OFFICE OF THE INFORMATION COMMISSIONER (QLD)

Decision No. 97004
Application S 173/93

Participants:

PRISONERS' LEGAL SERVICE INC.
Applicant

QUEENSLAND CORRECTIVE SERVICES COMMISSION
Respondent

DECISION AND REASONS FOR DECISION

FREEDOM OF INFORMATION - refusal of access - report by a prison inspector following investigation of a fatal assault on a prisoner - whether report contains matter the disclosure of which could reasonably be expected to -

(i) endanger the security of a building, or facilitate a person's escape from lawful custody - application of s.42(1)(g) and s.42(1)(i) of the *Freedom of Information Act 1992* Qld;

(ii) enable the existence or identity of a confidential source of information, in relation to the enforcement or administration of the law, to be ascertained - application of s.42(1)(b) of the *Freedom of Information Act 1992* Qld; or

(iii) prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law - application of s.42(1)(e) of the *Freedom of Information Act 1992* Qld.

FREEDOM OF INFORMATION - refusal of access - whether report contains deliberative process matter falling within the terms of s.41(1)(a) of the *Freedom of Information Act 1992* Qld - whether disclosure of deliberative process matter would, on balance, be contrary to the public interest - consideration of the public interest in accountability of the respondent for the death, by fatal assault, of a prisoner in its custody - whether disclosure of identifying details of prison officers adversely referred to in the report, but not made subject to further disciplinary action, would be contrary to the public interest in fair treatment of the prison officers concerned - application of s.41(1) of the *Freedom of Information Act 1992* Qld.

FREEDOM OF INFORMATION - refusal of access - matter claimed to have been communicated in confidence - whether exempt matter under s.46(1)(a) or s.46(1)(b) of the *Freedom of Information Act 1992* Qld.

FREEDOM OF INFORMATION - refusal of access - whether report contains information which concerns the personal affairs of certain prisoners and/or members of their families - whether disclosure of personal affairs information would, on balance, be in the public interest - application of s.44(1) of the *Freedom of Information Act 1992* Qld.

i

Freedom of Information Act 1992 Qld s.41(1), s.41(1)(a), s.41(1)(b), s.41(2), 41(2)(b), s.42(1)(a), s.42(1)(b), s.42(1)(c), s.42(1)(d), s.42(1)(e), s.42(1)(g), s.42(1)(i), s.44(1), s.46(1)(a), s.46(1)(b), s.48(1), s.52, s.52(6), s.81
Freedom of Information Act 1982 Vic s.31(1)(c)
Freedom of Information Act 1982 Cth
Corrective Services Act 1988 Qld s.13(1), s.17, s.27, s.29(1)(b), s.29(1)(c), s.29(2)
Corrective Services (Administration) Act 1988 Qld s.20, s.43, s.46
Criminal Law (Rehabilitation of Offenders) Act 1986 Qld
Criminal Law (Sexual Offences) Act 1978 Qld
Juvenile Justice Act 1992 Qld s.62(1)
Oaths Act 1867 Qld

Attorney-General (NSW) v Quin (1989-90) 170 CLR 1
"B" and Brisbane North Regional Health Authority, Re (1994) 1 QAR 279
Cairns Port Authority and Department of Lands, Re (1994) 1 QAR 663
Department of Health v Jephcott (1985) 62 ALR 421
Eccleston and Department of Family Services and Aboriginal and Islander Affairs, Re (1993) 1 QAR 60
Harris v Australian Broadcasting Corporation (1983) 50 ALR 551
Hudson as agent for Fencray Pty Ltd and Department of the Premier, Economic and Trade Development, Re (1993) 1 QAR 123
J v L & A Services Pty Ltd [1995] 2 Qd R 10
Kahn and Australian Federal Police, Re (1985) 7 ALN N190
Kavvadias v Commonwealth Ombudsman (1984) 2 FCR 64
Lapidos and Office of Corrections, Re (1989) 4 VAR 31
Lapidos and Office of Corrections (No. 3), Re (1990) 4 VAR 150
McEniery and the Medical Board of Queensland, Re (1994) 1 QAR 349
Murphy and Queensland Treasury & Ors, Re (Information Commissioner Qld, Decision No. 95023, 19 September 1995, unreported)
O'Sullivan and Victoria Police Force (No. 5), Re (Victorian AAT, No. 1989/39673, Fricke J, 23 March 1990, unreported)
Pasamonte and Victorian Police, Re (Victorian AAT, No. 1992/35274, Deputy President Dimtscheff, 18 May 1993, unreported),
Pope and Queensland Health, Re (1994) 1 QAR 616
SRD v Australian Securities Commission & Anor (1994) 123 ALR 730
Shaw and The University of Queensland, Re (Information Commissioner Qld, Decision No. 95032,
18 December 1995, unreported)
Stewart and Department of Transport, Re (1993) 1 QAR 227
"T" and Queensland Health, Re (1994) 1 QAR 386
Trustees of the De La Salle Brothers and Queensland Corrective Services Commission, Re (Information Commissioner Qld, Decision No. 96004, 4 April 1996, unreported)

DECISION

1. I set aside the decision under review (which is identified in paragraph 2 of my accompanying reasons for decision).

2. In substitution for it, I decide that, after taking into account the matter in the document in issue to which the applicant no longer wishes to pursue access (in accordance with concessions by the applicant which are noted in paragraphs 8 and 113 of my accompanying reasons for decision) -

   (a) the matter in issue which is identified in the findings stated at the ends of paragraphs 21, 49, 96, 110 and 115 of my accompanying reasons for decision is exempt matter under the *Freedom of Information Act 1992* Qld; and

   (b) the balance of the matter remaining in issue is not exempt matter under the *Freedom of Information Act 1992* Qld, and the applicant therefore has a right to be given access to it under the *Freedom of Information Act 1992* Qld.

Date of decision: 27 March 1997

.....
F N ALBIETZ
INFORMATION COMMISSIONER

TABLE OF CONTENTS

Page

OFFICE OF THE INFORMATION COMMISSIONER (QLD)

Decision No. 97004
Application S 173/93

Participants:

PRISONERS' LEGAL SERVICE INC.
Applicant

QUEENSLAND CORRECTIVE SERVICES COMMISSION
Respondent

REASONS FOR DECISION

Background

1. The applicant seeks review of the respondent's decision to refuse the applicant access, under the *Freedom of Information Act 1992* Qld (the FOI Act), to a report prepared by the respondent's Director of Audit and Investigations (Mr Wayne Shennan), into the death of a prisoner, David Eames, following an assault in the Townsville Correctional Centre gymnasium on 28 October 1991. The document in issue will be referred to as 'the Eames Report'.

2. On 5 May 1993, the Prisoners Legal Service Inc. (the PLS) applied to the Queensland Corrective Services Commission (the QCSC) for access to a copy of the Eames Report. By letter dated 31 May 1993, Ms P Cabaniuk, on behalf of the QCSC, informed the PLS of her decision to refuse access to any part of the Eames Report (described as consisting of a 23 page report, plus annexures) on the basis that it comprised exempt matter under a combination of the following exemption provisions in the FOI Act: s.42(1)(a), s.42(1)(b), s.42(1)(c), s.42(1)(d), s.42(1)(e), s.42(1)(g), s.44(1), s.46(1)(a) and s.48(1). On 28 June 1993, the PLS applied for internal review of Ms Cabaniuk's decision, in accordance with s.52 of the FOI Act.
On 2 September 1993 (having received no response from the QCSC to the application for internal review), the PLS applied to me for review, under Part 5 of the FOI Act, of the decision which the QCSC was deemed to have made, in accordance with s.52(6) of the FOI Act, affirming the original decision of Ms Cabaniuk.

3. The Eames Report was prepared by Mr Shennan pursuant to his appointment as an inspector under s.27 of the *Corrective Services Act 1988* Qld. The powers and functions of such an inspector are set out in Part 2, Division 4 of the *Corrective Services Act*, which (so far as relevant for present purposes) includes the following provisions:

27. Appointment of inspectors.

(1) The Commission [i.e. the QCSC] *may by instrument appoint any person, whether or not he is an officer of the Commission or is employed in the public service of the State, as an inspector for the purpose of advising upon or inquiring into any matter relating to corrective services.*

(2) The instrument of appointment of an inspector shall specify

(a) the term of appointment;

(b) the purpose for which he is appointed;

(c) any powers conferred upon the inspector;

(d) such other matters as are determined by the Commission.

(3) An inspector shall give the Commission his advice in writing or, as the case may be, a written report containing the results of his inquiry.

...

29. Powers of inspector.

(1) An inspector

(a) shall at any time have access to any prison or community corrections centre;

(b) may at any time require a prisoner or an officer or employee of the Commission to provide any information or answer any question relevant to any inquiry being conducted by the inspector;

(c) shall have access to and may examine any document or stored information kept under or for the purposes of this Act or the Corrective Services (Administration) Act 1988 *and require that he be provided with a copy of any document or with any part of any stored information in a manner specified by him;*

(d) shall have such of the powers of the Director of Custodial Corrections or the Director of Community Corrections as are conferred upon him by the Commission.

(2) The Governor in Council may by Order in Council declare that an inspector shall have such of the powers, authorities, rights, privileges, protection and jurisdiction of a Commission of Inquiry under the Commissions of Inquiry Act 1950-1988 *as are specified in the Order in Council.*

30. Privacy of communication with inspector.

An inspector may, as he thinks fit, conduct any interview with a prisoner or a person who is subject to a parole order, a probation order, a community service order or a fine option order out of the hearing of any officer or employee of the Commission.

4. I note that there is no suggestion in the evidence and written submissions lodged on behalf of the QCSC that the powers of a Commission of Inquiry were bestowed on Mr Shennan by the Governor in Council, under s.29(2) of the *Corrective Services Act*. The following parts of the instrument appointing Mr Shennan as an inspector under s.27 of the *Corrective Services Act* are relevant for present purposes:

> *The appointment is made for the purposes of investigating and reporting upon the serious injury and subsequent death of prisoner EAMES, D W on 28 October 1991. Without limiting the scope or generality of your inquiry you are to seek evidence and report upon the following matters:*
>
> *(a) how, when and why the incident occurred and the circumstances surrounding the occurrence;*
>
> *(b) whether all relevant orders were complied with and in the event of non-compliance, who failed to comply and to what extent;*
>
> *(c) whether there was any breach of procedures;*
>
> *(d) whether it is considered necessary to:*
>
> *(i) issue or amend instructions;*
> *(ii) modify training procedures; and*
> *(iii) modify facilities or equipment;*
>
> *(e) whether any immediate measures are considered necessary to prevent a recurrence of the incident;*
>
> *(f) whether the occurrence was caused or contributed to by any weakness in the system and method of control;*
>
> *(g) obtain signed statements from any person or persons who are able to give material information as to the time, date, place and circumstances of the incident; and*
>
> *(h) recommend what disciplinary, remedial or other action should be taken.*

External review process

5. A copy of the Eames Report was obtained from the QCSC and examined. A member of my staff conferred with Ms Cabaniuk and Mr Shennan of the QCSC in February 1994, following which it became clear that the QCSC was not prepared to make any concessions with respect to disclosure of some parts of the Eames Report. Directions were then given to the QCSC to lodge any evidence and written submissions on which it wished to rely to support its case for exemption in this external review, and also to clearly apportion exemption provisions to particular segments of the Eames Report (something which had not been done in the QCSC's

original decision). Unfortunately, Mr Shennan, the QCSC's key witness, was ill for an extended time, which delayed the preparation of the QCSC's evidence and submissions.

