

OFFICE OF THE INFORMATION)
COMMISSIONER (QLD))

L 16 of 1993
(Decision No. 94008)

Participants:

NEVA SEARS BYRNE
Applicant

- and -

GOLD COAST CITY COUNCIL
Respondent

DECISION AND REASONS FOR DECISION

FREEDOM OF INFORMATION - Refusal of access - matter in issue comprising the name and telephone number of a person who made a complaint to an Alderman of the respondent Council about the length of grass on public land - whether exempt matter under s.42(1)(b) or s.42(1)(f) of the *Freedom of Information Act 1992 Qld* - whether exempt matter under s.44(1) of the *Freedom of Information Act 1992 Qld*.

Freedom of Information Act 1992 Qld s.6, s.14, s.28, s.29(2), s.42(1)(b), s.42(1)(e), s.42(1)(f), s.44(1), s.44(2), s.46(1)(a), s.46(1)(b), s.52, s.88(2)

Freedom of Information Regulation 1992 Qld s.6

Freedom of Information Act 1982 Vic s.33(1)

Local Government Act 1936 Qld s.30

Local Government Act 1993 Qld

Accident Compensation Commission v Croom [1991] 2 VAR 322

Anderson and Australian Federal Police, Re (1986) 4 AAR 414

"B" and Brisbane North Regional Health Authority, Re (Information Commissioner Qld, Decision No. 94001, 31 January 1994, unreported)

Colakovski v Australian Telecommunications Corporation (1991) 100 ALR 111

Commissioner of Police v the District Court of New South Wales and Perrin (1993) 31 NSWLR 606

Croom and Accident Compensation Commission, Re (1989) 3 VAR 441

McEnery and Medical Board of Queensland, Re (Information Commissioner Qld, Decision No. 94002, 28 February 1994, unreported)

Stewart and Department of Transport, Re (Information Commissioner Qld, Decision No. 93006, 9 December 1993, unreported)

University of Melbourne v Robinson [1993] 2 VR 177

DECISION

1. The decision of Mr R E M Towson, Deputy Town Clerk of the Gold Coast City Council, dated 8 September 1993, is set aside.

2. In substitution for that decision, I decide that the name and telephone number of a person, which are recorded on a Memorandum dated 20 May 1992 from Ms D McDonald, Alderman for Division 9 of the Gold Coast City Council, to Mr B McGinnity, the Chief Engineer of the Gold Coast City Council, comprise exempt matter under s.44(1) of the *Freedom of Information Act 1992 Qld.*

Date of Decision: 12 May 1994

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F N ALBIETZ
INFORMATION COMMISSIONER

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Participants:

NEVA SEARS BYRNE
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REASONS FOR DECISION

Background

1. The applicant, Mrs N S Byrne, seeks review of a decision of the respondent, the Gold Coast City Council (the GCCC), to refuse her access to certain matter contained in a document held by the GCCC, on the basis that it is exempt matter under the *Freedom of Information Act 1992 Qld* (referred to in these reasons for decision as the FOI Act or the Queensland FOI Act). The matter in issue comprises the name and residential telephone number of an individual, who will be referred to as the third party.
2. On 10 August 1993, the applicant made an FOI access request to the GCCC for "any document tending to identify the person referred to in the first paragraph of the Town Clerk's letter to me dated 2nd August, 1993 (copy attached)". The relevant paragraph of the Town Clerk's letter to the applicant dated 2 August 1993 is in the following terms:

"Thank you for your further letter of the 23rd July, 1993, seeking the name of the person who complained regarding 'the length of grass on the Esplanade at 27th Avenue', Palm Beach, addressed to Alderman McDonald".
3. By decision of Mr N J Garnham (who is described in the relevant letter as the GCCC's FOI Co-ordinator and Decision-Maker), the applicant was granted partial access to the one document identified by Mr Garnham as falling within the terms of her FOI access request. The applicant was refused access to the name and residential telephone number of the third party as recorded on that document, on the basis that it was exempt matter under s.42(1)(b) and s.42(1)(f) of the FOI Act. In accordance with s.52 of the FOI Act, the applicant applied for internal review of Mr Garnham's decision. The internal review was undertaken by Mr R E M Towson, Deputy Town Clerk of the GCCC. By decision dated 8 September 1993, Mr Towson affirmed the initial decision of Mr Garnham.
4. On 23 September 1993, Mrs Byrne applied to the Information Commissioner for review of Mr Towson's decision of 8 September 1993.

