

OFFICE OF THE INFORMATION COMMISSIONER (QLD)

Decision No. 97017
Application S 27/97

Participants:

RONALD JOHN PRICE
Applicant

SURVEYORS BOARD OF QUEENSLAND
Respondent

DECISION AND REASONS FOR DECISION

FREEDOM OF INFORMATION - permitted forms of access - whether the applicant is entitled to require the respondent to permit him to attend the respondent's offices with his own photocopier in order to personally photocopy documents - interpretation of s.30(1)(b) of the *Freedom of Information Act 1992 Qld* - observations on the interpretation of s.30(1), s.30(2) and s.30(7) of the *Freedom of Information Act 1992 Qld*.

FREEDOM OF INFORMATION - charges for giving access by the provision of a photocopy of a document - whether or not the documents in issue concern the applicant's personal affairs - observations on the correct interpretation and application of s.7 of the *Freedom of Information Regulation 1992 Qld*.

Freedom of Information Act 1992 Qld s.29, s.30(1)(a), s.30(1)(b), s.30(2), s.30(7), s.32, s.44(1), s.79(1)

Freedom of Information Regulation 1992 Qld s.7(1), s.7(2), s.8, s.9

Bolton and Department of Transport, Re (Information Commissioner Qld, Decision No. 95035, 20 December 1995, unreported)

Byrne and Gold Coast City Council, Re (1994) 1 QAR 477

Jesser and University of Southern Queensland, Re (Information Commissioner Qld, Decision No. 97015, 8 October 1997, unreported)

Ryder and Department of Employment, Vocational Education, Training and Industrial Relations, Re (1994) 2 QAR 150

Stewart and Department of Transport, Re (1993) 1 QAR 227

DECISION

1. I set aside the decision under review (which is identified in paragraph 3 of my accompanying reasons for decision).
2. In substitution for it, I decide that—
 - (a) the applicant is not entitled, under the provisions of the *Freedom of Information Act 1992* Qld, to require the respondent to give him access to documents by permitting him to attend the respondent's offices with his own photocopier to personally photocopy the documents; and
 - (b) the applicant is required to pay the relevant charges prescribed in the *Freedom of Information Regulation 1992* Qld for the provision to him by the respondent of photocopies of the documents remaining in issue (which are identified in paragraph 22 of my accompanying reasons for decision), with the exception of page 177 in respect of which I find that no charge is payable.

Date of decision: 24 October 1997

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F N ALBIETZ
INFORMATION COMMISSIONER

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REASONS FOR DECISION

Background

1. This case raises two issues (concerning the levying of charges for, and provision of access to, non-exempt documents) which may be of general interest to users of, and authorised agency decision-makers under, the *Freedom of Information Act 1992* Qld (the FOI Act):
 - (i) whether the respondent was entitled to refuse the applicant's request that he be given access to the respondent's offices with his own photocopier to personally photocopy documents to which he had been granted access; and
 - (ii) whether charges are payable by the applicant for the provision to him of photocopies of the documents to which the applicant has been granted access.
2. This application for review stems from another case still before me (application for review no. S 201/95) in which the applicant sought review of a deemed refusal of access to requested documents: see s.79(1) of the FOI Act. During the course of that review, the respondent agreed to give the applicant access to a substantial number (but not all) of the documents initially in issue, and I authorised it to do so. The dispute in the current application for review concerns the levying of charges for, and the permitted methods for obtaining access to, the documents to which access has been granted.
3. By letter dated 3 January 1997, the applicant asked the respondent to waive the charges for providing him with copies of the documents to which he had been granted access, or, in the alternative, to allow him access to the respondent's office to copy those documents using his own photocopier. By a letter to the applicant dated 28 January 1997, the respondent refused the latter request, but informed the applicant that it had decided to approve a 50% reduction in the prescribed copying charges.

4. By letters dated 4 February 1997 and 11 February 1997, the applicant applied to me for review of the respondent's decisions, saying: ... *"I am not going to pay for documents I am entitled to at no charge, ... either supply the documents or allow me to copy with my copier ..."*.

