation Ltd v West Australian Government Holdings* (1993) 10 WAR 1, *Goldberg v Ng* (1995) 185 CLR 83, *Commissioner, Australian Federal Police and Anor v Propend Finance Pty Ltd and Others* (1996) 141 ALR 545.)

46. Stevenson has claimed the following to be exempt matter under s.43(1) of the FOI Act:

- (a) statement of John Grabbe, dated 4 May 1993 (folios 239-273 in application for review no. S 40/94) prepared for use by Stevenson in Stevenson's appeal to the Land Court (ref no. A92-56);
- (b) letter dated 6 May 1993 from John P Kelly & Co to the Crown Solicitor (folios 188-190 in application for review no. S 40/94); and
- (c) documents 906-909, 1812-1813, 2062-2063, 2243-2244 in application for review no. S 20/94 (the documents listed in Appendix 1), being multiple copies of a draft statement, and some notes prepared by officers of the Department, for use in Stevenson's appeal to the Land Court (ref no. A92-56).

47. In respect of the statement of Mr Grabbe, Stevenson's solicitors made the following comments at page 5 of their points of reply dated 7 September 1995:

The statement was prepared in anticipation of Mr Grabbe's giving evidence in the Land Court proceedings set down to commence on Tuesday 4 May 1993 i.e., it was a statement of a witness. ...

We understand that on this basis, it would properly be the subject of a claim of legal professional privilege. In fact, whilst our client's counsel was opening his case, a copy of the statement was provided to the Member of the Land Court and to Mr Needham of Counsel for the respondent, the Commissioner of Water Resources.

The respondent's counsel proposed an adjournment after our client's counsel's opening and our client's appeal was withdrawn consequent on the issue of a licence on Friday 7 May 1993. The copy of the statement provided to the Member in these circumstances was returned to us.

48. Accepting that the sole purpose for creation of Mr Grabbe's statement was for use in the legal proceedings in the Land Court, it is nevertheless clear, in my view, that any privilege which attached to Mr Grabbe's statement was waived when the statement was tendered in the Land Court proceedings, and a copy of it given to Stevenson's opponent in those proceedings (constituting an intentional disclosure of protected material: see *Attorney-General (NT) v Maurice* (1986) 161 CLR 475 at p.487, per Mason and Brennan JJ). One of the documents in issue in this case comprises notes taken by a Departmental officer at the relevant Land Court hearing. They record that Mr Grabbe's statement was tendered and became Exhibit 3 at the Land Court hearing which commenced on 4 May 1993, before being adjourned. (The hearing did not resume, because a settlement was reached whereby a licence for the referable dam was issued to Stevenson, and Stevenson's proceedings were withdrawn.) Inspection of the relevant Land Court file (which is open to the public) confirms that Mr Grabbe's statement was tendered as Exhibit 3 on 4 May 1993, and also shows that Exhibit 3 was returned to Stevenson's solicitors, at their request, on 7 May 1993. I find that Mr Grabbe's statement dated 4 May 1993 does not qualify for exemption under s.43(1) of the FOI Act.
49. I am also satisfied that folios 188-190 (see category (b) above) are not subject to legal professional privilege, since they fall within the principles stated by Dawson J in *Maurice* (at p.496):

... A letter to the other side in litigation which is drafted in a solicitor's office may be privileged before it is sent because it may reveal confidential communications between the solicitor and his client. Once it is sent, however, it ceases to be confidential and there is no privilege in it, not because privilege in the document is waived but because no privilege attaches to it.

... Legal professional privilege exists to secure confidentiality in communications between a legal adviser and his client but it can have no application in relation to a document the purpose of which is to communicate information to others.

I find that folios 188-190 do not qualify for exemption under s.43(1) of the FOI Act.

50. The documents in category (c) above are not Stevenson's documents, but documents of the Department. They may technically qualify for legal professional privilege as documents prepared for the sole purpose of use in litigation; however, it is open to the Department, as the holder of the privilege, to decide to waive the privilege, and it is clear on the material before me that the Department has decided to waive any privilege that may attach to the documents in category (c), in favour of disclosure under the FOI Act to Mr and Mrs Bouilly. I find that the documents in category (c) do not qualify for exemption under s.43(1) of the FOI Act.

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

51. Section 45(1)(b) of the FOI Act provides:

45.(1) Matter is exempt matter if—

...

(b) its disclosure—

(i) would disclose information (other than trade secrets) that has a commercial value to an agency or another person; and

(ii) could reasonably be expected to destroy or diminish the commercial value of the information; ...