The Matter in Issue

5. The matter in issue in the present external review is comprised solely of the name and residential telephone number of the third party as recorded on a memorandum dated 20 May 1992 from Ms D J McDonald, Alderman for Division 9 of the GCCC, to Mr B McGinnity, the Chief Engineer of the GCCC (the Memorandum). The applicant has been given access to the Memorandum, subject to the deletion of the third party's name and telephone number. The Memorandum is in the following terms:

"Mowing Required Esplanade 27th Ave

Rory

[name and telephone number of the third party deleted] has complained about the length of grass on the Esplanade at 27th Ave.

Kindly contact him for information on exact location.

Please attend to as soon as possible.

Thanks,

Daph"

6. There are also several notations on the Memorandum which appear to have been made by Council officers, including a request from one officer to another that action be taken about the complaint, and a notation that the appropriate action had been "completed".

The External Review Process

7. Following examination of the Memorandum, I was not satisfied that the exemptions relied upon by the GCCC, namely s.42(1)(b) and s.42(1)(f), were applicable in this case. I requested that the GCCC precisely identify the law in relation to the enforcement or administration of which (for the purposes of s.42(1)(b)) the third party was said to be a confidential source of information. I also requested that the GCCC precisely identify the lawful method or procedure for protecting public safety, the maintenance or enforcement of which (for the purposes of s.42(1)(f)) was at stake in the present case. Correspondence was received from the GCCC in response to my request on 7 October 1993 and 8 November 1993, the relevant details of which are discussed below at paragraphs 14 and 18.
8. Examination of the Memorandum did, however, cause me to form the preliminary view that the name and residential telephone number of the third party comprise exempt matter under s.44(1) of the FOI Act. I wrote to the applicant setting out my preliminary view in that regard, and setting out reasons in support of that view. In that letter I extended to the applicant the opportunity to provide me with a written submission addressing the issue of whether or not the third party's name and telephone number comprise exempt matter under the provisions of the FOI Act.
9. By letter dated 11 January 1994, the applicant advised me that she did not accept my preliminary view as previously communicated. The applicant made the following submissions in support of her case:

"Your letter seems to accept that there is nothing in the grounds raised by Council officers against my application. I would have hoped that, having reached that conclusion, you would have required the Council to divulge the information. I am disappointed to discover that, although you think I was right and the Council officers were wrong, you have perceived yet another potential obstacle to access.

I have considered your letter and the enclosure. Having done so, I ask you to reconsider your preliminary view that s.44(1) is a satisfactory basis for denying access.

May I remind you of some basic facts.

1. *The complaint has no private aspect. It was made to a public authority with the object of having that authority do work on public land.*
2. *The person who complained is not shown to have been affected in the use or enjoyment of his or her property by the grass, nor to have used the land for*

any purpose.

3. *As your letter reveals, the disclosure refused is only of (i) the name of the person who made the complaint; and (ii) that person's telephone number. He or she is not identified by another description or by reference to a fact or personal relationship which involves a disclosure of that person's 'affairs'. For example, there is no reference to a bank account or to a document held by the Council to hint at a confidential or private matter.*

You see it as important that, to use your words, 'The complaint was made as a private citizen and was not made by the third party in the context of his performance of some public duty'. I accept that the complaint was made by and as a private citizen. People who deal with governments usually are private citizens. It cannot be that communications from private citizens to governments naming the citizen necessarily mean that the name of the person complaining relates to the 'personal affairs' of that citizen. I suggest that the view set out in paragraph 88 of the Reasons for Decision concerning Decision No. 93006 is apposite. There you say you agree with the New South Wales Court of Appeal that a name alone does not ordinarily fall within the meaning of the phrase 'personal affairs'. You refer to a quotation that:

'A person's name would not, I think, ordinarily be, as such, part of his personal affairs. It is that by which, not merely privately but generally, he is known.'