6. Following the death of Mr Eames, four prisoners were charged with his murder. There was a committal hearing in the Townsville Magistrates Court in May 1992, followed by a trial before Cullinane J and a jury in the Supreme Court at Townsville in December 1992. (At the commencement of the committal, the Crown Prosecutor indicated that the prosecution would not offer any evidence against one of the prisoners who had been charged, and the proceedings against that prisoner were dismissed.) The result of the trial was that the three prisoners tried for the murder of Mr Eames were acquitted. Transcripts of the committal and the trial (i.e., the record of evidence given in open court during those proceedings) were obtained and examined for the purpose of comparing them to the material contained in the Eames Report.
The results of the comparison were forwarded to the QCSC for comment, during the course of the QCSC's preparation of its written submissions, with the suggestion that the QCSC may not wish to press claims for exemption in respect of matter in the Eames Report which corresponded to evidence given in open court during the course of the committal and/or trial.
The QCSC, however, refused to disclose any part of the Eames Report to the PLS.

7. By letter dated 15 June 1994, the QCSC lodged its written submission, accompanied by a schedule apportioning the exemption provisions relied upon by the QCSC to particular segments of the Eames Report, and a statutory declaration of Mr Wayne Edward Shennan dated 10 June 1994. I note that the QCSC no longer sought to rely on s.42(1)(a), s.42(1)(d) or s.48 of the FOI Act (which had been relied upon in Ms Cabaniuk's original decision).

8. The material lodged by the QCSC was forwarded to the PLS for response, subject to a number of deletions of matter claimed by the QCSC to be either exempt or confidential. I am satisfied that, despite that editing, the substance of the QCSC's case has been adequately conveyed to the PLS. I drew the attention of the PLS to the schedule apportioning exemption provisions to particular segments of the Eames Report, and requested the PLS to indicate whether it wished to obtain the entire Eames Report (including the large number of attachments to that report) or merely the body of the report containing Mr Shennan's analysis of the evidence he had obtained, plus the recommendations made by Mr Shennan. The PLS subsequently indicated that it wished to press for access only to the analysis and recommendations in the Eames Report. This very reasonable concession significantly narrowed the extent of the matter in issue in this external review. The result of that concession is that the matter remaining in issue in this external review consists of a cover page and 22 page report by Mr Shennan. The annexures to the Eames Report (and the index describing them), which largely comprise statements obtained by Mr Shennan and copies of documents he obtained from the Townsville Correctional Centre (being the raw material on which his report was based), are no longer in issue in this review.

9. Following the PLS's concession that it only wished to press for access to the analysis and recommendations contained in the Eames Report, the QCSC was asked to indicate whether it would be prepared to release any part of that material to the PLS. The QCSC indicated, by letter dated 5 August 1994, that it was not prepared to release any part of the analysis and recommendations in the Eames Report. The PLS was informed accordingly, and, under cover of a letter dated 23 September 1994, the PLS lodged a written submission in support of its case. The PLS also asked that I take into account, so far as they remained relevant to the matter still in issue, the detailed submissions it lodged with the QCSC in support of its application for internal review.

10. A number of custodial correctional officers at the Townsville Correctional Centre were adversely referred to in the Eames Report and Mr Shennan had recommended that disciplinary

action be taken against a number of officers. The PLS confirmed to me that it sought access to Mr Shennan's recommendations concerning disciplinary action against officers of the QCSC. Procedural fairness required that each officer who was adversely referred to in the Eames Report be consulted and given the opportunity to argue against disclosure of the adverse material: see s.74 and s.78 of the FOI Act. I wrote to each officer (there were ten in all), providing the following material:

(a) the FOI access application made by the PLS;

(b) the original decision made by Ms Cabaniuk;

(c) the application for internal review of that original decision;

(d) the application made by the PLS for external review;

(e) the evidence and submissions lodged with me by the QCSC;

(f) the submission lodged with me by the PLS;

(g) a copy of Part 3, Division 2 of the FOI Act (containing the exemption provisions available under the FOI Act);

(h) those parts of the Eames Report which adversely referred to the officer (each officer was provided only with those parts which adversely referred to him, and not to parts which adversely referred to other officers);

(i) where an officer had given evidence in the Supreme Court trial, which acknowledged that disciplinary action had been taken against him by the QCSC, a copy of that part of the trial transcript.

11. Each officer was given the opportunity to apply to be a participant in this review, and to lodge evidence and submissions in support of any claim for exemption that an officer wished to make, in respect of matter in the Eames Report which adversely referred to him. Most of the officers responded, with most of them objecting to disclosure of the material adverse to them (though some indicated they would be satisfied with the deletion of any identifying details in respect of them).

12. The QCSC was informed of the responses received from QCSC officers and former officers. The PLS was also informed of the responses, although without disclosing matter claimed to be exempt, or the identities of the officers concerned. Both the QCSC and the PLS lodged short points of reply to the responses received from the officers.

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

13. In light of the QCSC's written submissions, the following provisions of s.42(1) of the FOI Act are relevant:

> ***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*
>
> *(c) endanger a person's life or physical safety; or*
>
> *...*
>
> *(e) prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law (including revenue law); or*
>
> *...*
>
> *(g) endanger the security of a building, structure or vehicle; or*
>
> *...*
>
> *(i) facilitate a person's escape from lawful custody; or*
>
> *... .*

14. In my reasons for decision in *Re "B" and Brisbane North Regional Health Authority* (1994) 1 QAR 279, at pp.339-341 (paragraphs 154-160), I analysed the meaning of the phrase "*could reasonably be expected to*" (which governs each paragraph of s.42(1) of the FOI Act), by reference to relevant Federal Court decisions interpreting the identical phrase as used in exemption provisions of the *Freedom of Information Act 1982* Cth. Those observations are also relevant here. In particular, I said in *Re "B"* (at pp.340-341, paragraph 160):

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

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

Application of s.42(1)(g) and s.42(1)(i) of the FOI Act

15. The QCSC has submitted as follows (from p.5 of its written submission):

> *The* [Eames Report] *is interspersed with references to the gymnasium, the procedures and compliances with Orders and Rules, prisoner movement and supervision, security and safety procedures. Disclosure could endanger the security of the prison. This information is considered to be confidential and extremely sensitive.*

The report covers in detail the scene of the crime and discusses the security aspects of the area which is considered to be confidential. The method of

> *assault is also discussed to a great extent which is interspersed with information relating to the issue of security.*
>
> *It is important to ensure that prison security remains confidential so as not to prejudice the safety of the prison. It is submitted that this also extends to the exemption which states that disclosure of the matter could reasonably be expected to facilitate a person's escape from lawful custody* [s.42(1)(i) of the FOI Act]. *Knowledge of prison layout, prisoner involvement, officers rounds, etc could facilitate this.*

16. I also note that in paragraph 7 of his statutory declaration, Mr Shennan stated:

> *Another major concern is that in many cases information is disclosed which is clearly likely to adversely affect the Centre in question and indeed some or all similar Centres. This is particularly the case in respect of security, safety, and operational routine. Public disclosure of information contained in these reports is likely to be prejudicial to the QCSC and indeed to the persons involved, most of whom are usually not the perpetrators.*

17. Unfortunately, evidence which is as bare as the quoted paragraph is of no great assistance to me in my deliberations, because of its lack of particularity. It is also not clear whether Mr Shennan is referring to the annexures to the Eames Report, or to the body of the report (and if so, which segments). Some assistance is gained from the schedule attached to the QCSC's submission which indicates that s.42(1)(g) is claimed to apply to paragraphs 8, 12, 13, 24-32, 36 and 37 of the Eames Report.

18. In response, the PLS has submitted (at p.5 of its written submission):

> [The PLS] *is in possession of all Commission and General Manager rules relating to each Queensland Correctional Centre. We are aware that laws relating to security and safety procedures are not to be made available to inmates and are in fact not even provided to* [the PLS]. *We have no problem with this in respect of the Commission's need for protection of security measures. We do however have copies of the rules relating to the conduct and movement of* [prisoners in relation to] *Correctional Centre Gymnasiums and these rules are also readily available to inmates. They therefore cannot contain confidential and extremely sensitive information. In any case why would the procedures for supervision of a gymnasium be in any way confidential and/or sensitive information. If however the recommendations and analysis of Mr Shennan refer to confidential and extremely sensitive information relating to security and safety measures, we would not expect to be given that information and would be happy for it to be obliterated from the document.*

19. In its submission to the QCSC in support of its application for internal review (at p.10), the PLS had argued:

> *We believe that the subject document contains factual matter regarding the circumstances of a murder which took place in a prison gymnasium. It is absurd to suggest that if prisoners or the public are informed by findings of fact in the document which would suggest that the crime occurred because there was no supervision in the prison gymnasium, access to such information is likely to endanger the security of that building or place. If the document*

> *makes findings that it was the lack of supervision which permitted the offence to occur, then it could be implied that the best form of protection of that place would be to provide adequate staffing and supervision. If such a recommendation was contained in the document and it was released under the Act, it could only assist in the security of the area.*

20. In any case in which reliance on s.42(1)(g) or s.42(1)(i) is invoked, the crucial judgment to be made is whether or not the prejudicial consequences contemplated by the terms of those exemption provisions could reasonably be expected to follow, as a consequence of disclosure of the particular matter in issue. There may be instances where the nature of the matter in issue is such that it is self-evident that its disclosure could reasonably be expected to have the prejudicial consequences contemplated by s.42(1)(g) or s.42(1)(i) of the FOI Act (such is the case with the matter identified in paragraph 21 below). Ordinarily, however, in a review under Part 5 of the FOI Act, it will be incumbent on the respondent agency to explain to me (if necessary, in a submission kept confidential from the applicant for access) the precise nature of the prejudice that it expects to be occasioned by disclosure of the particular matter in issue, and to satisfy me that the expectation of prejudice is reasonably based. Although, in many instances, I will not be able to refer in my reasons for decision to the precise nature of the apprehended prejudice (as to do so would subvert the reasons for claiming an exemption in the first place), I must, in any event, be satisfied that the agency has discharged its onus under s.81 of the FOI Act of establishing all requisite elements of the test for exemption.