52. The following documents are claimed by Stevenson to be exempt under s.45(1)(b):

- (a) Sinclair Knight, Hazard Assessment Report, March 1992 (folios 296-340);
- (b) Sinclair Knight, Supplementary Hazard Assessment Report, July 1992 (folios 389-414);
- (c) map of Cubbie Station (folio 559); and
- (d) the documents listed in Appendix 1.

53. The correct approach to the interpretation and application of s.45(1)(b) of the FOI Act is explained in *Re Cannon and Australian Quality Egg Farms Limited* (1994) 1 QAR 491 at pp.511-516 (paragraphs 50-65). In relation to the first element of s.45(1)(b), i.e., whether the matter in issue has a commercial value to an agency or another person, I am not satisfied that either of the Sinclair Knight reports, or the map of Cubbie Station, contains information that has a commercial value to Stevenson (or others) in either of the senses explained in *Re Cannon* at p.513 (paragraphs 54-55). The information contained in the Sinclair Knight reports is rather more analogous to the reports considered in *Wittingslow Amusements Group v Director-General of the Environment Protection Authority of New South Wales* (Supreme Ct of NSW, Equity Division, No. 1963 of 1993, Powell J, 23 April 1993, unreported), which were reports obtained from consultants in acoustics, to provide a detailed noise impact assessment (on surrounding landholders) and appropriate noise control suggestions, in respect of a proposed redevelopment of the Luna Park site in Sydney. In finding that the provision of the *Freedom of Information Act 1989* NSW which corresponds to s.45(1)(b) of the Queensland FOI Act had no application to the reports by the consultants in acoustics, Powell J held that he was unable to see how the information contained in the report had a commercial value to any person.

54. The Sinclair Knight reports are site-specific, and relate to a proposal for which Stevenson may or may not have ultimately gained approval. Stevenson's business activities have continued in the meantime, and I do not consider that the Sinclair Knight reports have a commercial value, in the sense explained in paragraph 54 of *Re Cannon*. Nor, being site-specific reports, do I consider that they have a commercial value in the sense explained in paragraph 55 of *Re Cannon*.

55. At page 6 of its written submission dated 11 July 1995, the Department has submitted that the vast majority of the information claimed to be exempt under s.45(1)(b) has previously been provided to the landowners who objected to the referable dam proposal during the objection

process, including the Land Court hearings. I have not endeavoured to verify this (it being unnecessary in light of my findings above), though I note that the reports by Sinclair Knight were tendered as part of an exhibit in the Land Court proceedings commenced by Stevenson (they were attachments JFG11 and JFG13 to Mr Grabbe's statement tendered as Exhibit 3 - see paragraph 48 above), and hence the Department was entitled to regard its copies of the Sinclair Knight reports as copies of documents which are in the public domain (see paragraph 80 below). I merely observe that, if the Department's submission about previous disclosure of information in the Sinclair Knight reports were found to be factually correct, I do not think one could be satisfied that any commercial value that might attach to information in the Sinclair Knight reports could reasonably be expected to be destroyed or diminished by its further disclosure under the FOI Act (*cf. Re Cannon* at pp.513-515, paragraphs 56-64).

56. The documents referred to in point (d) of paragraph 52 above are documents prepared within the Department, for the purposes of the Land Court proceedings. They deal with safety issues concerning the referable dam application, and other matters which I consider have no commercial value, in the senses required by s.45(1)(b) of the FOI Act, to Stevenson, the Department, or any other person.
57. I find that none of the documents claimed to be exempt under s.45(1)(b) of the FOI Act qualifies for exemption under that provision.

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

58. 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.

59. The documents claimed to be exempt under s.45(1)(c) comprise:
 - (a) correspondence exchanged between Stevenson and the Department, concerning information required by the Department for assessment of waterworks licence application no. 49300, and intra-Departmental correspondence/memoranda concerning the evaluation of that licence application;
 - (b) the documents listed in Appendix 1;

(c) other specific documents claimed to be exempt under s.45(1)(c) namely:

- Mr Grabbe's statement dated 4 May 1993
- Sinclair Knight's Hazard Assessment Report
- Sinclair Knight's Supplementary Hazard Assessment Report.

60. The correct approach to the interpretation and application of s.45(1)(c) is explained in *Re Cannon* 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.