At least with respect to the name, if not as to the telephone number, I submit that the identity of the person who made this complaint is not part of his or her personal affairs (as there is no suggestion that the name of the person who made the complaint is not his or her true name).

As to your reference to the fact that the public duty in question was not that of a private citizen, I agree. It was not his (or her) public duty. He had no public duty to perform. But the local authority did; and it was asked by the person who made the complaint to perform such a public duty. I am afraid I cannot accept that the fact that a private citizen had no public duty to perform can assist in your decision whether in this instance the name of the person who made the complaint amounts to that person's 'personal affairs'.

If you apply the decisions referred to in paragraphs 86 and 88 of your Decision No. 93006 you will, I submit, decide that:

- (a) generally speaking, the name of a person who makes a complaint of the kind involved here cannot be regarded as a part of 'personal affairs';*
- (b) it is not to the point that the duty was to be performed by the local authority and not by the person making the complaint;*
- (c) further, it does not matter that the complaint was general and did not make reference to any other individual or to the property of any other individual.*
- (d) there is nothing special in this instance to take this case out of the ordinary rule;*

Perhaps the telephone number gives rise to different considerations; but that could only be so if the telephone number is not listed in the directory against the name of the person who made the complaint. If it is listed, then that is the number by which, not merely privately but generally, he is known; and Perrin's case would then mean that the number should also be disclosed. I accept, however, that you might revise your decision only to the extent of requiring the name to be divulged."

10. The applicant's references to Decision No. 93006 are references to my reasons for decision in *Re Stewart and Department of Transport* (Information Commissioner Qld, Decision No. 93006, 9 December 1993, unreported).
11. Following receipt of the applicant's submission, a member of my investigative staff telephoned the third party to explain the nature of the review being conducted under Part 5 of the FOI Act, and to ascertain whether the third party was prepared to consent to the applicant obtaining access to the matter in issue, which would identify the third party as the person who had complained to Alderman McDonald about the length of grass on the Esplanade at 27th Avenue. (It is open to a person to consent to the disclosure of items of information concerning his or her personal affairs, either generally or to a particular applicant. Such a consent would be relevant to the exercise of an agency's discretion under s.14 or s.28 of the FOI Act to release information, even though it may technically qualify as exempt matter.) However, the third party objected to the disclosure of the identifying material. The third party had no idea who the applicant was, and could not understand why the applicant would want access to the name and telephone number.
12. The applicant's motive for seeking access to the matter in issue is, of course, irrelevant (except in circumstances where the matter in issue concerns the applicant's personal affairs and s.6 of the FOI Act applies - but that is not the case here). The question of whether the matter in issue is exempt is to be approached on the basis that disclosure could be to any member of the public.

Exemptions Claimed by the GCCC under s.42(1)(b) and s.42(1)(f)

13. The exemptions contained in s.42(1)(b) and s.42(1)(f) of the FOI Act were relied upon by the GCCC to refuse the applicant access to the name and telephone number of the third party, as recorded on the Memorandum. Those provisions are in the following terms:

"42.(1) Matter is exempt matter if its disclosure could reasonably be expected to -

...

(b) enable the existence or identity of a confidential source of information, in relation to the enforcement or administration of the law, to be ascertained; or

...

(f) prejudice the maintenance or enforcement of a lawful method or procedure for protecting public safety ..."