21. Noting the concession made by the PLS in the last sentence of the extract from its submission quoted at paragraph 18 above, I am satisfied that disclosure of the following parts of the Eames Report could reasonably be expected to endanger the security of a building or structure, or to facilitate a person's escape from lawful custody, and hence that they comprise exempt matter under either or both of s.42(1)(g) and s.42(1)(i) of the FOI Act:

    (a) paragraph 31, except for the first two lines of that paragraph;
    (b) paragraph 37, except for the last 11 words of that paragraph; and
    (c) subparagraph e. and subparagraph i. of paragraph 45.

22. Based on my examination of the other parts of the Eames Report claimed to be exempt under s.42(1)(g), and the evidence and submissions lodged by the QCSC, I am not satisfied that the tests for exemption under s.42(1)(g), or under s.42(1)(i), of the FOI Act are established. This material largely refers to non-compliance with prescribed safety and security procedures which, of their nature, must have been made known (or else must have been obvious) to the prison population at Townsville Correctional Centre. On the material before me, I cannot identify any reference to a safety or security procedure the effectiveness of which might be prejudiced by disclosure of the parts of the Eames Report now under consideration.

23. Paragraphs 8, 12 and 13 of the Eames Report contain detail about the fatal assault on Mr Eames. This material has been thoroughly traversed in evidence given at the committal hearing in the Townsville Magistrates Court and/or in the Supreme Court jury trial. I am not satisfied that there is any reasonable basis for expecting that disclosure of those paragraphs could have the prejudicial consequences referred to in s.42(1)(g) or s.42(1)(i) of the FOI Act.

24. The matter in the Eames Report which refers to the gymnasium (the scene of the fatal assault on Mr Eames), and the security aspects of that area, deals principally with the need for control of prisoner movements to and from the gymnasium, and for supervision of prisoners using gymnasium equipment. I am not satisfied that disclosure of this matter could reasonably be expected to endanger the security of a building, structure or vehicle, or to facilitate a person's escape from lawful custody.

25. There is matter in the Eames Report about the movements of particular prisoners on the day of the fatal assault (it appears in paragraphs 8, 12 and 13 of the Eames Report, which I have already dealt with above), and about general systems for control of prisoner movements. The nature of the latter information is such that it must have been generally known to the prison population at the Townsville Correctional Centre. I am not satisfied that disclosure of this matter could reasonably be expected to endanger the security of a building, structure or vehicle, or to facilitate a person's escape from lawful custody.

26. There is matter in the Eames Report in which Mr Shennan expresses opinions about the extent of compliance with orders and rules. The authority of a General Manager of a custodial correctional centre to issue rules is dealt with in s.17 of the *Corrective Services Act* as follows:

> *17.(1) The general manager of a prison may make rules (called the "General Manager's Rules"), not inconsistent with this Act or the* Corrective Services (Administration) Act 1988 *(or regulations made under either Act) or the Commission's Rules, in respect of the management and security of the prison and for the safe custody and welfare of prisoners detained in or who, for the time being, may be detained in the prison.*
>
> *(2) The general manager shall cause the General Manager's Rules to be brought to the notice of persons to whom they apply.*
>
> *(3) Rules made under this section may differ according to the persons or classes of persons to whom they are expressed to apply.*

27. The submission made by the PLS is consistent with that provision, in that the PLS says it has been provided with General Manager's Rules relating to Queensland correctional centres, but has not been provided with rules relating to security and safety procedures. The QCSC has not lodged any evidence to assist me in determining which of the rules referred to in the Eames Report have been brought to the attention of prisoners, as persons to whom those rules apply (though it is clear from the nature of the discussion in the Eames Report that many of them must fall into this category), and which have not. However, I consider that no significance attaches to this distinction, since the rules themselves have been referred to only by number (the text of the rules is not set out in the body of the report), and there is nothing in Mr Shennan's discussion of the extent of compliance with rules which, if disclosed, could reasonably be expected to have any of the prejudicial consequences contemplated in s.42(1)(g) or s.42(1)(i) of the FOI Act. I am not satisfied that disclosure of any of the material in the Eames Report which deals with rules or orders, or the extent of compliance with them, could reasonably be expected to endanger the security of a building, structure or vehicle, or facilitate a person's escape from lawful custody.

28. Paragraphs 32 and 36 of the Eames Report are of a different character, in that they, in essence, make recommendations for change to some aspects of the administration of the Townsville Correctional Centre, and/or note changes that had been set in train following the death of Mr Eames. Some of this matter (e.g., subparagraphs 36b. and 36d.) is of such a nature that it must necessarily have been known to the prison population at the Townsville Correctional Centre, and the balance is of such a nature that there could not, in my opinion, be any reasonable basis for expecting that its disclosure could endanger the security of a building, structure or vehicle, or facilitate a person's escape from lawful custody.

29. Apart from the matter identified in paragraph 21 above, I find that the matter contained in the Eames Report does not satisfy the test for exemption under s.42(1)(g), or s.42(1)(i), of the FOI Act.

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

30. The QCSC asserts that s.42(1)(b) of the FOI Act (the terms of which are set out at paragraph 13 above) applies to all, or parts of, paragraphs 5, 6, 8, 12, 13, 19, 20, 22, 24 and 27-32 of the Eames Report. My views on the proper interpretation and application of s.42(1)(b) of the FOI Act are set out in detail in *Re McEniery and Medical Board of Queensland* (1994) 1 QAR 349, where I said (at pp.356-357, paragraph 16):

> *Matter will be eligible for exemption under s.42(1)(b) of the FOI Act if the following requirements are satisfied:*
>
> *(a) there exists a confidential source of information;*
>
> *(b) the information which the confidential source has supplied (or is intended to supply) is in relation to the enforcement or administration of the law; and*
>
> *(c) disclosure of the matter in issue could reasonably be expected to*
>
> *(i) enable the existence of the confidential source of information to be ascertained; or*
> *(ii) enable the identity of the confidential source of information to be ascertained.*

31. The submissions of the QCSC in respect of the s.42(1)(b) exemption are as follows (from p.4 of its written submission):

> *This report also contains confidential sources of information in relation to the enforcement and administration of the law. Prison management is considered to be encompassed within the definition of "enforcement and administration of the law". Disclosure of the report would enable the existence and identity of this confidential source of information to be ascertained.*
>
> *Further, deletion of the informants' names would not guarantee anonymity as it would be possible to deduce the identity of the informant from the circumstances. This could prejudice their personal safety and unnecessarily create tension.*
>
> *The inspector evaluates the information and refers to the names of inmates and/or officers who provided the information. It is crucial that the Inspector receives as much information as possible so that the report gives full account of the incident. The Inspector's report relies heavily upon information provided on a confidential basis.*
>
> *... It is evident from the annexures* [to the report itself, i.e., the statements of prisoners and custodial correctional officers] *that the Inspector is capable of obtaining a full account from officers and prisoners. Disclosure would prejudice this method and procedure of investigating the incident.*
>
> *It is crucial that the internal investigation by the Inspector remain uninhibited.*

32. Paragraph 6 of Mr Shennan's statutory declaration appears to be relevant to several of the exemption claims made by the QCSC, including s.42(1)(b):

> *I should stress that in these investigations and, in particular, those affecting vicious assaults resulting in deaths, that information volunteered by witnesses is done so by them on the basis of confidentiality. The information provided is expected to remain "in house" and is not to be used in the public forum. In many serious incidents which are investigated we, and officers of the Queensland Police Service, rely very heavily on volunteered information from staff and, in particular, inmates. Open forum disclosure of such information may well be prejudicial to the health and safety of the informants.*
> *Particularly, inmates and to a lesser extent, officers of the QCSC. It is my experience that in all criminal matters where an operational investigation is also conducted that should it become knowledge or accepted practice that information volunteered in a confidential manner is likely to be publicly disclosed in, for example, courts, inquests and the media, that such sources will not only dry up but may indeed result in misleading information being provided to deflect information from the informant.*

33. In response to Mr Shennan's evidence, the PLS submitted (at p.4 of its written submission):

> *We find it difficult to accept that an inmate, officer or administrative person who provides information to either the Police or a QCSC investigator in a criminal matter does not realise that they are placing themselves in a position where they may possibly be called to give evidence either before a Court or Coronial Inquiry. The prison environment is not that shallow and naive. As for the possibility of misleading information being provided, this already happens, with prisoners changing their statements prior to trial or simply stating that they "do not know anything" or they "did not see anything".*

The PLS also submitted that the identities of those persons referred to in the Eames Report who gave evidence at the trial of those charged with the murder of Mr Eames, are already publicly available information.

34. In this regard, however, I should note that, while Mr Shennan's investigation was conducted in parallel with the investigations by the Queensland Police Service into the murder of Mr Eames, each investigation had its own objects, not all of which overlapped. Thus, it is not necessarily the case that all the witnesses interviewed by Mr Shennan gave evidence in the committal hearing and/or the Supreme Court trial, or that the evidence given by witnesses in the committal hearing and/or the Supreme Court trial necessarily corresponded with all the issues on which Mr Shennan wished to, and did, obtain evidence (see paragraph 4 above).

35. In paragraph 4 of his statutory declaration, Mr Shennan gave evidence of the methods he used to conduct his investigation. It is clear that he liaised with investigators from the Corrective Services Investigation Unit (CSIU) of the Queensland Police Service, and that his investigation was conducted in parallel with the police investigation. Mr Shennan appears to have interviewed witnesses shortly before or after they were interviewed by investigating police. In nearly all instances, Mr Shennan has obtained a statement, a substantial part of which is identical, or virtually identical, to the statement which the Queensland Police Service obtained from the same witness, but Mr Shennan has in some instances gone on to deal with additional issues of concern to him (see paragraphs (b), (c), (d), (e), (f) and (h) of the instructions given to Mr Shennan in his instrument of appointment, as set out in paragraph 4 above).

36. Statements obtained by police investigators from some prisoners and several QCSC officers were tendered at the committal hearing in the Townsville Magistrates Court, and thus became

a matter of public record. Some prisoners and several QCSC officers also gave evidence in the Supreme Court jury trial. To the extent that the statements obtained by Mr Shennan reproduce the material in the police statements tendered in the committal, or evidence given in the Supreme Court trial, I do not consider it possible to find that the persons who gave that evidence are confidential sources of information under s.42(1)(b), applying the principles referred to in *Re McEniery* at p.357 (paragraphs 17 and 18). I should note, however, that only one of several prisoners interviewed by Mr Shennan gave evidence at the committal hearing and Supreme Court jury trial. I should also note that not every name mentioned in the body of the Eames Report identifies a person who was interviewed by, or gave information to, Mr Shennan. Mr Shennan was able to gather information from records routinely kept by the Townsville Correctional Centre (see s.29(1)(c) of the *Corrective Services Act*, reproduced at paragraph 3 above) such as 'Incident Reports' in respect of incidents involving prisoner Eames in the days preceding the fatal assault.