61. I note that some of the claims for exemption made by Stevenson under s.45(1)(c) are entirely lacking in substance. For example, folio 8 is merely a letter to the Department by Sinclair Knight, as consultants acting for Stevenson, forwarding a copy of a report, and discussing arrangements for further meetings. No relevant prejudicial effects could conceivably be occasioned by its disclosure.

62. Moreover, I consider that much of the matter claimed to be exempt under s.45(1)(c) does not satisfy the first element of the test for exemption under s.45(1)(c). It does not concern the business, commercial or financial affairs of Stevenson, according to the confined approach to the construction of the term "concerning the business, ... commercial or financial affairs of ... another person" adopted by Powell J of the NSW Supreme Court in the *Wittingslow Amusements Group* case, the relevant passage from which is reproduced in *Re Cannon* at p.518, paragraph 72. A similar approach has also been adopted by Victorian judges (see the cases analysed in *Re Cannon* at pp.517-518, paragraphs 69-71). It is not sufficient that the matter in issue has some connection with a business, or has been provided to an agency by a business, or will be used by a business in the course of undertaking its business operations. The matter in issue must itself be information about business, commercial or financial affairs, in order to satisfy the first element of the test for exemption under s.45(1)(c).

63. Stevenson was (and is) in the business of conducting a large-scale grazing and crop-growing operation. While the lodgment of waterworks licence application no. 49300 doubtless occurred in the course of Stevenson's business operations with the aim of furthering its business objectives, it remained a proposal which may or may not have been approved, and Stevenson's business operations have carried on regardless. The Department required a good deal of information for the purposes of assessing whether to approve the application, much of it related to safety issues

and the possible consequences of the proposed referable dam for surrounding property owners, and I consider that very little of it can be properly characterised as information concerning Stevenson's business, commercial or financial affairs.

64. With respect to the second element of the test for exemption under s.45(1)(c), the material before me is not sufficient (with the exception of the segments of matter dealt with in paragraphs 70-71 below) to satisfy me that disclosure of the matter claimed to be exempt under s.45(1)(c) could reasonably be expected to have either of the prejudicial consequences specified in s.45(1)(c)(ii) of the FOI Act.
65. In the letter dated 1 October 1993 from Stevenson's solicitors to the Department, it was submitted that:

... development [of Stevenson's property] to date has involved heavy capital investment and the further development which our clients wish to undertake will also require heavy capital investment. Security of water entitlements with their capacity to impact on our clients' business prospects and commercial and financial affairs is obviously a sensitive issue in the financing of such a project.

Our clients contend that public access to certain information could reasonably be expected to have an adverse effect on those affairs.

66. I have had regard to those comments and, without the benefit of any more detailed evidence or submissions on behalf of Stevenson, I have identified from my examination of the documents in issue, certain matter which concerns Stevenson's financial affairs, the disclosure of which could reasonably be expected to have an adverse effect on those affairs. Some of that matter ceased to be in issue at the preliminary stages of this review (see paragraph 13 above) and the balance is dealt with at paragraphs 70-71 below.
67. I am not satisfied that disclosure of any of the other documents claimed to be exempt under s.45(1)(c) could reasonably be expected to have an adverse effect on Stevenson's business, commercial or financial affairs. The documents concern a site-specific proposal (which, as such, none of Stevenson's competitors could take advantage of for themselves) and I am not satisfied that any competitive harm could be caused to Stevenson by disclosure of details of the proposed dam construction, and evaluations of its safety and possible impacts on surrounding landholders.
68. Nor am I satisfied that disclosure of any of the matter claimed to be exempt under s.45(1)(c) could reasonably be expected to prejudice the future supply of such information to government. Insofar as that matter consists of information supplied to the Department by, or on behalf of, Stevenson (rather than Departmental documents assessing and evaluating the licence application), it consists of information of a kind that a person seeking the grant of a licence would be obliged to supply to the relevant government agency to enable a proper assessment of the licence application.
69. In any event, having regard to the public interest considerations discussed at paragraphs 37-43 above, I am satisfied, in respect of all of the matter claimed to be exempt under s.45(1)(c) except that dealt with in paragraphs 70-71 below, that its disclosure would, on balance, be in the public interest, notwithstanding any adverse effect which disclosure might have on Stevenson's business, commercial or financial affairs, or any prejudice which disclosure might have on the future supply to government of like information.