14. In his reasons for decision, Mr Towson did not identify any law (for the purposes of s.42(1)(b)) in respect of the enforcement or administration of which, the third party was said to be a confidential source of information. On two occasions during the review process, I requested Mr Towson to precisely identify the relevant law for the purposes of s.42(1)(b). In a letter dated 8 November 1993, Mr R H Brown, Town Clerk/Chief Executive Officer of the GCCC, responded to my request by making reference to the GCCC's general power to undertake works pursuant to s.30 of the *Local Government Act 1936 Qld* (which Act has subsequently been repealed and replaced by the *Local Government Act 1993 Qld*). Section 30 of the *Local Government Act 1936* was a provision which empowered local authorities to make by-laws on specified subjects and also empowered local authorities to undertake a range of functions which members of the community would recognise as functions commonly associated with the province of local government, including "... generally all works, matters and things in its opinion necessary or conducive to the good rule and government of the area and the wellbeing of its inhabitants". The Town Clerk's letter also referred to the fact that the GCCC administers many by-laws, but did not identify any by-law which governed the mowing of grass in a public place.
15. At paragraphs 36-43 of my decision in *Re McEniery and the Medical Board of Queensland* (Information Commissioner Qld, Decision No. 94002, 28 February 1994, unreported), I discussed the requirement in s.42(1)(b) that the information communicated by a confidential source must relate to the enforcement or administration of the law. In particular, I expressed my opinion that the comments of Jones J (President) of the Victorian Administrative Appeals Tribunal in *Re Croom and Accident Compensation Commission* (1989) 3 VAR 441, at page 453-457, correctly captured the sense of the words "enforcement or administration of the law" as they are used in s.42(1)(b) of the Queensland FOI Act. Jones J stated, in part, as follows:
- "As the Senate Committee points out, s.31 [of the Freedom of Information Act 1982 Vic - a provision which is analogous to s.42 of the Queensland FOI Act] embraces not only agencies involved in the detection, punishment and prevention of criminal law violations but also the enforcement of law through civil and regulatory action by agencies entrusted with that task. It is not confined to the criminal law but encompasses a broad range of areas of the law. The concept of administration of the law is a broad one. It is wider than the concepts of 'investigation' and 'enforcement' but its breadth is limited by the context. What is being addressed by the legislature is administration of the law as a further process to investigation of breaches of the law or the enforcement of the law. As Peter Bayne points out, administration in this context can embrace such functions as the collection of information to monitor compliance."*
16. Further, at paragraph 43 of my decision in *Re McEniery*, I adopted the statement by Young CJ from his judgment in the decision of the Full Court of the Supreme Court of Victoria in *Accident Compensation Commission v Croom* [1991] 2 VAR 322, to the effect that the words "enforcement or administration of the law" require a connection with the criminal law or the process of upholding or enforcing the civil law, with the proviso that the process of upholding or enforcing the civil law can, in appropriate cases, commence with and involve action taken within government agencies.
17. In the present case, there can be no suggestion that the third party is a confidential source of information relating to the criminal law. In my opinion, a law which does no more than empower a government agency to carry out activities for the benefit of the public, as opposed to, for instance, imposing enforceable legal obligations, will not ordinarily be a law which attracts the application of s.42(1)(b) of the FOI Act. The only law specifically identified by the GCCC for the purposes of s.42(1)(b), being s.30 of the *Local Government Act 1936 Qld*, falls into this category so far as the context of the present case is concerned. The information on which a local authority proceeds, in particular instances, in the exercise of a power to mow grass on public land is not, in my opinion,

information which could attract the protection of s.42(1)(b) of the FOI Act. It is not, in my opinion, information in relation to "the enforcement or administration of the law", according to the meaning of that term which is explained above. Since the GCCC has been unable to refer me to a law relevant to the circumstances of this case, the enforcement or administration of which is within the ambit of s.42(1)(b), I am not satisfied that the matter in issue is exempt matter under s.42(1)(b) of the FOI Act.

18. In respect of s.42(1)(f), I requested during the review process that the GCCC precisely identify the lawful method or procedure for protecting public safety, the maintenance or enforcement of which could reasonably be expected to be prejudiced by disclosure of the third party's identity. In his letter dated 8 November 1993, the Town Clerk did not specifically identify a relevant method or procedure but asserted that the Council's cutting of the grass on the Esplanade at 27th Avenue related to public safety in that:

"such long grass is an excellent habitat for vermin and other health injurious infestations, as well as, an excellent camouflage for other physical safety hazards".

The letter went on to observe that:

"The fact that the Council's conventional weed [and long grass] eradication program had been remiss in this instance, was only drawn to Council's attention by this complaint. It is extremely fortunate that it brought to light one of the very things that could seriously injure an adult, and even more so a luckless child trudging through the grass, viz. long-needled cactus. Section 160 of the Health Act provides Council with powers to remove such long grass even from private property. Even more so is Council bound to protect the public on public land in a similar fashion".