37. The first element which must be satisfied to establish that matter is exempt under s.42(1)(b) of the FOI Act is that there exists a confidential source of information. At p.358 (paragraphs 21-22) of *Re McEniery*, I adopted the statement of Keely J, sitting as a member of a Full Court of the Federal Court of Australia in *Department of Health v Jephcott* (1985) 62 ALR 421 (at p.426), in finding that the phrase "a confidential source of information" in s.42(1)(b) of the FOI Act means a person who has supplied information on the understanding, express or implied, that his or her identity will remain confidential.

38. Pursuant to s.81 of the FOI Act, the QCSC has the onus of establishing that the decision under review was justified, or that I should give a decision adverse to the applicant. The only evidence lodged by the QCSC relevant to the first element of s.42(1)(b) of the FOI Act is that part of Mr Shennan's statutory declaration which is reproduced at paragraph 32 above. That evidence does not establish that express assurances were given to witnesses to the effect that their identities, as sources of information, would be kept confidential. Mr Shennan has purported to give evidence of what other people expected in terms of confidentiality, but has not given evidence of any statements made by him, or any other material facts or circumstances, that would afford a basis for a finding that there was an express understanding between Mr Shennan, on behalf of the QCSC, and any of the witnesses, that their identities as sources of information would be kept confidential.

39. It is therefore necessary to assess the circumstances surrounding the communication of information by persons interviewed by Mr Shennan in order to determine whether there was an implicit mutual understanding that the identities of persons who supplied information would remain confidential. I discussed the factors relevant to an assessment of this kind in *Re McEniery* at pp.359-364 (paragraphs 24-34), and also at p.371 (paragraph 50) where I said:

> *50. The determination of whether the relevant information was supplied by the informant and received by the respondent on the implicit understanding that the informant's identity would remain confidential (and hence whether the informant qualifies as a confidential source of information for the purposes of s.42(1)(b)) requires a careful evaluation of all the relevant circumstances including, inter alia, the nature of the information conveyed, the relationship of the informant to the person informed upon, whether the informant stands in a position analogous to that of an informer (*cf. *paragraph 25 above), whether it could reasonably have been understood by the informant and recipient that appropriate action could be taken in respect of the information conveyed while still preserving the confidentiality of its source, whether there is any real (as*

opposed to fanciful) risk that the informant may be subjected to

> *harassment or other retributive action or could otherwise suffer detriment if the informant's identity were to be disclosed, and any indications of a desire on the part of the informant to keep his or her identity confidential (e.g. a failure or refusal to supply a name and/or address,* cf. Re Sinclair, McKenzie's *case, cited in paragraph 36 above).*

40. Also of relevance in the present context are the comments of Victorian judges on the equivalent exemption provision in Victoria (s.31(1)(c) of the *Freedom of Information Act 1982* Vic), which are noted in *Re McEniery* at pp.359-360 (paragraphs 24 and 25):

> *24. In* Re Croom and Accident Compensation Commission *(1989) 3 VAR 441, the documents in issue were a medical report on the applicant who had been examined by a doctor on behalf of a workers' compensation insurer following an industrial injury, and an investigator's report concerning the industrial injury compiled from statements taken from three witnesses. The then President of the Victorian AAT, Jones J, said (at p.459):*
>
> > What is at the heart of the exemption is the protection of the informer not the subject matter of the communication.
> >
> > The provision clearly does not apply to the medical report. The identity of the medical practitioner is known. What is sought is the subject matter of the communication from him to the Commission.
> > The doctor is not a confidential source of information within the meaning of the provision.
> >
> > Nor do I think that the provision applies to the investigator's report.
> > The witnesses who provided information to the investigator are not confidential sources of information in the relevant sense. As appears from the evidence, they were also employed by [the applicant's employer] in varying capacities -management, leading hand and fellow worker. In my view, it is likely that their identities, if not well known, could easily be ascertained independently of the investigator's report.
> > Further, the statements did not result from an undertaking that they would be kept confidential and only provided on that basis. [The investigator] agreed that he did not assert that the witnesses would not have spoken to him unless they received an undertaking as to confidentiality. He could not guarantee the confidentiality of statements but would do his best to keep them confidential and told worker witnesses that whatever they said to him was confidential for the insurance company. The reality is that the people interviewed by [the investigator] were potential witnesses in a hearing in a court or before the Tribunal or body dealing with workers' compensation. In my view they would be likely to realise this and that notwithstanding the statements by [the investigator] about confidentiality, the information they provided might ultimately become public through some formal process. Indeed, that could easily occur through the tender of the report and proceedings before the [Accident Compensation Tribunal], which is a relatively common occurrence.
> >
> > In these circumstances I do not consider that the witnesses who provided information to the investigator are confidential sources of information within the meaning of s.31(1)(c).

25. *On appeal to a Full Court of the Supreme Court of Victoria, the Tribunal's decision was upheld, O'Bryan J (with whom Vincent J agreed) observing (at p.329):*

> In relation to [s.31(1)(c) of the Victorian FOI Act], the critical words are 'confidential source of information'. Clearly, this paragraph has no application to the medical report because the author of the report is known to the respondent and Mr Uren conceded that his submission was confined to three witnesses' statements taken by [the investigator] in the course of his investigation.
>
> I am of the opinion that it was clearly open to the Tribunal to arrive at the finding that the evidence did not disclose that any witness provided information in confidence to [the investigator]. [The investigator] offered to maintain confidence in respect of information provided to him but was never informed by a person from whom he took a statement that the person wished his identity to be protected from disclosure.
>
> ... The plain meaning that one might ascribe to this paragraph is that it is concerned with protection of the 'informer' and not with the protection of a potential witness who would prefer not to be identified. Public interest has dictated for a long time the need to protect the true 'informer' but a reluctant witness has never attracted immunity at common law. For instance, the 'newspaper rule' which protects confidential sources of information must yield whenever the interests of justice override the public interest: *cf. Herald and Weekly Times Ltd v Guide Dog Owners and Friends Association* [1990] VR 451 and *British Steel Corporation v Granada Television Ltd* [1981] AC 1096.
>
> Mr Uren submitted that to release the report would disclose the identities of 'confidential' sources of information. The sources were confidential because they gave the information contained in their statements after being given (or offered) a promise of confidentiality.
>
> In my opinion, the words 'confidential source of information' do not apply to a potential witness in a civil proceeding who would prefer to remain anonymous for the time being. A potential witness cannot clothe himself with secrecy in relation to the administration of the law unless he is able to invoke 'informer' immunity. Nor may an investigator confer upon a potential witness 'confidential' status until it is convenient to his principal to reveal the name of the witness.

41. Applying the principles referred to above to the circumstances of the present case, a number of observations can be made. Where a person who has given information to Mr Shennan stands in a position analogous to that of an informer, i.e., one who has informed on another person attributing responsibility to the other person for acts and/or omissions which contravene the law (or perhaps also, in the case of prisoners or prison officers, acts and/or omissions which could warrant disciplinary proceedings), that would tend to afford support (always depending on the significance of other relevant facts and circumstances) for a finding that there was an implicit mutual understanding that the identity of the source of the information would remain confidential. Moreover, in the potentially volatile environment of a prison, where many people

prone to violence may be confined, it will frequently be appropriate to find that there is a real risk that an informer, whether a prisoner or prison officer, may be subjected to harassment or other retributive action.

42. While the factors referred to in the preceding paragraph would, where applicable to particular matter in issue, tend to support a finding that there was an implicit mutual understanding that the identity of a source would remain confidential, the PLS has, in my opinion, correctly identified a factor that would tend to support the opposite finding, i.e., the fact that persons interviewed must have realised they were potential witnesses at a coroner's inquest, or in criminal proceedings, or perhaps even in a QCSC disciplinary hearing. (I note that each of the signed statements obtained by Mr Shennan bears an endorsement under the *Oaths Act 1867* Qld, signed by the witness, which specifically refers to the possibility of the signed statement being "admitted as evidence", and to the consequences of stating anything in it that is known to be false). This would not necessarily rule out the possibility of a finding that there existed an implicit mutual understanding that the identity of a source of information would be kept confidential unless and until it must be disclosed in some kind of formal proceeding or through some other legal requirement (see *Re McEniery* at p.364, paragraph 33).

43. However, under our system of law, even the identity of a true informer cannot be protected beyond the point where revelation of his or her identity is necessary in the course of the committal or trial (or in procedures preparatory thereto) of a person charged with a criminal offence. The statements obtained by Mr Shennan from QCSC officers comprise information falling into two broad categories -

    (a) information relating to how, when, and why the death of prisoner Eames occurred; and

    (b) information relating to prison systems and procedures (e.g., any weaknesses or needed improvements) and the extent of compliance with established rules and procedures.

    In the first category, Mr Shennan obtained statements which, for the most part, duplicated the statements given to investigating police officers. In the case of witnesses from whom statements were obtained and tendered at the committal hearing in the Townsville Magistrates Court and/or who gave evidence in the Supreme Court jury trial, whatever the understanding may have been at the time that statements were given by them to Mr Shennan, I find that it is no longer possible for them to qualify as confidential sources of information under s.42(1)(b) of the FOI Act.

44. To the extent that persons interviewed by Mr Shennan have provided information falling into the second broad category referred to in paragraph 43 above, the information has in part been used by Mr Shennan in assessing whether to recommend disciplinary action against prison officers for breach of duty. Disciplinary proceedings of that kind are considered in law to be civil proceedings rather than criminal proceedings. However, significant sanctions can be imposed, and I consider that the factors referred to in paragraph 41 above could (always depending on the significance of other relevant facts and circumstances) apply in respect of a source of information who informs on another, attributing responsibility for acts or omissions which involve a breach of duty/breach of discipline. Short of that situation, however,
    I consider that a witness who has supplied information falling into the second broad category referred to in paragraph 43 above, is in no materially different position to that of a potential witness in a civil proceeding, as referred to in the two Victorian cases of *Croom* (see paragraph 40 above), and would not, in my opinion, ordinarily qualify as a confidential source of information within the terms of s.42(1)(b) of the FOI Act.

45. Having regard to the factors referred to in paragraph 41 above, I consider that where a prisoner interviewed by Mr Shennan has given information about criminal conduct or wrongdoing by another person, it is proper to find that the information communicated by the prisoner was communicated on the basis of an implicit mutual understanding that the identity of the prisoner as a source of information would remain confidential to the recipients of Mr Shennan's report within the QCSC, unless and until it was necessary to be disclosed in the course of taking action against a person charged with a criminal or disciplinary offence. Where the identity of such a prisoner as a source of information has not in fact been disclosed in the committal proceedings in the Townsville Magistrates Court or in the Supreme Court jury trial (or otherwise entered the public domain), and has not been disclosed to the person informed against in the context of QCSC disciplinary proceedings, I consider that it is proper to find that such a prisoner remains a confidential source of information, within the terms of s.42(1)(b) of the FOI Act.