70. I am satisfied, however, following examination of the documents claimed to be exempt under s.45(1)(c), that some segments of matter do qualify for exemption on the basis that they comprise information concerning Stevenson's financial affairs (in the strict sense applied in the *Wittingslow Amusements* case and endorsed in *Re Cannon*), and that disclosure could reasonably be expected to have an adverse effect on those affairs. That matter is:
- (a) paragraph 7 of folio 38; and
 - (b) the following segments of folio 477 -
 - the first, second and third lines, and the first two words in the fourth line, of the third paragraph;
 - the third and fourth lines of paragraph 4;
 - the first two lines, and the first eight words in the third line, of paragraph 7.
71. It comprises information similar in nature to that referred to in paragraph 13(b) above, in respect of which Mr and Mrs Bouilly accepted the preliminary view that it qualified for exemption under s.45(1)(c). It is materially different to the bulk of the matter claimed by Stevenson to be exempt under s.45(1)(c), since it specifically refers to Stevenson's financial affairs, rather than the proposal for the dam generally. I am satisfied from the nature of the information itself that its disclosure could reasonably be expected to have an adverse effect on Stevenson's financial affairs. Because the information specifically concerns Stevenson's financial affairs, rather than the referable dam proposal and its evaluation, the public interest considerations telling in favour of disclosure of information concerning the proposed referable dam (including its safety and potential impacts on surrounding property owners) do not apply with any great force, and do not warrant a finding that disclosure would, on balance, be in the public interest. I find that the matter identified in paragraph 70 above is exempt matter under s.45(1)(c) of the FOI Act.
72. With the exception of the matter identified in paragraph 70 above, I find that none of the matter in issue which is claimed to be exempt under s.45(1)(c) of the FOI Act qualifies for exemption under that provision.

Application of s.45(3) of the FOI Act

73. Section 45(3) of the FOI Act provides:

45.(3) *Matter is exempt matter if—*

- (a) it would disclose the purpose or results of research (including research that is yet to be started or finished); and*
- (b) its disclosure could reasonably be expected to have an adverse effect on the agency or other person by or on whose behalf the research is being, or is intended to be, carried out.*

74. The documents claimed by Stevenson to be exempt under s.45(3) are:

- Sinclair Knight Hazard Assessment Report
- Sinclair Knight Supplementary Hazard Assessment Report.

75. I briefly considered the meaning and effect of s.45(3) in *Re O'Dwyer and the Workers' Compensation Board of Queensland* (1995) 3 QAR 97, at pp.105-106, paragraphs 22-23. I noted that the requirements of paragraphs (a) and (b) of s.45(3) are cumulative. I also expressed the view that, in the context of s.45(3), the word "research" was used in the sense of "a search or investigation undertaken to discover facts and reach new conclusions by the critical study of a subject or by a course of scientific enquiry", or a "diligent and systematic enquiry or investigation into a subject in order to discover facts or principles".
76. I have doubts about whether the Sinclair Knight reports comprise research of a kind that s.45(3) was intended to protect, but in any event I am satisfied that their disclosure could not reasonably be expected to have an adverse effect on Stevenson. Without the benefit of any relevant evidence or submission on behalf of Stevenson, I am unable to discern any adverse effect on Stevenson that could reasonably be expected as a consequence of disclosure of the Sinclair Knight reports. Those reports were in fact tendered as part of an exhibit in the Land Court on 4 May 1993 (see paragraphs 48 and 55 above), which indicated that Stevenson was content to have the Sinclair Knight reports become a matter of public record in the interests of pursuing the grant of a licence for the proposed referable dam. In the circumstances, I am not satisfied that disclosure under the FOI Act of the Sinclair Knight reports could reasonably be expected to have an adverse effect on Stevenson. I find that the two Sinclair Knight reports claimed to be exempt under s.45(3) of the FOI Act do not qualify for exemption under that provision.

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

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

46.(1) *Matter is exempt if—*

...

(b) it consists of information of a confidential nature that was communicated in confidence, the disclosure of which could reasonably be expected to prejudice the future supply of such information, unless its disclosure would, on balance, be in the public interest.

78. The documents claimed by Stevenson to be exempt under s.46(1)(b) are:

- Mr Grabbe's statement dated 4 May 1993
- Sinclair Knight Hazard Assessment Report
- Sinclair Knight Supplementary Hazard Assessment Report.

79. In *Re "B" and Brisbane North Regional Health Authority* (1994) 1 QAR 279 at pp.337-341, I explained the correct approach to the interpretation and application of s.46(1)(b) of the FOI Act. In order to establish the *prima facie* ground of exemption under s.46(1)(b) of the FOI Act, three cumulative requirements must be satisfied:

- (a) the matter in issue must consist of information of a confidential nature;
- (b) that was communicated in confidence;
- (c) the disclosure of which could reasonably be expected to prejudice the future supply of such information.