External review process

5. In a letter to the applicant dated 7 February 1997, I pointed out that it was clear from the terms of s.29 of the FOI Act and s.7 of the *Freedom of Information Regulation 1992* Qld (the FOI Regulation) that an agency is not conferred with a statutory power or discretion to waive or reduce the fees and charges prescribed in the FOI Regulation. That information was also conveyed to the respondent, which wrote to the applicant on 18 February 1997 informing him that it would not be reducing the prescribed access charges by 50% as previously advised, because it had no power to do so.
6. The issue for my determination in respect of charges required consideration of each document to which the applicant had been granted access in order to decide whether or not it was, in the terms of s.7 of the FOI Regulation, a document that concerns the applicant's personal affairs. Thus, a copy of each document has been obtained from the respondent and examined (except in the case of three audiotapes of interviews, in respect of which only the transcripts of interviews have been examined).
7. By letter dated 23 April 1997, I informed the respondent of my preliminary view that certain documents (which I listed) did not concern the applicant's personal affairs (and hence charges were properly payable for giving access by the provision of photocopies), but that the balance of the documents to which access had been granted did concern the applicant's personal affairs (and hence no charge was payable for giving access by the provision of photocopies).
8. By letter dated 21 May 1997, the respondent informed me that it did not wish to contest my preliminary views. Accordingly, by letter dated 10 June 1997, I authorised the respondent to give the applicant access, free of charge, to photocopies of those documents in respect of which the respondent did not wish to contest my preliminary view that no charge was payable. Under cover of a letter from the respondent dated 12 June 1997, the applicant was provided with copies of those documents free of charge. Those documents are therefore no longer in issue in this review. Under cover of a letter from the respondent dated 7 July 1997, the applicant was also provided, free of charge, with copies of two audiotapes of interviews. A third audiotape was unable to be copied for technical reasons, but the applicant has been informed that he may make arrangements to attend the respondent's office to listen to the audiotape, at no charge. Accordingly, those audiotapes are no longer in issue in this review.
9. By letter dated 2 June 1997, I informed the applicant of my preliminary view (and my reasons for forming it) that certain documents, which I listed, did not concern the applicant's personal affairs, and hence that charges were properly payable for giving access to those documents by the provision of photocopies, in accordance with s.7(1) and s.8 of the FOI Regulation. In the event that he did not accept my preliminary view, I invited the applicant to lodge evidence and written submissions in support of his case.

10. I had previously, by letter dated 23 April 1997, conveyed to the applicant my preliminary view that he had no entitlement under the FOI Act to require the respondent to permit him to attend its office and copy documents with his own photocopier. In the event that he did not accept that preliminary view, I had also invited him to lodge a written submission and/or evidence addressing that issue.
11. The applicant was granted extensions of time in which to provide this office with any written submission and/or evidence on which he wished to rely in this review. Since nothing of that kind has been received from the applicant, I have taken into account all material contained in his correspondence to my office which is relevant to the issues which I must determine in this review, together with the applicant's letter to the respondent dated 30 June 1997 (which is relevant in that regard).

Issue 1: Requested form of access

12. The applicant's request that he be given access to the respondent's office with his own photocopier to personally photocopy the documents to which he has been granted access, raises for consideration the permitted forms of access to agency documents under the FOI Act. Section 30 of the FOI Act relevantly provides:

30.(1) Access to a document may be given to a person in one or more of the following forms—

(a) a reasonable opportunity to inspect the document;

(b) providing a copy of the document;

...

(2) Subject to this section and section 32, if an applicant has requested access in a particular form, access must be given in that form.

(3) If giving access in the form requested by the applicant—

(a) would interfere unreasonably with the operations of the agency, or the performance by the Minister of the Minister's functions; or

(b) would be detrimental to the preservation of the document or, having regard to the physical nature of the document, would be inappropriate; or

(c) would involve an infringement of the copyright of a person other than the State;

access in that form may be refused and given in another form.

(4) If an applicant is given access to a document in a form different to the form of access requested by the applicant, the applicant must not be required to pay a charge that is more than the charge that would have been payable if access had been given in the form requested by the applicant.

...

(7) This section does not prevent an agency or Minister giving access to a document in another form agreed to by the applicant.