46. I note that, in the matter which remains in issue (after the concessions by the PLS noted at paragraph 8 above), no QCSC officer is identified in a context that indicates or suggests that he has informed against another person, so no occasion arises for considering whether s.42(1)(b) applies so as to require the deletion of identifying references to a QCSC officer from the matter which remains in issue.

47. In *Re McEniery* at pp.365-369, I made some general observations on the second element of s.42(1)(b), i.e., the requirement that information relate to the enforcement or administration of the law. The QCSC asserts that prison management is encompassed within the phrase "enforcement or administration of the law". This will largely be true because so much of prison management is conducted within a framework of laws, including delegated rule-making power, to which sanctions attach for any breach. However, some of the material in issue indicates that the QCSC may have overstated its case to some extent. Segments of the Eames Report which deal with topics such as training programs for prison officers, and strategic plans for the Townsville Correctional Centre, must, in my opinion, be properly characterised as relating to the QCSC's internal management processes rather than the enforcement or administration of the law. Nevertheless, I am satisfied that information supplied by the persons who qualify as confidential sources of information within the terms of s.42(1)(b), was information which clearly related to the enforcement or administration of the law.

48. With respect to the third element of s.42(1)(b), I made some brief observations in *Re McEniery* at pp.357-358 (paragraph 19). I note that most cases on the application of s.42(1)(b) involve disputes over disclosure of the identity of a source of information, where it is known (or obvious) that a source of information exists. However, s.42(1)(b) can also be invoked to prevent disclosure of information which could reasonably be expected to enable the existence of a confidential source of information to be ascertained. In such a case, while the respondent agency must still satisfy me that the three requirements for exemption under s.42(1)(b) are established, it will not ordinarily be possible to provide details of that claim in published reasons for decision, for fear of causing one of the kinds of prejudice which the exemption provision was intended to avoid.

49. Applying the principles discussed above, I am satisfied that the following segments of the Eames Report comprise exempt matter under s.42(1)(b) of the FOI Act:

    (a) in paragraph 19 -

        (i) the third sentence;
        (ii) that part of the fourth sentence which follows the word "statements"; and

(iii) the fifth sentence;

(b) the first two sentences of paragraph 22;

(c) the first two sentences, and all words appearing before the word "is" in the third sentence, of paragraph 23;

(d) in subparagraph 24f. -

(i) the last six words in line one;
(ii) the first word, and the name following it, in line 2;
(iii) the sixth, seventh, eighth and ninth words in line 8; and
(iv) the second, third and fourth words in line 9;

(e) all words in the last line of subparagraph 26d. appearing after the name "(Eames)";

(f) paragraph 44;

(g) subparagraph 46h.

50. I have examined other segments of the Eames Report claimed by the QCSC to be exempt under s.42(1)(b), but I am satisfied that the segments identified above comprise the only matter which meets all the requirements for exemption under s.42(1)(b) of the FOI Act.

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

51. The correct approach to the interpretation and application of s.42(1)(c) of the FOI Act was discussed in my reasons for decision in *Re Murphy and Queensland Treasury & Ors* (Information Commissioner Qld, Decision No. 95023, 19 September 1995, unreported) at paragraphs 43-57. The only paragraph of the Eames Report which has been claimed by the QCSC to be exempt under s.42(1)(c) is paragraph 22. I have already found that the first two sentences of paragraph 22 are exempt matter under s.42(1)(b), and it is not necessary to consider the application of s.42(1)(c) to those sentences. With respect to the third (and final) sentence of paragraph 22, I am not satisfied on the material before me that any grounds exist to support a reasonable expectation that its disclosure could endanger a person's life or physical safety. I find that the third sentence of paragraph 22 is not exempt matter under s.42(1)(c) of the FOI Act.

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

52. The QCSC has claimed that paragraphs 4-13, 19, 21-35 and 38-44 of the Eames Report are exempt under s.42(1)(e) of the FOI Act (the terms of which are set out at paragraph 13 above). I have already found some of those paragraphs, or parts of them, to be exempt under s.42(1)(g) or s.42(1)(b) of the FOI Act, so I do not need to consider the application of s.42(1)(e) to that matter. I have previously set out my views on the correct approach to the interpretation and application of s.42(1)(e) of the FOI Act in *Re "T" and Queensland Health* (1994) 1 QAR 386.

53. The QCSC has made the following submissions on the application of s.42(1)(e) of the FOI Act (at p.5 of its written submission):

> *It is submitted that the disclosure of the report would prejudice the effectiveness of the lawful method and procedure for investigating and dealing with a contravention of the law.*
>
> *The inspector is appointed under Section 27 of the* Corrective Services Act 1988 *by the Director-General to investigate and report into the circumstances surrounding the incident.*
>
> *This lawful method/procedure consists of visiting the crime scene, discussing certain aspects with the General Manager of the Correctional Centre, examining reports, conducting interviews, and gathering statements in conjunction with the Police Service.*
>
> *The effects on the disclosure of the report have been discussed above.* [This is a reference to submissions made by the QCSC in respect of s.41(1) of the FOI Act which are set out in paragraph 73 below.]
>
> *Officers and prisoners will be reluctant to provide any information to the inspector if it became known that the report could be disclosed.*

54. Paragraph 6 of Mr Shennan's statutory declaration, which is reproduced at paragraph 32 above, also appears relevant to the claim for exemption under s.42(1)(e) of the FOI Act.

55. In its written submission, the PLS rejected the QCSC's claim of prejudice to the effectiveness of the lawful method or procedure of investigations by an inspector, through reluctance by prisoners and prison officers to provide information to an inspector, on the same basis that it contested the application of s.42(1)(b): the PLS submitted that the trial of those accused of the murder of Mr Eames made public the names and relevant evidence of prisoners and QCSC officers who provided evidence to both the investigator and the police, and further that a prisoner or QCSC officer who provided information to the QCSC inspector must have appreciated that he was placing himself in a position where he may possibly be required to give evidence before a court or coronial inquiry.

56. In addition, the PLS submitted that the investigation conducted by Mr Shennan was for the purpose of reviewing institutional and administrative operations following the death of Mr Eames, and that his report was not therefore concerned with detecting, investigating or dealing with a contravention of the law. The PLS submitted that the Queensland Police Service was the responsible agency in that regard. However, I think it is clear that Mr Shennan's instructions (see paragraph 4 above) extended to the investigation of several matters, including possible contraventions of rules, or the code of conduct for QCSC officers (made by the QCSC under s.20 of the *Corrective Services (Administration) Act 1988* Qld), possible breaches of discipline by QCSC officers under s.43 of the *Corrective Services (Administration) Act*, and possible offences or breaches of discipline by prisoners under Part 3, Division 7 of the *Corrective Services Act.* The QCSC was a proper authority to investigate and/or deal with those matters, which involved a "contravention or possible contravention of the law" according to the meaning of that phrase which I explained in *Re "T"* at pp.391-392 (paragraphs 16-20).

57. The PLS also argued that the lawful methods or procedures identified in the QCSC's submission were so obvious and well-known that disclosure could not prejudice their effectiveness in future investigations, citing the cases referred to in *Re "T"* at pp.394-395, paragraphs 28-32. I think it is certainly correct that disclosure of the methods and procedures used by Mr Shennan in his

investigation could not in itself prejudice the effectiveness of those

methods or procedures. The QCSC, however, appears to be basing its case under s.42(1)(e) simply on the assertion that disclosure under the FOI Act of the information obtained by Mr Shennan will prejudice the effectiveness of the methods and procedures used by an inspector, by inhibiting future co-operation by prisoners and QCSC officers in providing full and frank information to an inspector. In this respect, the QCSC's case under s.42(1)(e) overlaps, in whole or in part, its case under s.41(1), s.42(1)(b) and s.46(1) of the FOI Act.

58. I consider that the last sentence in paragraph 6 of Mr Shennan's statutory declaration (which is reproduced at paragraph 32 above) involves considerable overstatement, unless it was meant to be confined to informers rather than witnesses generally. A prisoner or prison officer questioned by an investigator in connection with a serious crime would ordinarily appreciate that he or she was a potential witness in some kind of formal legal proceeding, and that any information given to an investigator would not remain confidential in that event. Yet many prisoners and prison officers co-operated with both the police investigators and Mr Shennan, and gave evidence in subsequent court proceedings. An investigator ordinarily needs to identify relevant witnesses and establish that they can give relevant and reliable evidence in any formal legal proceeding that may be in contemplation. An investigator who bound himself or herself to an obligation of confidence with respect to the information obtained from a particular source could not use or further disclose the information so obtained in a manner that was not authorised by the particular source. This might be considered worthwhile in some instances (e.g., promises of confidentiality may be given to secure the co-operation of a genuine informer) for the sake of obtaining crucial information that could lead to other sources of material evidence, which could be used in a formal legal proceeding.
However, investigators would ordinarily be reluctant to be bound to such an obligation of confidence - they need the flexibility to put evidence obtained from one source to other sources in order to test the reliability of evidence, pursue fresh lines of inquiry, *et cetera*, and they must ultimately be able to confront an alleged wrongdoer with sufficient reliable evidence of the wrongdoing with which he or she is to be charged. (Hence the endorsement under the *Oaths Act 1867* which Mr Shennan obtained from each witness who supplied a signed statement: see paragraph 42 above).

59. I am sympathetic to the difficulties which must attend the task of an inspector appointed under s.27 of the *Corrective Services Act*, particularly in securing the co-operation of relevant prisoner witnesses, who may be particularly vulnerable to recrimination or retribution, and many of whom may have a philosophical predisposition toward non-co-operation with prison authorities. However, leaving aside the matter which I have already found to be exempt, none of the matter remaining in issue would, if disclosed, reveal information obtained by Mr Shennan from an identifiable prisoner (other than those prisoners who gave evidence at the committal hearing in the Townsville Magistrates Court and/or the Supreme Court jury trial), and I therefore consider that there is no reasonable basis for expecting that disclosure under the FOI Act of the matter remaining in issue would prejudice the effectiveness of the lawful method or procedure by which an investigator appointed under s.27 of the *Corrective Services Act* interviews, and obtains statements from, prisoners.

60. I find it difficult, for a number of reasons, to accept the QCSC's contention that QCSC officers would be reluctant to provide information to an inspector, if the matter from the body of the Eames Report, which remains in issue, were to be disclosed under the FOI Act. (I note again that the information obtained by Mr Shennan from QCSC officers fell into the two broad categories identified in paragraph 43 above).