19. The only thing revealed by an examination of the Memorandum which could arguably be described as a lawful method or procedure for the protection of public safety, is the procedure by which the GCCC receives and acts upon complaints from members of the public regarding the length of grass in public areas (allowing that long grass can in certain circumstances amount to a health hazard or otherwise constitute a hazard to public safety). It is possible that something as elementary and widely known in the community as the fact that local authorities will receive and act upon complaints from the public as to the existence of hazards to public safety may nevertheless answer the description of "a lawful method or procedure for protecting public safety" for the purposes of s.42(1)(f) of the FOI Act. There is no requirement that a method or procedure be a covert or relatively secret one in order to attract the application of s.42(1)(f), although methods or procedures in that category are more likely to be prejudiced by disclosure of information about them than are methods or procedures which are well known in the community. I note that there was no attempt to claim in this case that the disclosure of the Memorandum, other than the third party's name and telephone number, would prejudice the maintenance or enforcement of a method or procedure for protecting public safety.
20. In my opinion, the maintenance of the procedure referred to would not be prejudiced by the disclosure of the names of individuals who complain about hazards on public land. In contrast to s.42(1)(e), s.42(1)(f) does not refer to prejudice to the "effectiveness of a lawful method or procedure", but to prejudice to the "maintenance or enforcement of a lawful method or procedure". Put at its highest, the GCCC's case must be that persons may be discouraged from making use of the procedure, if they were concerned at the prospect of their identities as complainants being disclosed under the FOI Act. If this proved to be the case, it would be unfortunate, but it still would not amount to prejudice to the maintenance of the procedure - the procedure would remain in place even if fewer people used it (and the procedure is not of its nature one that is enforceable; it is simply a procedure that is available to people wishing to volunteer information). I am therefore not satisfied

that the matter in issue is exempt under s.42(1)(f) of the FOI Act.

21. I can understand persons who complain about hazards to public safety which are situated on private property being concerned at the possible revelation of their identities to the property owners complained against (though at least in such situations there is ordinarily a law whose enforcement or administration would fall within the ambit of s.42(1)(b) - see for example s.160 of the *Health Act 1937 Qld*; for a full examination of the requirements of eligibility for exemption under s.42(1)(b), see my reasons for decision in *Re McEniery*). However, I doubt that disclosure of the third party's identity in this case could reasonably be expected to deter people from complaining about the existence of hazards to public safety situated on public land.
22. As explained at paragraph 8 above, I had communicated a preliminary view to the applicant that the matter in issue was exempt matter under s.44(1) of the FOI Act. In the applicant's submission, she contended that, having not accepted that the exemptions applied by Mr Towson were made out in the present case, I should have required the GCCC to release to the applicant the matter which had been deleted from the Memorandum. However, s.88(2) of the FOI Act provides otherwise: where it is established on external review that the matter in issue is exempt matter, the Information Commissioner has no power to direct that access be given to that matter. Accordingly, notwithstanding that the GCCC has not satisfied me that the matter in issue is exempt under s.42(1)(b) or s.42(1)(f), in the event that I am satisfied that the name and telephone number of the third party comprise exempt matter under any other provision of Division 2 of Part 3 of the FOI Act, I have no power to direct that the applicant be given access to the matter in issue.

Is the Matter in Issue Exempt on a Different Basis?

23. At paragraphs 12-14 of my reasons for decision in *Re McEniery*, I said:
 - "12. *There are at least three possible bases on which a person's identity, or information which would enable a person to be identified, may be exempt from disclosure under the FOI Act. The first was adverted to in paragraph 81 of my reasons for decision in Re R K & C D Stewart and Department of Transport (Information Commissioner Qld, Decision No. 93006, 9 December 1993, unreported); i.e. the ground of exemption in s.44(1) of the FOI Act may permit deletion of names and other identifying particulars or references so as to render a document no longer invasive of personal privacy, thereby removing the basis for claiming exemption under s.44(1) over a wider field of the information contained in the document.*
 13. *The second was explained and applied in my reasons for decision in Re 'B' and Brisbane North Regional Health Authority (Information Commissioner Qld, Decision No. 94001, 31 January 1994, unreported) at paragraph 137. The decision of Yeldham J in G v Day [1982] 1 NSWLR 24 was cited as authority for the proposition that although a person's identity is ordinarily not information which is confidential in quality, the connection of a person's identity with the imparting of confidential information can itself be secret information capable of protection in equity in an action for breach of confidence. Matter of that kind is therefore capable of being exempt matter under s.46(1) of the FOI Act, provided other relevant requirements for exemption are satisfied. In G v Day itself, the plaintiff imparted certain confidential information to a proper authority in circumstances where it must have been understood that the information imparted was likely to become public in the course of a public inquiry, but the court ordered that the plaintiff's identity as the provider of the information be protected from*