(my underlining)

13. Essentially, s.30 provides for two forms of access to information contained in paper documents. Those two forms of access are set out in s.30(1)(a) and s.30(1)(b). Given the form of access which the applicant has requested, it is s.30(1)(b) which must be considered in this case.
14. In my view, the use of the word "providing" in the phrase "providing a copy of the document", as it appears in s.30(1)(b) of the FOI Act, is consistent only with the relevant agency making a copy of a document in its possession, and providing that copy to the applicant for access. That is the natural and ordinary meaning conveyed by the words used in s.30(1)(b) of the FOI Act. In my opinion, that provision cannot be logically interpreted as meaning that an agency must, on request, hand over documents (in respect of which an applicant is entitled to obtain access under the FOI Act) to allow the applicant to photocopy the documents.
15. Sections 7, 8 and 9 of the FOI Regulation contain the charging regime for "giving access to a document by providing a copy of the document":

Requirement to pay charges

7.(1) An applicant must pay a charge for access to a document that does not concern the applicant's personal affairs.

(2) A charge is not payable for access to a document that concerns the applicant's personal affairs.

Charges for photocopies of documents (A4 size)

8. The charge for giving access to a document by providing a photocopy of the document in A4 size is the amount calculated at the rate of 50c for each page of the copy.

Charges for copies of documents (other than A4 size photocopies)

9.(1) The charge for giving access to a document by providing a copy of the document (other than a copy mentioned in section 8) is the amount that the agency considers to be reasonable.

*(2) The amount must not be more than the amount that reasonably reflects the cost of providing the copy.
(my underlining)*

16. The charges provided for in the quoted sections of the FOI Regulation clearly refer to an amount to be paid to the agency for "providing a copy". This supports my view that the agency is given the responsibility of making the copy, for which the agency is to be paid at the specified rate, and is consistent with the interpretation I have expressed above (at paragraph 14) in relation to s.30(1)(b) of the FOI Act.
17. I note that s.30(2) of the FOI Act provides that, if an applicant has requested access in a particular form, access must be given in that form. However, s.30(2) is clearly expressed to be a provision which has effect subject to s.30 itself (i.e., to provision made elsewhere in s.30), and also s.32, of the FOI Act. In my opinion, the reference in s.30(2) to "access in a particular form" cannot be read as extending to any form of access of the applicant's devising, but must be read as being confined to the particular forms of access provided for in s.30(1) of the FOI Act as the forms by which access to a document may be given under the FOI Act.

18. I find that requiring an agency to provide an applicant for access with a requested document, so that the applicant can make a photocopy of the document using his or her own photocopier, is not a form of access contemplated or provided for by the FOI Act, and therefore is not a form of access which the applicant is entitled to require of the respondent in the present case.
19. I note that an agency is not prevented from giving access to a document in any form agreed upon by an agency and an applicant for access: see s.30(7) of the FOI Act. Section 30(7) is clearly intended as a facilitative provision, to ensure that an agency is not prevented from giving access to a document in a form not contemplated or provided for in s.30(1) of the FOI Act (provided the applicant for access agrees to that course of action). It is not, however, a provision which gives an applicant for access any entitlement to require an agency to give access to a document in a manner not provided for in s.30(1) of the FOI Act. In this case, the respondent would not agree to give the applicant access in the particular manner he requested, and I am satisfied that, under the terms of s.30 of the FOI Act, the applicant has no entitlement to require the respondent to give access in that way.

Issue 2: Imposition of charges for the provision to the applicant, by the respondent, of copies of the documents remaining in issue

20. In addition to sections 7, 8 and 9 of the FOI Regulation (which are set out at paragraph 15 above), the following parts of s.29 of the FOI Act are relevant to my consideration of this issue:

29.(1) In this section—

"agency" includes a Minister.

(2) An applicant applying for access to a document that does not concern the applicant's personal affairs may be required, by regulation, to pay an application fee at the time the application is made.

(3) Any charge that is, by regulation, required to be paid by an applicant before access to a document is given is to be calculated in accordance with the following principles—

- (a) no charge is to be made for the time spent by the agency in conducting a search for the document to which access is requested;*
- (b) no charge is to be made for supervising the inspection by the applicant of the matter to which access is granted;*
- (c) a charge may be made for the reasonable costs incurred by an agency in—*
 - (i) supplying copies of documents; or*
 - (ii) making arrangements for hearing or viewing documents of a kind mentioned in section 30(1)(c); or*
 - (iii) providing a written transcript of the words recorded or contained in documents; or*