61. Firstly, in respect of the information obtained by Mr Shennan which corresponds to the statements by QCSC officers which have been tendered in the committal hearing in the

Townsville Magistrates Court, and/or which corresponds to the evidence given by QCSC

officers in the Supreme Court jury trial, I consider that there is no reasonable basis for expecting that any prejudice of the kind contemplated by s.42(1)(e) could be caused by disclosure of Mr Shennan's analysis and recommendations to the extent that they are based on that information. That information is now a matter of public record. Moreover, I consider that the QCSC officers interviewed by Mr Shennan must have appreciated, at the time, that they were likely to be required to give the information in formal legal proceedings consequent upon the commission of such a serious crime (i.e., they could not realistically have held the expectation that the information which they gave in the form of signed statements, endorsed in accordance with the *Oaths Act 1867* (see paragraph 42 above), was likely to remain confidential to Mr Shennan and senior management of the QCSC).

62. Secondly, there are at least two bases on which QCSC officers are subject to a legal duty to co-operate with an investigation by an inspector appointed by their employer under s.27 of the *Corrective Services Act*. Section 29(1)(b) of the *Corrective Services Act* provides that an inspector may at any time require an officer or employee of the QCSC to provide any information or answer any question relevant to any inquiry being conducted by the inspector. Subject to the privilege against self-incrimination (if applicable), a failure or refusal by a QCSC officer to provide information or answer a question, or the wilful supply by a QCSC officer of information known to be false, would expose the officer to disciplinary action. In addition, employees of the QCSC owe duties of good faith and fidelity to their employer, which would encompass a positive obligation (which applies with greater force to employees holding positions of special trust and responsibility, especially managerial responsibility) to disclose to their employer any information, acquired in the capacity of employee, which the employer might reasonably require for identifying and/or remedying deficiencies in the systems and procedures by which the employer conducts its operations: see *Re Shaw and the University of Queensland* (Information Commissioner Qld, Decision No. 95032, 18 December 1995, unreported) at paragraphs 55-56, and the cases there cited.

63. The QCSC might counter that such legal duties will not necessarily secure full and frank co-operation with an inspector, and that guarantees that information supplied will remain confidential within the QCSC are necessary in that regard. However, in any investigation of serious crime or wrongdoing where punitive action of some kind is a possible outcome, promises of confidentiality afford no real guarantee of full and frank co-operation. Experience of human nature indicates that some people will be prepared to give less than a complete and honest account of their knowledge of relevant facts and circumstances (perhaps even maliciously seeking to focus blame on another person), in the hope of avoiding adverse consequences for themselves, or a friend or colleague. It is part of the investigator's art to take account of such motives, and to test, and weigh the reliability of, different witnesses and their evidence.

64. In the case of persons not otherwise entitled to protection under the FOI Act (e.g., as an informer protected by s.42(1)(b) of the FOI Act), would promises to the effect that information supplied to an inspector would remain confidential within the QCSC really afford any additional incentive for full and frank co-operation with an inspector, beyond that afforded by the threat of disciplinary sanction for non-compliance with the legal duty imposed by s.29(1)(b) of the *Corrective Services Act*? Mr Shennan's investigation was conducted against the background of a serious crime, where QCSC officers had no direct involvement in the commission of the crime but must have appreciated that the making of recommendations for disciplinary action against QCSC officers for inefficiency, carelessness, failure to comply with rules, *et cetera*, was part of the inspector's brief. The most directly intimidating consequences for QCSC officers in such an investigation lay in the consideration of their evidence and conduct by senior management of the QCSC (for whom the Eames Report was always intended), and the possibility of disciplinary action under s.43 of the *Corrective Services*

(Administration) Act, rather than in any subsequent disclosure outside the QCSC. In the circumstances, I have difficulty in accepting that the possibility of disclosure outside the QCSC, of information given to the inspector, could have been a factor inhibiting full and frank co-operation by QCSC officers with the inspector's investigation, or that disclosure outside the QCSC of the matter remaining in issue in this case (which would disclose Mr Shennan's analysis of the information he obtained, rather than extracts from the officers' statements themselves) would be a significant factor inhibiting full and frank co-operation with similar investigations in the future.

65. On the material before me, I am not satisfied that disclosure of the matter from the body of the Eames Report which remains in issue (which consists of Mr Shennan's analysis of information obtained in his investigation, rather than extracts from statements given by QCSC officers) could reasonably be expected to prejudice the effectiveness of a method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law, and I find that it is not exempt matter under s.42(1)(e) of the FOI Act.

Application of s.41 of the FOI Act

66. The QCSC contends that paragraphs 16, 17, and 22-45 (inclusive) of the Eames Report are exempt matter under s.41(1) of the FOI Act. I note that some of those paragraphs, or parts of them, have already been found to be exempt matter under other exemption provisions, so it is not necessary for me to consider the application of s.41 to that matter.

67. 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.*

68. 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. ...*

69. 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.*

70. Under s.41(2)(b) of the FOI Act, matter is not exempt under s.41(1) if it merely consists of factual or statistical matter: see *Re Eccleston* at p.71, paragraphs 31-32. Having regard to the principles referred to there, and explained 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), I consider that paragraph 17 and many segments of paragraphs 22-45 of the Eames Report comprise merely factual matter, which is severable from opinion, advice or recommendations expressed by Mr Shennan, and which is therefore not eligible for exemption under s.41(1) of the FOI Act, by virtue of s.41(2). I will refrain from adding to the length of this decision by specifying the matter which I consider to be merely factual matter. That is not necessary since I am satisfied that (even if I were mistaken as to its characterisation as merely factual matter), none of it is matter the disclosure of which would, on balance, be contrary to the public interest, for reasons explained below. It would not, therefore, satisfy the test for exemption posed by s.41(1)(b) in any event.

71. Apart from the merely factual matter referred to in the preceding paragraph, I am satisfied that the balance of the matter claimed to be exempt under s.41(1) answers the description in s.41(1)(a) of the FOI Act. Mr Shennan's opinions and recommendations were prepared for the purposes of the deliberative processes of senior management of the QCSC in considering measures to be taken by the QCSC in response to the death of prisoner Eames.

72. The deliberative process matter in the body of the Eames Report falls into two broad categories -

(a) analysis and recommendations with respect to problems in systems and methods of control at Townsville Correctional Centre; and

(b) analysis and recommendations in respect of possible disciplinary action against QCSC officers, and comments otherwise adverse to particular QCSC officers.

73. The case presented by the QCSC (at p.3 of its written submission) as to why disclosure of the deliberative process matter in issue would be contrary to the public interest is essentially the same as the case it has presented in respect of the application of s.42(1)(b), s.42(1)(e) and s.46(1) of the FOI Act:

> *The* [QCSC] *submits that the likelihood of information drying up in future as a result of the disclosure of this report would seriously prejudice the Inspector's investigations and method of dealing with same. The disclosure of this report would affect the* [QCSC's] *operations significantly. It is in the public interest that the* [QCSC] *and Executive receive a full and comprehensive report on such an incident. In order to obtain a full and frank report, it is necessary that an appointed Inspector obtains as much information as possible.*
>
> *A large degree of this information is attained by interviewing and speaking with officers and prisoners. If it were known that Inspectors' Reports were released, then this would seriously prejudice the future supply of such information. While the* [QCSC] *recognises that the public ought to know about the incident, it is considered that this "internal" report, which is of an inherently confidential nature, remains protected so that the* [QCSC] *can make proper and well-informed decisions which are in the public interest.*
>
> *It is in the public interest that the* [QCSC] *not fail in its responsibility to the community at large namely, that is, by ensuring the security and management of prisons and the safe custody and welfare of prisoners by virtue of section 13 of the* Corrective Services Act 1988.
>
> *There is a real need to protect the integrity and viability of the decision-making process. This report is part of this decision-making process. The disclosure of this report will significantly affect the efficient performance and proper workings of an Inspector.*
>
> *If inadequate inspectors' reports are furnished because officers and prisoners are loathe to provide information then the conclusions and recommendations will be seriously affected. It is of critical importance that the* [QCSC] *receives comprehensive inspectors' reports. Informants and interviewees need to be assured that information provided will remain confidential.*

74. In essence, the QCSC submits that the comprehensiveness and reliability of reports prepared by inspectors will be prejudiced if sources of information are reluctant to co-operate with inspectors, and the ability of the QCSC (in response to such reports) to take appropriate measures for the security and management of prisons, and the safe custody and welfare of prisoners, would consequently be prejudiced. There is no doubt that it is in the public interest that inspectors appointed under s.27 of the *Corrective Services Act* be able to furnish reports

that are as comprehensive and reliable as possible (given the exigencies which generally attend any investigation of serious wrongdoing - see paragraph 63 above), and that the QCSC take appropriate measures in response to such reports.

75. However, I have already stated my reasons for finding that disclosure of most of the matter in the body of the Eames Report that is claimed to be exempt under s.41(1) could not reasonably be expected to prejudice co-operation with future investigations by inspectors (see paragraphs 59-65 above). I have already found that any informants who are still (following the court proceedings) able to qualify as confidential sources of information in relation to the enforcement or administration of the law, will be protected under s.42(1)(b) of the FOI Act.
I have indicated generally my view that disclosure under the FOI Act of Mr Shennan's analysis and recommendations, to the extent that they are based on information that is already in the public domain (as evidence given in court proceedings), could not reasonably be expected to prejudice co-operation with future investigations by inspectors. For all these reasons,
I consider that the weight to be accorded to the public interest considerations referred to in the preceding paragraph, as considerations favouring non-disclosure of the matter claimed to be exempt under s.41(1) of the FOI Act, is significantly diminished.