disclosure, even though the information itself had since entered the public domain.

14. *The third basis is s.42(1)(b), the terms of which are set out at paragraph 7 above. Section 42(1)(b) refers to a 'confidential source of information' rather than a source of confidential information. Thus, while a confidential source can frequently be expected to supply confidential information (in the sense explained in Re 'B' and Brisbane North Regional Health Authority at paragraph 71) it appears that it is not a necessary requirement to attract the application of s.42(1)(b) that the confidential source has supplied confidential information ...".*

24. I have already explained why I am not satisfied that the matter in issue is exempt matter under s.42(1)(b) of the FOI Act. Neither the GCCC nor the third party has suggested or argued that the matter in issue is exempt matter under s.46(1) of the FOI Act. The information conveyed by the third party to Alderman McDonald was not information of a confidential nature. As I noted at paragraph 65 of my reasons for decision in *Re McEniery*, the question of whether the connection of a person's identity with the imparting of non-confidential information is capable of being categorised as confidential information for the purposes of s.46(1)(a) and (b) is one attended by some uncertainty. This is not the appropriate case in which to attempt to resolve the uncertainty, since there are no indications in the facts and circumstances surrounding the communication of information from the third party to Alderman McDonald which suggest any express or implicit understanding that the third party's identity was to remain confidential, nor that Alderman McDonald and the GCCC should be bound by an equitable obligation of confidence with respect to the identity of the third party. Thus, I could not be satisfied in any event that the matter in issue is exempt matter under s.46(1)(a) or s.46(1)(b).

Application of s.44(1) to the Matter in Issue

25. Paragraph 12 of my reasons for decision in *Re McEniery* (which is set out at paragraph 23 above) referred to paragraph 81 of my reasons for decision in *Re Stewart*, where I made the following comments:

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

26. At paragraph 66 of my reasons for decision in *Re McEniery*, I outlined a potential argument (which was not in fact relied on by either the respondent or the third party/informant in that case) as to how the identity of the informant, who had lodged a complaint with the Medical Board of Queensland concerning Dr McEniery, might qualify for exemption as exempt matter under s.44(1) of the FOI Act:

- "66. *In respect of s.44(1), the argument would be that the fact that the informant made the complaint to the Board is a personal affair of the informant (cf. the passage from Colakovski v Australian Telecommunications Corporation (1991) 100 ALR 111 at p.123 per Heerey J, which is set out in my decision in Re Stewart at paragraph 39). Although the material conveyed in the letter of complaint could not be characterised as information concerning the informant's, or indeed any person's, personal affairs (it is properly to be characterised as information concerning the applicant's professional affairs, and has in fact been released to the applicant) the deletion of material which would identify the informant could be argued to be justified in order to prevent the disclosure of matter that is prima facie exempt, i.e. the personal affair of the informant comprising the fact that it was the informant who made the complaint to the Board. If this argument succeeded in establishing a prima facie case for exemption, it would be necessary to consider the application of the countervailing public interest test incorporated within s.44(1).*
67. *I do not propose to consider the application of s.44(1), which was not relied on by the respondent, and not addressed in evidence or submissions from either participant, but my foregoing comments illustrate its potential application in a comparable situation."*

27. In my opinion, the present case is a comparable situation to that considered in *Re McEniery*, and an appropriate occasion to consider the application of s.44(1) of the FOI Act in such circumstances. For completeness, I should set out the passage from Heerey J's judgment in *Colakovski's* case which is referred to in the preceding passage:

"The fact that the call was made in itself is a personal affair of the caller. The personal affairs of a person are made up of a myriad of 'acts, facts, matters and circumstances'. A single act, such as the making of a telephone call, can be a personal affair. Evidence of the subject matter of the call, for example that it was connected with the caller's duties as a public employee, might compel the conclusion that no question of personal affairs was involved."