- (iv) *providing a written document under section 30(1)(e);*
- (d) *no charge is to be made for the time spent by an agency in—*
 - (i) *examining a document to determine whether it contains exempt matter; or*
 - (ii) *deleting exempt matter from a document;*
- (e) *no charge is to be made for producing for inspection a document mentioned in section 19(1), whether or not the document has been specified in a statement published under section 18;*
- (f) *no charge is to be made for the time spent in meeting the requirements of section 51.*

21. It has been necessary to consider each of the documents remaining in issue in this review, and to decide, in respect of each document, whether or not it "concerns the applicant's personal affairs", within the terms of s.7 of the FOI Regulation. If a document does not concern the applicant's personal affairs, then a charge must be paid for the provision of a copy of the document to the applicant. (In respect of A4 size documents, that charge is \$0.50 for each page of the document.) If, however, a document does concern the applicant's personal affairs, then a charge is not payable for the provision of a copy of that document to the applicant. Section 7(1) of the FOI Regulation is framed in mandatory terms, and agencies are not conferred with a power or discretion to waive or reduce the prescribed charges.
22. The documents remaining in issue, which have been individually examined for the purpose of applying the test imposed by s.7 of the FOI Regulation, are listed below:
 - (1) **Page 038** - Public Notice re "Applications for Permanent Closure of Roads" dated 21 December 1990;
 - (2) **Page 039** - copy letter to Mr G W Eastaugh dated 22 June 1990;
 - (3) **Page 040** - letter to Mr Eastaugh dated 21 March 1990;
 - (4) **Page 041** - letter from Mr Eastaugh to Land Administration Commission dated 25 February 1990;
 - (5) **Page 042** - Department of Lands memorandum from Acting Director, Division of Roads and Acquisitions, to Acting Senior Legal Adviser dated 24 January 1990;
 - (6) **Pages 043-044** - handwritten letter re Council letter dated 22 December 1989;
 - (7) **Page 046** - letter, Secretary to Mr Eastaugh dated 9 January 1990;
 - (8) **Page 047** - letter, Secretary to Mr Eastaugh dated 27 July 1990;
 - (9) **Page 048** - letter, Mr Eastaugh to Department of Lands dated 25 June 1990;
 - (10) **Page 068** - letter Gatton Shire Council to Secretary, Land Administration Commission dated 21 September 1989;
 - (11) **Pages 069-070** - handwritten note by D J O'Connor dated 11 December 1991;

- (12) **Page 071** - letter, Programme Director, Land Use, to Shire Clerk, Gatton Shire Council dated 5 September 1991;
- (13) **Page 074** - declaration, dated 20 February 1991, that Application for Closure has been posted on road proposed to be closed;
- (14) **Page 076** - sections 6-8 of the *Water Act 1926* Qld;
- (15) **Page 077** - letter, South East Queensland Electricity Board to the Lands Department dated 21 January 1991;
- (16) **Pages 078-079** - letter, Assistant Director-General to Shire Clerk, Gatton Shire Council, dated 24 December 1990;
- (17) **Page 080** - advertisement for application of Gatton Shire Council;
- (18) **Page 081** - Notice of Application for Permanent Road Closure under the *Land Act 1962* dated 4 January 1991 to Mr Eastaugh;
- (19) **Page 084** - Diagram 3 - Light Distribution of Low Pressure Sodium Type Luminaire in the Vertical Plane;
- (20) **Page 087** - account of Mr Dawson to the Gatton Shire Council dated 21 June 1989;
- (21) **Page 088** - letter, Gatton Shire Council to Secretary, Land Administration Commission, dated 21 September 1989;
- (22) **Page 098** - letter from Secretary to Mr Eastaugh dated 9 January 1990;
- (23) **Page 099** - letter from Secretary to Mr Eastaugh dated 22 June 1990;
- (24) **Page 100** - letter from Mr Eastaugh to Department of Lands dated 25 June 1990;
- (25) **Page 101** - letter from Secretary to Mr Eastaugh dated 27 July 1990;
- (26) **Page 103** - handwritten letter to Mr Eastaugh dated 26 September 1989;
- (27) **Page 104** - Boundary Information by Scott Dawson (part of survey plan) dated 20 June 1989;
- (28) **Pages 111-132** - decision *Plenty v Dillon and Ors* (1990-91) 171 CLR 635;
- (29) **Page 133** - copy cartoon;
- (30) **Page 143** - file note dated 12 July 1993;
- (31) **Page 157** - letter, Surveyors Board to Mr Dawson dated 20 August 1993 (I note that the final paragraph of this letter is claimed to be exempt and is in issue in external review application no. S 201/95 (page 051));
- (32) **Page 177** - photograph;
- (33) **Page 182** - letter, Parkinson & Parkinson Pty Ltd to Surveyors Board dated 28 October 1993;
- (34) **Page 183** - Surveyors Board internal memorandum to Complaints Committee from Executive Officer dated 16 November 1993;