If the *prima facie* ground of exemption is established, it must then be determined whether the *prima facie* ground is displaced by the weight of identifiable public interest considerations which favour the disclosure of the particular information in issue.

80. On the material before me, I am not satisfied that any of the requirements to establish exemption under s.46(1)(b) are satisfied in respect of the three documents nominated by Stevenson. As previously noted, those three documents were tendered as an exhibit in proceedings in the Land Court (see paragraphs 48 and 55 above), and hence have technically entered the public domain (notwithstanding that the exhibit was subsequently returned to Stevenson's solicitors at their request) and cannot be regarded as information of a confidential nature: see *Johns v Australian Securities Commission* (1993) 178 CLR 408 at p.432, 67 ALJR 850 at p.860, per Brennan J; the relevant passage is quoted in *Re "B"* at p.310, paragraph 73. Moreover, given the circumstances in which the documents were provided to the Department on 4 May 1993, being handed over at the same time as they were tendered in the Land Court proceeding, I do not accept that there could have existed any relevant mutual understanding, express or implied, that the documents had been communicated to the Department in confidence.
81. I note that I have already made a finding that disclosure of the documents claimed by Stevenson to be exempt under s.45(1)(c), which included the documents now under consideration, could not reasonably be expected to prejudice the future supply of like information to government. And, in any event, having regard to the public interest considerations discussed at paragraphs 37-43 above, I am satisfied that disclosure of the three documents now under consideration would, on balance, be in the public interest, notwithstanding any prejudice that disclosure might cause to the future supply of like information to government.
82. I find that none of the matter claimed by Stevenson to be exempt matter under s.46(1)(b) of the FOI Act qualifies for exemption under that provision.

Decision

83. In application for review no. S 20/94, I vary the decision under review by finding that the documents which remain in issue, as listed in Appendix 1, are not exempt from disclosure to the applicants under the FOI Act.
84. In application for review no. S 40/94, I vary the decision under review by finding that the segments of matter in issue identified in paragraph 70 above are exempt matter under s.45(1)(c) of the FOI Act, but otherwise I affirm the decision under review in respect of the documents which remain in issue, as listed in Appendix 2.

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F N ALBIETZ
INFORMATION COMMISSIONER

APPENDIX 1

Application for review no. S 20/94 - Schedule of documents remaining in issue

Folio No.	Exemptions claimed by Stevenson	Description	Rekurs as Folio No.
906-909	s.41 s.43(1) s.45(1)(b) s.45(1)(c) s.45(3)	Draft statement by officer of DPI	2062-2063 2243-2244
1812-1813	s.41 s.43(1) s.45(1)(b) s.45(1)(c) s.45(3)	Notes re proposed evidence	

APPENDIX 2

Application for review no. S 40/94 - Schedule of documents remaining in issue

Folio No.	Exemptions claimed by Stevenson	Description	Recurs as Folio No.
		<u>FOLDER 1</u>	
4-7	s.41, s.45(1)(c) (folio 6 not relevant)	<u>Discussion Points</u> Internal Water Resources Commission (WRC) fax	455-458
8	s.45(1)(c)	Letter, Sinclair Knight to WRC 23/3/92	470, 764, 847, 2033, 2099, 2034
9-11	s.41, s.45(1)(c)	Letter, WRC to Stevenson 26/8/91 -tendered in Land Court as exhibit to Grabbe's statement - p.10 - EX JFG6	18-19, 52-53, 150-151, 460-462, 529-530, 703-705, 875-876, 895-896, 924-925, 1231-1232, 1270-1272, 1368-1369, 1729-1730, 2076-2080, 2083-2084, 2126-2128, 2230-2231
12-13	s.45(1)(c)	Letter, Stevenson to Potts (WRC) 9/8/91	869-870, 1565-1566
14-17	s.41, s.45(1)(c)	Internal WRC memo McConnell to Milligan 23/8/91	48-51, 101-104, 153-156, 166-169, 695-698, 699-702, 871-874, 1567-1570
21-22	s.45(1)(c)	Letter, WRC to Stevenson 11/5/92 Tendered as exhibit to Grabbe's statement in Land Court - p.15 - EX JFG12	29-30, 55-56, 85-86, 482-483, 517-518, 536-537, 816-817, 893-894, 922-923, 1277-1278, 1727-1728, 2095-2096, 2133-2134, 2161-2162, 2228-2229
23	s.45(1)(c)	Letter, Stevenson to Potts, WRC 5/9/91 Tendered in Land Court as exhibit to Grabbe's statement p.10 - EXJFG7	464, 717, 878
24	s.45(1)(c)	Letter, Stevenson to Potts, 10/9/91	532, 718, 719, 879, 1273, 1564, 2126, 2130
25-26	s.45(1)(c)	Letter, Potts (WRC) to Stevenson 9/10/91 Tendered as exhibit to Grabbe's statement in Land Court - p.11 - EX JFG9	465-466, 533-534, 720-721, 880-881, 1274-1275, 2086-2087, 2131, 2129
27	s.45(1)(c)	Letter, Stevenson to Potts (WRC) 15/10/91 Tendered as exhibit to Grabbe's statement in Land Court - p.11 - EX JFG10	467, 535, 722, 882, 1276, 1563, 2089, 2090, 2132
28	s.45(1)(c)	Internal WRC Memo 23/3/92	471, 765, 848