28. Sub-sections 44(1) and (2) of the FOI Act provide as follows:

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

(2) Matter is not exempt under subsection (1) merely because it relates to information concerning the personal affairs of the person by whom, or on whose behalf, an application for access to a document containing the matter is being made."

29. In my reasons for decision in *Re Stewart*, 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 the relevant variations thereof) as it appears in the FOI Act (see paragraphs 79-114 of *Re Stewart*). In particular, I said that information concerns the "personal affairs of a person" if it relates to 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:

- family and marital relationships;
- health or ill-health;
- relationships with and emotional ties with other people; and
- domestic responsibilities or financial obligations.

30. At paragraphs 86-90 of my decision in *Re Stewart*, I noted that a person's name, address and telephone number were matters which fall within the grey area, rather than within the core meaning of the phrase "personal affairs of a person". I stated that such information must be characterised according to the particular context in which it appears. In that regard, I quoted the following passage from Lockhart J sitting as a member of a Full Court of the Federal Court of Australia in *Colakovski v Australian Telecommunications Corporation* (1991) 100 ALR 111 (at page 119):

"There is a real question as to whether the name and telephone number can answer the description of 'information relating to the personal affairs' of that person under s.41(1). Viewed as an abstract conception I would be inclined to the view that it could not, but such questions are not considered by Courts in the abstract."

31. Further, as was correctly pointed out in the applicant's submissions, I expressed agreement in my reasons for decision in *Re Stewart* with the decision of the New South Wales Court of Appeal in *Commissioner of Police v the District Court of New South Wales and Perrin* (1993) 31 NSWLR 606 that an individual's name alone does not ordinarily fall within the meaning of the phrase "personal affairs". In particular, I quoted the following comments of Mahoney AJ at paragraph 88 of *Re Stewart*:

"A person's name would not, I think, ordinarily be, as such, part of his personal affairs. It is that by which, not merely privately but generally, he is known."

Since the context being considered in *Perrin's* case involved the names of police officers appearing on reports prepared in the course of performing their police duties, the NSW Court of Appeal had little difficulty in finding that disclosure of the names could not be classified as disclosure of information concerning the personal affairs of the police officers.

32. In the present case, I am not considering the name and telephone number of the third party in isolation, for the purpose of determining whether they comprise exempt matter under s.44(1) of the FOI Act. I am considering them in the context in which they appear in the Memorandum. Their disclosure in that context would identify the third party as a person who made a complaint to the local Alderman about the length of grass on public land.

33. In my opinion the making of that complaint was a personal affair of the third party (*cf.* the passage from Heerey J in *Colakovski's* case set out at paragraph 27 above). The third party was acting in the capacity of a private citizen exercising a citizen's privilege to make a private approach to an elected representative about a matter of concern.

34. There was nothing in the circumstances attending the making of the complaint that might take the making of it out of the sphere of the private aspects of the third party's life and arguably place it in

the public sphere (*cf.* the discussion in *Re Stewart* at paragraphs 60 to 62 about the possible argument that matters widely known in the community or easily verifiable from public records cannot be said to be "personal"). For example, if the third party's identity and complaint had been announced by the third party at a meeting of the GCCC that was open to the public, or published in a letter to the *Gold Coast Bulletin*, it would be arguable that the making of the complaint was a public act rather than a personal affair of the third party, for the purposes of applying s.44(1) of the FOI Act to a record of the complaint in the possession of the GCCC. (The public nature of the making of a complaint would doubtless be relevant in any event to the exercise of the discretion possessed by agencies or Ministers under s.28(1) of the FOI Act as to whether or not to rely on the s.44(1) exemption even if it were available.) I note in this regard what was said by Eames J of the Supreme Court of Victoria concerning s.33(1) (the personal affairs exemption) of the *Freedom of Information Act 1982 Vic* in *University of Melbourne v Robinson* [1993] 2 VR 177 (at p.187):

"The reference to the 'personal affairs of any person' suggests to me that a distinction has been drawn by the legislature between those aspects of an individual's life which might be said to be of a private character and those relating to or arising from any position, office or public activity with which the person occupies his or her time."