- (35) **Pages 184-185** - letter, Surveyors Board to Mr Dawson dated 16 December 1993;
- (36) **Page 187** - letter, Lockyer Survey Services to Department of Lands dated 5 January 1994;
- (37) **Page 188** - file note dated 2 February 1994.

Applicant's submissions

23. In a letter to the respondent dated 30 June 1997, the applicant stated:

...

Please confirm if you have indicated to the Information Commissioner the documents I supplied to the Board, (I suggest that the Information Commissioner should know that there can be no charge for these). It appears that he has listed these documents, including the High Court Case Plenty and Dillon supplied by myself, and the cartoon.

You might explain to the Information Commissioner to also look for the mark on the top of documents that I made on most of the documents I supplied. Please let me know if this has been made known to the Information Commissioner. Has the Information Commissioner given reasons for the complaint to the Surveyor's Board by myself having a charge?

Will you explain to the Information Commissioner that I supplied all the letters to and from the Lands Dept. etc and they are personal documents due to the fact that I supplied them and they are also related to the survey complaint and the survey for that matter. Does the Information Commissioner know or has he been informed that document No. 084 is part of the papers referring to the report of the surveyor and is part of that document, would you be kind and inform the Information Commissioner that he is not to break up a document consisting of multiple pages and declare that one page is not relevant or the same for part of one document. He may also be shown that this document is originally numbered as No. 079 and precedes No. 080 which is the back of the just mentioned document and was part of the complete document supplied from the Gatton Shire Council minutes, they produced their documents back to back.

...

24. In his letter to my office dated 31 July 1997, the applicant stated:

Most of the documents supplied by Price to the Board were clearly identified with a mark, that is the dark mark on the right hand side top. The Surveyor's Board have informed Price that the Information Commissioner has been informed as to documents supplied by Price to the Board. Price suggests that where the documents are required by the Surveyors Board in an investigation such as this the documents form part of the personal submission, the documents are the personal property of the applicant.

The Surveyors Board have expressed an opinion to agree that no charges are to apply to certain documents. The Information Commissioner has decided that the applicant is to be charged for copies of documents the applicant has supplied. I refer to the correspondence with the Surveyors Board as well. Due to ill health and lack of funds at the moment I submit that I am not in the position to submit further at this time.

All the documents supplied by Price were from his personal documents, these documents were referred to in communications with the Board and were part of the evidence by Price. The Eastaugh documents are related to the unlawful survey, the infringements and land resumptions are part of the survey.

Eastaugh fence realignment is part and parcel of the Board investigation.

Eastaugh told the Gatton Shire Council that he was exploring alternative's all reference to boundaries adjoining the road and Price's property are related etc.

25. I note that the following documents remaining in issue have a "dark mark" on the top right hand side of the page: pages 038-048, 068-071, 074, 076-081, 084, 088, 098-101, and 103-104. According to the applicant's submission, he also supplied to the respondent the pages numbered 111-133.