Folio No.	Exemptions claimed by Stevenson	Description	Recurs as Folio No.
32	s.45(1)(c)	Letter, Sinclair Knight to WRC 28/5/92	813, 845
33-38	s.41, s.45(1)(c)	Review of proposal re referable dam application (internal WRC) (undated)	58-62, 501-506, 858-863, 1571-1576, 2103-2108
39-41	s.41, s.45(1)(c)	Intra-office memo (WRC) - by McConnell 16/7/92	72-74, 509-511, 864-866, 1361-1363, 2109-2111
42	s.45(1)(c)	Letter, Sinclair Knight to WRC 23/7/92	513, 2186
43-47	s.45(1)(c)	Points for discussion - Baredoo No. 1 Storage (undated)	63-67, 170-174 (plus handwritten line of no significance on 173), 1577-1581
52-53	s.41, s.45(1)(c)	(A copy of folios 9-11, but with one handwritten sentence at the foot of folio 53)	
55-56	s.41	(same as folios 21-22, but with some handwritten alterations on folio 55)	
69-70	s.41	Notes on Technical Discussions with Stevenson's reps. (internal WRC memo) 24/7/92	175-176, 1582-1583
75-77	s.41	Letter, WRC (Bevin) to Stevenson 6/8/92 Tendered in Land Court as an exhibit to Grabbe's Statement - (p.22 - EX JFG14)	79-81, 82-84, 514-516, 539-540, 890-892, 919-921, 1234-1236, 1279-1281, 1724-1726, 2115-2117, 2135-2137, 2225-2227
87	s.41	Letter, Stevenson to WRC 17/9/92 Tendered in Land Court as an exhibit to Grabbe's Statement (p.22-EX JFG15)	91, 519, 521, 541, 1223, 1282, 1562, 2088, 2138
88	s.41	Internal memo WRC 21/9/92	
89-90	s.41	Draft response, WRC to Stevenson 24/9/92	
92-93	s.41	Signed letter, WRC to Stevenson 25/9/92 A copy of this document was tendered to the Land Court as an exhibit to Grabbe's Statement - EX JFG16	522-523, 542-543, 888-889, 917-918, 1283-1284, 1355-1356, 1722-1723, 2112-2113, 2139-2140, 2223-2224
94-95	s.41	(Draft) Internal memo, McKenna to Regional Manager (RM) 23/10/92	1237-1238, 1239-1240 (an earlier draft of this memo with some insignificant handwritten notations)
99-100	s.41	Signed internal memo, McKenna to RM 8/10/92	527-528, 1246-1247, 1268-1269, 2121-2123