The hypothetical examples posed above are arguably illustrations of a "public activity" of the kind referred to in this passage.

35. The fact that the third party in this case was acting in a personal capacity can also be contrasted with the position that would apply if, for instance, the complaint had been made by the Secretary of the local ratepayers association, acting in his or her capacity as such, rather than in a personal capacity, in which case s.44(1) would not apply (see the passage from *Re Anderson and Australian Federal Police* (1986) 4 AAR 414 which is quoted at paragraph 83 of my reasons for decision in *Re Stewart*).
36. While the subject matter of the third party's complaint in this case cannot itself be characterised as information concerning the personal affairs of the third party (it could be described as information concerning local civic affairs), I am satisfied that disclosure of the matter in issue would disclose the fact that the third party made the complaint which is noted in the Memorandum, and I am satisfied that that fact is information concerning the personal affairs of the third party, within the meaning of s.44(1) of the FOI Act.
37. I note that in my decision in *Re Stewart* I accepted that the fact that the applicants in that case had lodged certain complaints with certain government agencies was a matter concerning the personal affairs of the applicants for the purpose of assessing whether an application fee was payable on lodgement of an FOI access request, in accordance with s.29(2) of the FOI Act and s.6 of the *Freedom of Information Regulation 1992 Qld* (see paragraph 119 of *Re Stewart*).
38. The applicant has submitted that the third party's complaint to the local Alderman has "no private aspect". That is true of the subject matter of the complaint itself, which is not exempt matter and has already been released to the applicant. However, for the foregoing reasons, I do not accept the applicant's contention that the name and address of the third party, in the context in which they appear in the Memorandum, do not comprise personal affairs information for the purposes of s.44(1) of the FOI Act. The deletion of the third party's name and residential telephone number may be justified in order to prevent the disclosure of matter which is *prima facie* exempt, i.e. the personal affair of the third party comprising the fact that the third party approached Alderman McDonald requesting action to rectify a matter of concern. The deletion of the name and telephone number allows the Memorandum to be released without intruding upon the third party's personal affairs.

39. The final element of the s.44(1) exemption provision requires that the public interest balancing test incorporated within s.44(1) be considered and applied. I must therefore consider whether disclosure of the third party's name and telephone number would, on balance, be in the public interest.
40. As the matter in issue does not concern the applicant's personal affairs, the applicant is unable to gain any assistance from s.6 or s.44(2) of the FOI Act. The applicant's submissions did not identify any public interest considerations favouring disclosure which might outweigh the public interest in non-disclosure which is inherent in the satisfaction of the *prima facie* test for exemption under s.44(1) (see paragraph 179 of *Re "B" and Brisbane North Regional Health Authority* (Information Commissioner Qld, Decision No. 94001, 31 January 1994, unreported)). If there is a public interest in the accountability of government (in this instance a local authority) in the present case, it has been satisfied by the disclosure which has already occurred of those parts of the Memorandum which reveal that a complaint was received by the GCCC and was acted upon. The disclosure of the matter remaining in issue would not further the public interest in the accountability of the GCCC. Further, as the complaint does not relate to the applicant herself, there is no public interest (in the nature of natural justice) that might favour disclosure of the complainant's identity to the applicant. I find that there is no public interest that might be served by disclosure of the name and telephone number of the third party in the present case and, accordingly, I find that disclosure of the matter in issue would not, on balance, be in the public interest.
41. I find that the name and telephone number of the third party, as recorded on the Memorandum, comprise exempt matter under s.44(1) of the FOI Act.

Conclusion

42. For the foregoing reasons:
- (a) I set aside Mr Towson's decision of 8 September 1993; and
 - (b) I find that the name and telephone number of the third party, as recorded on the Memorandum, comprise exempt matter under s.44(1) of the FOI Act.

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F N ALBIETZ
INFORMATION COMMISSIONER