76. On the other hand, the PLS has pointed (at pp.8-9 of its submission) to a number of public interest considerations favouring disclosure of the matter in issue, which in my view are deserving of substantial weight:

> *We submit that there are a number of reasons why it is actually in the public interest for access to be given to the subject document. They are as follows:*
>
> - *it reported on the murder in a state prison*
> - *the murder was the fourth murder in a prison in two years of operation by the QCSC*
> - *the murder occurred in the gymnasium in a high security prison where prisoners were given access to the gymnasium without staff supervision*
> - *prosecutions for the murder resulted in the acquittals of all defendants*
> - *no coronial inquest was held into the death of David Eames*
> - *within 18 months of the David Eames murder, another murder occurred in the gymnasium of a high security prison where prisoners were given access to the gymnasium without staff supervision.*
>
> *It is in the public interest that the Prisoners' Legal Service knows the contents of the subject document in order to ensure that steps are taken to protect the interests of the Services' client group. It is submitted that the contents of the document should have been useful and effective in addressing issues of supervision in prison gymnasiums and in ensuring that there was not a re-occurrence of such an event. With the occurrence of a later murder of Bart Vosmaer at the Sir David Longland Correctional Centre in virtually identical circumstances to the murder of David Eames in Townsville eighteen months before, it became apparent that appropriate steps had not been taken to*

> *address the risks. It is submitted that in the wake of two deaths in unsupervised prison gymnasiums it is indisputable that it is in the public interest that the contents of the subject document be made available.*

77. The PLS also submitted (at p.1):

> *These two incidents raised the interest of the* [PLS] *as to what recommendations arose out of the report of the internal investigator into the death of Eames and whether those recommendations were implemented so as to avoid any similar incidents occurring in other State Correctional Centres.*

78. The PLS referred to paragraph 5 of Mr Shennan's statutory declaration which states that Mr Shennan was aware that all recommendations of the Eames Report had been addressed. The PLS submitted (at p.1):

> *There is however no way of checking this without seeing what those recommendations were and the* [PLS] *cannot help but be suspicious that those recommendations, although they may have been implemented at the Townsville Correctional Centre, were not made far reaching and implemented in all Queensland Correctional Centres.*

79. Responding to the QCSC's submission that: "*... this internal report, which is of an inherently confidential nature,* [should remain] *protected so that the* [QCSC] *can make proper and well informed decisions which are in the public interest*", the PLS submitted (at p.2) that:

> *We say that such non-disclosure may also provide the* [QCSC] *with the opportunity to hide mistakes and take no effective action, as there is no requirement for accountability. It is therefore in the public interest that the recommendations and analysis of the investigator be made available so that there is some form of accountability to the public to ensure that recommendations will be acted upon.*

80. The PLS made further submissions as to the accountability of the QCSC (at p.10):

> *We would submit that access to the subject document might reveal inefficiencies or lack of process in the operation of the* [QCSC], *the disclosure of which would be in the public interest if it results in a reduction in the numbers of murders in State prisons.*
>
> *...*
>
> *The subject document we would suggest, addresses the factual matters of the circumstances of the murder of David Eames and may also consider the need for the staff and resources in the area of the prison where the murder took place.*

81. I might add that disclosure of the matter in issue would be of significance to the wider public interest, and not just to the interests of the PLS's client group. I note and endorse the comments of Jones J, then President of the Victorian Administrative Appeals Tribunal, in *Re Lapidos and Office of Corrections* (1989) 4 VAR 31 at p.44:

> *As pointed out by the Full Supreme Court in* Department of Public Prosecutions v Smith *[1991] VR 63,* [the *Freedom of Information Act 1982*

> Vic] *does not contain any definition of public interest and there are many areas of national and community activities which may be the subject of the public interest. There is the public interest in the proper and due administration of criminal justice. With respect to prisons and prisoners, there is the public interest in the fair and humane treatment of prisoners and in their rehabilitation into the community and the security and good order of prisons and the welfare of prisoners and the staff who work in prisons:*
> Re Mallinder and Office of Corrections *(1988) 2 VAR 566. There is also the public interest in the due and proper administration of prisons.*

82. A similar view was expressed by Fricke J in *Re Lapidos and Office of Corrections (No. 3)* (1990) 4 VAR 150, at p.153: *"... I accept that the public interest in the disclosure of information relating to penal administration is a strong one."* The punishment and rehabilitation of criminal offenders, the effectiveness of the administration of systems established for that purpose, and their cost to the public, are matters of real public interest, and there is, in my opinion, a strong public interest in disclosure of information which will enhance public scrutiny of, and accountability for, the conduct of those operations on behalf of the people of Queensland. Mr Eames was sentenced to a term of imprisonment, not a sentence of death. One of the fundamental responsibilities of the QCSC is the safe custody and welfare of prisoners (see s.13(1) of the *Corrective Services Act 1988*) and, while I do not underestimate the considerable practical difficulties of prison management, it is clear that the QCSC did not successfully discharge its statutory responsibility in respect of prisoner Eames. It is appropriate that it be accountable to the public for the occurrence of a fatal assault on a prisoner in its custody, and for the measures taken to prevent a similar incident occurring in future. Disclosure of the matter in issue will enhance the accountability of the QCSC in that regard, and to the extent that disclosure of the matter in issue can be made without prejudicing the ability of the QCSC to continue to ensure the security of prisons and the safe custody and welfare of prisoners, then the balance of the public interest, in my opinion, clearly favours disclosure of the matter in issue.

83. I am not satisfied that disclosure of the matter claimed by the QCSC to be exempt under s.41(1) of the FOI Act would, on balance, be contrary to the public interest, except for some matter which falls into the second broad category identified in paragraph 72 above, and is dealt with in the following paragraphs.

84. As noted above, ten QCSC officers who were adversely referred to in the Eames Report, were contacted and invited to participate in the review. A summary of their responses is set out below (since the identity of the officers concerned is itself matter claimed to be exempt, I have referred to each officer by a number, for purposes of identification):

- Officer 1 did not respond.

- Officer 2 indicated that he did not have a strong objection to the release of matter contained in the Eames Report which adversely refers to him, provided that his name was deleted in connection with that matter.

- Officer 3 indicated that he had no objection to release of the Eames Report as such, apart from those matters which adversely refer to him. The officer contended that parts of the recommendations of Mr Shennan are not accurate. The officer received a letter indicating that he was not to be subject to disciplinary action (despite the recommendation of Mr Shennan).

- Officer 4 strongly objected to release of any part of the Eames Report which referred to him. The officer indicated that the comments made by Mr Shennan about him disclose an opinion which was later proved to be wrong. (I take this to mean that although a recommendation was made concerning disciplinary action against this officer, no disciplinary action was ever taken). The officer indicated his belief that disclosure of the documents which refer to him would involve a grave injustice and may adversely affect his career. He contended that the deletion of his name would not be sufficient should those parts of the Eames Report which adversely refer to him be released, and that not only his name, but also his title, should be deleted.

- Officer 5 indicated in a telephone conversation with a member of my staff that he had no objection to release of those matters which refer to him, although he was concerned for other persons referred to in the Eames Report. He was asked to write to my office confirming that he had no objection to the disclosure of matter which refers to him, but he has not done so.

- Officer 6 made a strong objection to any part of the Eames Report being released. Allegations against this officer contained in the Eames Report were strongly denied by him. Disciplinary action initiated against this officer by the QCSC was subsequently withdrawn. The officer submitted that this indicates that the recommendation of Mr Shennan in respect of this officer was wrong. The officer submitted that any portion of the Eames Report being released to any person would seriously affect his career as parts of the Eames Report would no doubt end up in the media. The officer submitted that the deletion of his name would not protect him from any innuendos and that further accusations would be made by the media and any other person wishing to denigrate an officer of the QCSC.

- Officer 7 lodged a written response in similar terms to the response by officer 6.

- Officer 8 endorsed the QCSC's written submissions (a copy of which had been forwarded to him). In his written submission, this officer requested that consideration be given to the purpose for which the Eames Report was being sought, whether the PLS was likely to have a "sectional interest" in accessing the information, and whether the public interest was likely to be served by the PLS's anticipated or probable use of sensitive information in other cases. This officer submitted that disclosure of the Eames Report, either in its entirety, or more particularly, in part, would place the QCSC in a position where it would be subjected to a biased representation of the facts in issue and trial by media. This officer submitted that impartial adjudication of the facts in issue by the public would be prejudiced. In conclusion, this officer submitted that public disclosure of all or, more particularly, part of the Eames Report, would present an unbalanced and misleading report to the reader. No disciplinary action was initiated against this officer by the QCSC, although Mr Shennan had recommended that consideration be given to disciplinary action.

- Officer 9 objected to any part of the Eames Report being released to any person for any reason. This officer noted that he had been mentioned adversely in the Eames Report but was not charged with any disciplinary breach. He submitted that release of the report would cast a slur on his character and would endanger his future career prospects. He submitted that deletion of his name would not protect him from any further allegations of misconduct.

- Officer 10 indicated that he had no objection to the finding adverse to him being released, but he did object to his name being associated with those findings. He would be happy for the information to be released if his name were deleted. No disciplinary action was taken against this officer.

85. After a summary of the responses received from QCSC officers was provided to the PLS, the PLS lodged a reply specifically concerning the recommendations by Mr Shennan that disciplinary action be taken against certain QCSC officers. The PLS submitted that the material relating to proposed disciplinary action does not relate to the officers' personal affairs, within s.44(1) of the FOI Act, since the material relates to the officers' employment affairs and work performance. This is clearly correct (see *Re Pope and Queensland Health* (1994) 1 QAR 616 at pp.658-660, paragraphs 110-116), but irrelevant for present purposes, since no claim has been made that the matter concerning recommended disciplinary action against QCSC officers is exempt matter under s.44(1) of the FOI Act.

86. The QCSC also lodged a reply to the responses received from the officers consulted. The QCSC submitted that it would be contrary to the public interest for the recommendations relating to disciplinary action to be disclosed, and that this was particularly so in the case of those officers against whom disciplinary action was recommended but not proceeded with, and those officers adversely named in the Eames Report against whom no disciplinary action was taken.

87. Mr Shennan recommended disciplinary action against seven QCSC officers. He also expressed the opinion that the Commissioners of the QCSC may need to give consideration to disciplining another officer. (No disciplinary action was, in fact, taken against that officer).
Mr Shennan adversely referred to two other officers as having failed to comply with rules as to searching of prisoners, but did not recommend that disciplinary action be taken against those two officers, and none was taken by the QCSC.

88. Two officers were dismissed by the QCSC for breaches of discipline, but had their appeals against dismissal upheld by an appeal tribunal constituted under s.46 of the *Corrective Services (Administration) Act 1988.* Relevantly for present purposes, however, both officers acknowledged, in the evidence they gave in the Supreme Court jury trial (see transcript of *R v Scrivener, Hills and Farr*, p.402, p.407, p.1176), that they had been dismissed from the QCSC for breaches of discipline and were awaiting the outcome of an appeal.

89. Of the five other officers against whom Mr Shennan recommended disciplinary action, action was initiated against two officers, but subsequently withdrawn by the QCSC. One officer was merely warned that formal disciplinary action would be taken against him if the impugned conduct was repeated. No disciplinary action was taken against the remaining two officers.
No evidence concerning disciplinary action proposed or taken against those five officers was given in court proceedings, so no material adverse to them in that respect has become a matter of public record.