Folio No.	Exemptions claimed by Stevenson	Description	Recurs as Folio No.
105-107	s.41	Memo, McKenna to RM, South 17/2/93	109-111, 2196-2198 (note this is copy sent of draft), 1386-1388 (signed version)
108	s.41	Schedule of Terms for licence no. 49300	1375
112-114	s.41, s.45(1)(c)	Handwritten notes re Land Court appeal (undated, author unknown)	1358-1360
141-144	s.41, s.45(1)(c)	Notes from (internal) meeting 19/4/93	567-570, 1584-1587
148-149	s.45(1)(c)	Handwritten notes re Appeal	
158-161	s.45(1)(c)	Letter, WRC (McConnell) to Norm Himsley (undated)	
163-164	s.41, s.45(1)(c)	Internal Memo, McConnell to RM (South) 4/5/93	1805-1807
165	s.41, s.45(1)(c)	Map of Referable Dam Storage	
175-176	s.41, s.45(1)(c)	Notes on Technical Discussion with Fiedler, Abbey & McConnell 24/7/92	
184-187	s.41, s.45(1)(c)	Statement by McConnell (WRC)	191-194, 1618-1621
188-190	s.43	Letter, John P Kelly & Co to Crown Solicitor 6/5/93	1867-1869
219	s.41	Fax, McConnell to John P Kelly & Co	
<u>FOLDER 2</u>			
229-231	s.45(1)(c)	Memo to Commissioner of Water Resources 8/5/91	
234-236	s.45(1)(c)	Briefing notes for the Minister by Commissioner 13/5/91	444-446
239-273	s.41, s.43, s.45(1)(c), s.46(1)(b)	Statement of John Grabbe 4/5/93	593-625, 1037-1069, 1766-1798, 2373-2406
296-340	s.41, s.45(1)(b), s.45(1)(c), s.45(3), s.46(1)(b)	Hazard Assessment Report by Sinclair Knight March 1992 Has been tendered in the Land Court as an attachment to Grabbe's statement - p.24, EX JFG11	341-388 (plus some insignificant handwritten notes made by WRC officers), 765, 2163-2185

Folio No.	Exemptions claimed by Stevenson	Description	Rekurs as Folio No.
389-414	s.41, s.45(1)(b), s.45(1)(c), s.45(3), s.46(1)(b)	Supplementary Hazard Assessment Report July 1992 - Sinclair Knight Has been tendered in the Land Court as an attachment to Grabbe's Statement - p.20, EX JFG13	
415-444	s.41	Diary Entry Cubbie Station	
447-453	s.41, s.45(1)(c)	Draft letter, WRC to Stevenson (undated)	
454	s.41	Fax cover, WRC Regional Engineer to WRC Toowoomba 22/5/91	
463	s.41	Fax transmission form	
468	s.41	Fax transmission Grabbe to Potts 15/10/91	723, 2091, 2093
474-475	s.41	Draft letter, RM, Southern Region to Stevenson (undated)	775-776
476-479	s.41, s.45(1)(c)	Briefing note, RM (South) to Commissioner 16/4/92	777-780
480	s.41	Fax, Claydon (RM South) to Commissioner 16/4/92	
507-508	s.41	Standard & Miscellaneous Licence Conditions	
512	s.41	Notes of meeting with Stevenson, Grabbe & WRC 20/7/92	
559	s.45(1)(b)	map of Cubbie Station	map 886, 912, 1392, 2189, 2218, note 915, 1720, 2191, 2120
560-561	s.41	Note of discussion with objectors Brad Heck (Technical Officer)	
562	s.41	Note of discussion with Objectors 19/1/92(?) by G Lyons	884-885, 914, 1395, 1719, 2192, 2221
563	s.41	Internal memo, WRC, Heck to RM (South) 3/2/93	887, 916, 1397, 1721, 2193, 2222
571	s.41	Fax, Paul Mills (WRC) to RM (South) 16/4/93	2217
577	s.41	Fax, McKenna to RM (South) 28/4/93	1036, 1605, 2252
589	s.41	Fax, WRC to Crown Law 6/5/93	1831
590	s.41	Fax Cover, McKenna to RM (South) 6/5/93	1832, 2371
591	s.41	Memo, Wallwork (WRC) to Executive Director 7/5/93	626, 1835, 1878, 2066, 2372
639	s.41	Memo, McKenna to Wallwork 18/5/93	

Folio No.	Exemptions claimed by Stevenson	Description	Recurs as Folio No.
693	s.41	Fax, Claydon to Thompson 22/7/91	2019
706-707	s.41	Memo, WRC 2/9/91	
767	s.41	Handwritten notes by WRC officer (John McKenna) on Barnedoo Storage 6/4/92	
768-772	s.41	Handwritten notes by WRC Officers in April 1992	
809-811	s.41	Notes on application for waterworks licence	
810-812	s.41	Handwritten note	
814-815	s.41	Handwritten comment by Amprimo (WRC) 18/6/92	
843-844	s.41	Handwritten notes of discussion with Stevenson's Reps 9/4/92(?)	
846	s.41	Handwritten note - re significant hazard levels	
849-851	s.41	Handwritten comments on Hazard Report by Sinclair Knight	
852-853	s.41	Draft letter, Claydon to Stevenson - post 9/4/92	
854	s.41	Fax, Claydon to Stevenson 15/4/92	
855-857	s.41	Handwritten notes re meeting with Stevenson's reps 15/6/92	
867-868	s.41	Fax, WRC to Stevenson enclosing licence conditions 16/7/92	
905	s.41	Summary of attachments	2064, 2242
910	s.41	Handwritten notes of Land Court proceedings	
911	s.41	Fax, Claydon to Paul Mills/Larry Ryan 29/4/93	
1222	s.41	Fax Cover, Heck to McKenna (WRC) 16/9/92	
1241	s.41	Handwritten file memo to John McKenna (undated)	
1259	s.41	Handwritten memo of a telephone conversation between John McKenna and Margaret Kelly on 14/10/92 and 16/10/92	
1260-1264	s.45(1)(c)	WRC Memo, GM WRC to Commissioner 14/10/92	
1267	s.41	Letter, John P Kelly & Co to Commissioner 26/10/92	