Application of s.7 of the FOI Regulation to the documents remaining in issue

26. The terms of s.44(1) of the FOI Act (the exemption provision for personal affairs information) direct attention to whether particular segments of matter in issue (which may range from a single word in a document, through a sentence or paragraph to the whole, or several pages, of a multi-page document) can be properly characterised as information concerning the personal affairs of a person other than the applicant for access. In contrast, the terms of s.7 of the FOI Regulation require an assessment of each discrete document to which an applicant has requested access (rather than particular segments of matter contained in a document). A paper document to which access has been requested under the FOI Act may comprise one page, or multiple pages (not infrequently, dozens or hundreds of pages). Documents, especially longer documents, may deal with multiple topics. A practical question arises as to precisely how s.7 of the FOI Regulation, in requiring an assessment of whether or not a requested document concerns the personal affairs of the applicant for access, was intended to apply.
27. If, for example, a thirty page document deals with several topics, most of which do not concern the personal affairs of the applicant for access, but there is information on one page which clearly does concern the personal affairs of the applicant for access, is the applicant required to pay a charge for access to the document, on the basis that the document, characterised as a whole, does not concern the applicant's personal affairs? Or is the fact that the document contains some information which concerns the applicant's personal affairs sufficient to make it a "document that concerns the applicant's personal affairs" (in respect of which no charge is payable for access, by virtue of s.7(2) of the FOI Regulation)? If the former is the correct approach, what is the position with respect to—
 - a document of which 15 pages concern the applicant's personal affairs and 15 pages do not?

- a document in which the central or most important topic concerns the personal affairs of the applicant and is dealt with in 10 pages, while a range of minor, ancillary topics which do not concern the applicant's personal affairs are dealt with over 20 pages?
 - a document in which the central or most important topic does not concern the applicant's personal affairs and is dealt with in 10 pages, while some minor, ancillary topics which do concern the applicant's personal affairs are dealt with over 20 pages?
 - a document in which three key topics are dealt with, one of which concerns the applicant's personal affairs?
28. Any number of teasing examples might be posed to illustrate my view that s.7 of the FOI Regulation cannot have been intended to operate by requiring agency decision-makers to attempt some form of characterisation of whether a document, considered as a whole, can be properly characterised as a document that concerns the personal affairs of the applicant for access, by reference to the relative extent, or relative importance, of the information in the document which concerns the personal affairs of the applicant for access. Such an approach would be productive of enormous uncertainty and inefficiency in the administration of the FOI Act (especially since a single FOI access application may cover dozens or hundreds of multi-page documents). Moreover, I consider that it is consistent with established principles of statutory construction that any doubt or ambiguity as to the intended meaning of words used in the legislative scheme for beneficial/remedial legislation, such as the FOI Act and the FOI Regulation, should be resolved by adopting the interpretation which is more favourable to those whom the legislation is intended to benefit, i.e., applicants for access to agency documents (see D C Pearce and R S Geddes, Statutory Interpretation in Australia, 3rd ed, 1988, at pp.164-165).
29. I consider that s.7 of the FOI Regulation requires an assessment of whether a document to which access has been requested contains some information which can be properly characterised as information concerning the personal affairs of the applicant for access (see also *Re Ryder and Department of Employment, Vocational Education, Training and Industrial Relations* (1994) 2 QAR 150 at pp.155-156, paragraph 19, and *Re Jesser and University of Southern Queensland* (Information Commissioner Qld, Decision No. 97015, 8 October 1997, unreported) at paragraph 24). If so, it will be a document that concerns the applicant's personal affairs, and no charge will be payable for access to the document, by virtue of s.7(2) of the FOI Regulation. If not, it will be a document that does not concern the applicant's personal affairs, and the applicant must pay any charge that is prescribed for obtaining access to the document (see s.7(1) of the FOI Regulation).
30. In my reasons for decision 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, in the FOI Act (see *Re Stewart* at pp.256-267, paragraphs 79-114). 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:
- affairs relating to family and marital relationships;
 - health or ill health;
 - relationships with and emotional ties with other people; and
 - domestic responsibilities or financial obligations.

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.

31. In the context of s.7 of the FOI Regulation, the word "concerns" means "about, regarding": see *Re Bolton and Department of Transport* (Information Commissioner Qld, Decision No. 95035, 20 December 1995, unreported) at paragraphs 16-17. Thus, each document in issue must be examined, and an assessment made as to whether it contains some information about the applicant's personal affairs. From my examination of the documents remaining in issue in this external review, I am satisfied that none of those documents contains any information which can be properly characterised as information that concerns the applicant's personal affairs. Unlike most of the documents to which the applicant has been given access by the provision of free photocopies, the documents remaining in issue do not contain information about the applicant's residential property. Most of them relate to another person's property, and do not refer to the applicant's property in any way.
32. Nor do the documents remaining in issue contain information about the applicant's complaint to the respondent Board. It is apparent from assertions made in the applicant's correspondence to my office that he considers that the fact that the documents remaining in issue were created or obtained by the respondent in the course of dealing with the applicant's complaint to the respondent about the conduct of a surveyor, is sufficient to establish that the documents concern the applicant's personal affairs. However, that is not sufficient to satisfy the test imposed by the terms of s.7 of the FOI Regulation, which requires an assessment of the contents of each requested document, to establish whether it contains some information about the personal affairs of the applicant for access. It is true that in *Re Stewart* (at p.268, paragraph 119) and in *Re Byrne and Gold Coast City Council* (1994) 1 QAR 477 (at p.489, paragraph 36), I held that the fact that a citizen, acting in a private capacity, had made a complaint to an agency about a matter of concern to the citizen, was information concerning that citizen's personal affairs. However, I also observed (see, in particular, at p.487, paragraphs 26-27 and pp.488-490, paragraphs 33-38, of *Re Byrne*) that the fact of making the complaint was to be distinguished from the substance of the complaint, which may or may not (but in *Re Byrne* did not) itself comprise information concerning the personal affairs of the complainant. The same observation applies equally to documents created or obtained by an agency in the course of dealing with a complaint.
33. I note that the applicant claims that the respondent has not returned to him the original documents which the applicant made available to the respondent to assist it to deal with his complaint about the conduct of a surveyor. The respondent asserts that it did return the original documents to the applicant, and retained copies only of those documents for its file. That issue, however, is irrelevant to the questions I have to determine. If the applicant wishes to pursue a claim that he is entitled to any of the documents listed in paragraph 22 above because of his property in the documents, he must pursue that claim through the relevant court. I do not have jurisdiction to rule on it. The applicant has, however, made an application for access, under the FOI Act, to the documents listed in paragraph 22 above. That application for access is governed by the terms of the FOI Act and the FOI Regulation, and I do have jurisdiction to make decisions as to the correct application of relevant provisions of the FOI Act and the FOI Regulation to documents which fall within the terms of the applicant's FOI access application.

34. From the passages quoted at paragraphs 23 and 24 above, it is apparent that the applicant considers that the fact that he supplied the respondent with many of the documents remaining in issue means that he must be entitled to obtain access to the documents free of charge. However, the provision of access to documents in response to an access application under the FOI Act is governed by s.7 of the FOI Regulation, and the fact that the applicant may have supplied the respondent with the documents to which he now seeks access under the FOI Act is irrelevant to the test imposed by the words of s.7 of the FOI Regulation, i.e., whether any of the documents remaining in issue contain some information which can be properly characterised as information that concerns the applicant's personal affairs.
35. Further, I do not accept the applicant's argument that the documents which formed part of his "submission" to the respondent (in connection with his complaint about the conduct of a surveyor), merely by their attachment to the submission as supporting documentation, became documents that concern the personal affairs of the applicant. The terms of s.7 of the FOI Regulation require a decision-maker to characterise the information contained in a document to which access has been requested under the FOI Act, not the context in which a document was created or obtained by an agency.
36. With respect to the issue raised in the last two sentences of the passage quoted at paragraph 23 above, I find that none of the documents in issue can be considered to be part of the Gatton Shire Council minutes (to which the applicant has been given access free of charge). I do not consider that, merely because one page has been photocopied onto the back of another page, those pages become, by the manner of photocopying, one document, for the purposes of applying s.7 of the FOI Regulation.
37. However, in respect of the photograph which has been numbered for identification as page 177, the respondent informed my office on 19 September 1997 that the photograph formed part of the investigation report, a copy of which has been provided to the applicant free of charge on the basis that it contained some information concerning the applicant's personal affairs. Since page 177 formed part of that investigation report, I find that the applicant is not required to pay a charge for the provision of a photocopy of page 177.

Conclusion

38. As noted above, the respondent has already accepted significant changes to the decision under review. In the circumstances, it is appropriate that I set aside the decision under review. In substitution for it, I decide that—
- (a) the applicant is not entitled to require the respondent to give him access to documents by permitting him to attend the respondent's offices with his own photocopier to personally photocopy the documents; and
 - (b) the applicant is required to pay the relevant charges prescribed in the FOI Regulation for the provision to him by the respondent of photocopies of the documents remaining in issue (which are listed in paragraph 22 above), with the exception of page 177 in respect of which I find that no charge is payable.

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F N ALBIETZ

INFORMATION COMMISSIONER