Folio No.	Exemptions claimed by Stevenson	Description	Recurs as Folio No.
1367	s.41	Fax, McKenna (WRC) to Manager, Legislative Services 3/2/93	
1376	s.41	Memo, WRC - Land Court appeal, by Mills to McKenna 5/2/93	
1372	s.41	(page 3?) of a letter, McKenna to Manager, Legislation & Legal Services WRC	
1382	s.41	Letter, WRC to Registrar of the Land Court 11/2/93	1383
1384	s.41	Handwritten memo, to McKenna 17/2/93	
1385	s.41	Letter, WRC to John P Kelly & Co 18/2/93	
1389	s.41	Fax, McKenna to RM (South) 4/3/93	2202
1397	s.41	Memo, Wallwork to RM (South) 3/2/93	
1398	s.41	Memo, McKenna to District Manager, St George 8/3/93	2208
1561	s.41	Copy, letter, John P Kelly & Co to Registrar of the Land Court 8/2/93	
1598	s.41	Fax Cover, John P Kelly & Co to Crown Solicitor 16/4/93	1593
1594	s.41	Letter, Crown Solicitor to WRC 19/4/93	
1595	s.41	Letter, WRC to Crown Solicitor 22/4/93	
1598	s.41	Letter, WRC (Greg McLeod) to John P Kelly & Co 22/4/93	1602
1612-1613	s.41	Draft Memo (undated) from Director Design Division	1614-1616 (the final edition)
1617	s.41	Table of Flood Hazard Categories	
1622	s.41	Handwritten note to Larry Ryan (Crown Law) 28/4/93	
1821	s.41	Blank Form	
1822	s.41	Telephone message (undated)	
1834	s.41	Draft version of waterworks licence for application 49300 6/5/93	1883, 2032, {2354, 2386} "draft" copies
1833	s.41	Fax, Wallwork to McKenna 6/5/93	
1853-1858	s.41	Memo, (GM (Development)) DG, DPI to RM (South) 6/5/93	
1870-1875	s.41	Terms of licence 49300	1877-1883, 2026-2032, 2353, 2355

Folio No.	Exemptions claimed by Stevenson	Description	Rekurs as Folio No.
1928	s.41	Memo, A/Director Legal & Legislation to McKenna 24/5/93	1959-1960, 2414, 2409
1929	s.41	Memo, Bridgeman to D-G 10/5/93	
1932-1933	s.41	(Draft?) letter, WRC to objectors, notifying them of granting of licence 1/6/93	
1961	s.41	Fax Cover, DM St George to GM South 2/6/93	
1993	s.41	Earlier draft of folio 1932	
2021	s.41	Fax, Milligan (WRC) to DE St George 22/7/91	
2022	s.41	Memo, D-E (St George) to Regional Engineer 31/7/91	
2081-2082	s.41	Memo (Draft) to GM Development from GM (Water Management) 22/8/91	
2124	s.41	Fax cover, Burgess to Heck 6/11/92	
2151	s.41	Memo, (WRC) DM St George to RM (South) 26/11/92	2152
2160	s.41	Fax, (WRC) Milligan to RM Toowoomba (19/11/92)	
2187-2188	s.41	Notes of discussion with the Boulllys 19/11/93	
2211	s.41	Action sheet	
2246	s.41	Fax, Heck to Claydon 29/4/93	
2247-2248	s.41	Letter, John P Kelly & Co to Crown Solicitor 15/4/93	
2416	s.41/irrelevant	Fax Cover, McKenna to Heck	
2415	s.41	Fax message McKenna to Heck	