90. Disclosure of the Eames Report, with identifying references to those five officers intact, would, in my opinion, damage the reputations of those five officers in respect of the performance of their employment duties. That would not ordinarily be unfair, or contrary to the public interest, in circumstances where, after being given a fair opportunity to answer charges against them, the officers were found to have performed their duties in an unsatisfactory manner. I consider, however, that disclosure of matter damaging to the reputations of those five officers would be unfair in the circumstances of this case, where the QCSC, after more careful reflection on Mr Shennan's report, after considering responses by those officers required to show cause why disciplinary action should not be taken against them, and presumably after monitoring the evidence given in the committal and trial (following ongoing investigations by police under the guidance of lawyers from the Office of the Director of Public Prosecutions), decided that disciplinary action should not be pursued against the five officers. That decision by the QCSC should itself be the subject of an appropriate level of public scrutiny and accountability, which would be assisted by disclosure of Mr Shennan's

analysis of the evidence obtained in his investigations, on the basis of which he believed recommendations for disciplinary action were warranted (*cf.* the passage from *Re Pope* set out at paragraph 92 below). However, I consider that the public interest in fair treatment of the five officers can be reconciled with the public interest in appropriate accountability of the QCSC (in respect of the death of prisoner Eames and the measures taken in response to it) by disclosing the body of the Eames Report subject to deletion of identifying references to the five QCSC officers referred to in this paragraph. I consider that the same reasoning ought to apply to the three other QCSC officers who were adversely mentioned in the Eames Report, and against whom no disciplinary action was taken.

91. In two previous decisions, I have referred to the kinds of public interest considerations which support my findings in the preceding paragraph as to deletion of identifying references to QCSC officers. The courts have recognised that: "*the public interest necessarily comprehends an element of justice to the individual*" (per Mason CJ in *Attorney-General (NSW) v Quin* (1989-90) 170 CLR 1 at p.18). In *Re Eccleston* at p.109 (paragraph 138),
I referred with approval to decisions of the Federal Court of Australia in *Harris v Australian Broadcasting Corporation* (1983) 50 ALR 551 and *Kavvadias v Commonwealth Ombudsman* (1984) 2 FCR 64 where it was held that it would be contrary to the public interest to disclose interim reports critical of particular persons who were still to be given the chance to respond to those reports, because their responses might result in further refinement or greater balance in those reports. A similar principle is evident in the remarks of Hill J of the Federal Court of Australia in *SRD v Australian Securities Commissioner & Anor* (1994) 123 ALR 730 at p.736.

92. In *Re Pope*, I concluded that the public interest in appropriate public scrutiny of, and accountability with respect to, the process and outcome of an investigation into alleged breaches of acceptable standards of scientific research in a publicly funded research institution, outweighed any public interest considerations favouring non-disclosure of the report in issue in that case, including the possibility of an adverse effect on Dr Pope's reputation as a research scientist. The following extract from *Re Pope* (at pp.649-650, paragraph 96) is relevant generally to the present case, and I have underlined the parts which have particular relevance to the issue of deleting identifying references to some of the QCSC officers adversely referred to in the Eames Report:

> *It is possible to envisage circumstances in which the public interest in fair treatment of individuals might be a consideration favouring non-disclosure of matter comprising allegations of improper conduct against an individual where the allegations are clearly unfounded and damaging, and indeed might even tell against the premature disclosure of matter comprising allegations of improper conduct against an individual which appear to have some reasonable basis, but which are still to be investigated and tested by a proper authority. In this case, however, I am dealing with a report into allegations of improper conduct against an individual, the report having been made by an independent investigator who has allowed the subject of the allegations a reasonable opportunity to answer adverse material. The weight to be accorded to public interest considerations (in the nature of fair treatment of individuals) which might favour non-disclosure of such a report must be judged according to the circumstances of each case. If allegations against an individual are found, on investigation, to lack any reasonable basis, and they involve no wider issues of public importance (such as whether proper systems and procedures are being followed in government agencies), the public interest in fair treatment of the individual might carry substantial weight in favour of non-disclosure (on the basis that the unsubstantiated allegations*

> *ought not to be further disseminated, even though accompanied by an exoneration). However, the public interest in accountability of government agencies and their employees (for the manner in which they expend public funds to carry out their allocated functions in the public interest) will generally always be in issue in such situations. In particular, there is a clear public interest in ensuring that allegations of improper conduct against government agencies and government employees, which appear to have some reasonable basis, are properly investigated, and that appropriate corrective action is taken where individuals, systems or organisations are found to be at fault, and that there is proper accountability to the public, in respect of both process and outcomes, in this regard. Each case must be judged on its own merits, and I consider that the weight of relevant public interest considerations (of the kind discussed in this paragraph) clearly favours disclosure of the Seawright Report.*

93. In *Re Pope*, specific allegations against Dr Pope were the subject of the report in issue, and the applicants for access knew this; thus deletion of Dr Pope's name was not an option.
Moreover, Dr Pope was given the opportunity to answer the allegations against him. Deletion of identifying references to the QCSC officers who were adversely referred to in the Eames Report (at a stage prior to them being given the opportunity to answer the allegations against them, if indeed the QCSC decided to pursue disciplinary action) remains an option in the present case, and I consider that it would strike an appropriate balance between the relevant competing public interests which are referred to earlier in this decision, and in the above extract from *Re Pope*.

94. In respect of the two officers whose dismissal for breaches of discipline has become a matter of public record (see paragraph 88 above), I consider that no further significant damage to their reputations could be caused by disclosure of the references to them in the body of the Eames Report, and I am not satisfied that the balance of the relevant public interest considerations warrants deletion of identifying references to those two officers. I have already noted at paragraph 88 above (so that it too is a matter of public record) that those two officers succeeded in having their dismissals from the QCSC overturned following a hearing by an appeal tribunal constituted under s.46 of the *Corrective Services (Administration) Act 1988*.

95. Apart from identifying references to eight of the QCSC officers adversely referred to in the Eames Report, I am satisfied that disclosure of three further segments of the Eames Report (the last two sentences of paragraph 23, sub-paragraph 24f., and the last 21 words of the second sentence in paragraph 41) would be contrary to the public interest. In those three segments, Mr Shennan expresses opinions that are severely prejudicial to the reputation of one QCSC officer, based on information Mr Shennan had obtained from a prisoner informant.
Mr Shennan was no doubt acting in good faith, and (in the second segment of information) qualified his conclusion with the proviso that it was conditional on the information proving to be correct. It appears, however, that by the time of the Supreme Court jury trial, the Crown Prosecutor had established that the information provided by this prisoner informant was completely unreliable (transcript, *R v Scrivener, Hills and Farr*, pp.409-411). I consider that it would be contrary to the public interest in the fair treatment of the QCSC officer concerned, for this severely prejudicial material, based on evidence now known to be completely unreliable, to be disclosed.

96. In summary then, I am satisfied that the following matter in the body of the Eames Report is exempt matter under s.41(1) of the FOI Act -

    (a) the last two sentences in paragraph 23;
    (b) in subparagraph 24b. -

(i) the fourth last word in line 2;
(ii) the last word in line 8;
(iii) the name of an officer, and the abbreviation of that officer's title, appearing in line 9;
(iv) the name of an officer appearing in line 10;
(v) the last word in line 12;

(c) in subparagraph 24d. -

(i) the last four words in line 8;
(ii) line 9;
(iii) the names of officers, and the abbreviation of one officer's title, appearing in line 10;
(iv) the last word in line 11;
(v) the first two words in line 12;
(vi) the names of officers, and the abbreviations of their titles, appearing in lines 16, 17 and 19;

(d) subparagraph 24f.;

(e) the first, third and fourth lines on page 13;

(f) the names of officers, and the abbreviations of their titles, appearing at the end of subparagraph 26b.(ii);

(g) in subparagraph 26b.(iii) -

(i) the last two words in line 6;
(ii) the first word in line 7;
(iii) the name of an officer, and the abbreviation of that officer's title, appearing at the end of subparagraph 26b.(iii);

(h) in subparagraph 26c. -

(i) the fifth, sixth and seventh words in line 10;
(ii) line 11;
(iii) the last three lines, in which names of officers appear;

(i) the last 21 words of the second sentence in paragraph 41;

(j) the names of officers, and the abbreviations of their titles, appearing in the first lines of subparagraphs 46(a), (b), (c), (d) and (e) respectively; and

(k) in paragraph 47 -

(i) the last word on the fifth line; and

(ii) the sixth line.

97. In respect of the balance of the matter claimed by the QCSC to be exempt under s.41(1) of the FOI Act, I am not satisfied that its disclosure would, on balance, be contrary to the public interest, and I find that it is not exempt matter under s.41(1) of the FOI Act.

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

98. Section 46 of the FOI Act provides:

> ***46.(1)*** *Matter is exempt if*
>
> *(a) its disclosure would found an action for breach of confidence; or*
>
> *(b) it consists of information of a confidential nature that was communicated in confidence, the disclosure of which could reasonably be expected to prejudice the future supply of such information, unless its disclosure would, on balance, be in the public interest.*
>
> ***(2)*** *Subsection (1) does not apply to matter of a kind mentioned in section 41(1)(a) unless its disclosure would found an action for breach of confidence owed to a person or body other than*
>
> *(a) a person in the capacity of*
>
> *(i) a Minister; or*
>
> *(ii) a member of the staff of, or a consultant to, a Minister;*
>
> *or*
>
> *(iii) an officer of an agency; or*
>
> *(b) the State or an agency.*

99. The QCSC has claimed that paragraphs 19 and 23 of the Eames Report are exempt under s.46(1)(a) of the FOI Act, and that paragraphs 27-32 of the Eames Report are exempt under s.46(1)(b) of the FOI Act. I have already found that paragraph 23 is exempt matter (partly under s.42(1)(b), and partly under s.41(1), of the FOI Act), and that parts of paragraph 19 are exempt under s.42(1)(b) of the FOI Act, so I need only consider the application of s.46(1)(a) to the balance of paragraph 19.

100. At p.7 of its written submission, the QCSC submitted that: "*The information which was conveyed to the Inspector* [i.e., Mr Shennan] *by prisoners is considered to be of a confidential nature and disclosure could bring an action for breach of confidence. ... The criteria to establish the equitable action for breach of confidence are considered to be satisfied.*" The elements of an action in equity for breach of confidence are set out, and discussed at some length, in my reasons for decision in *Re "B" and Brisbane North Regional Health Authority* (1994) 1 QAR 279 at pp.302-330. An essential element is that the information in question has the necessary quality of confidence (as to which see *Re "B"* at pp.304-310). The first, second and fourth sentences in paragraph 19 of the Eames Report do not have the necessary quality of confidence to found an action for breach of confidence. The substance of the information contained in those sentences is in the public domain: see p.219 of the transcript of proceedings of the committal hearing in the Townsville Magistrates Court, *Stanley & Ors (Complainants) v Farr, Hills, Scrivener and Levi*; see also p.405 and p.407 of the transcript of proceedings of the Supreme Court jury trial, *R v Scrivener, Hills and Farr*. I find that the first, second and fourth sentences of paragraph 19 of the Eames Report do not qualify for exemption under s.46(1) of the FOI Act.

101. The last six sentences of paragraph 19 do not record information communicated to Mr Shennan by other persons, and I think that the QCSC cannot have intended to include them amongst the matter claimed to be exempt under s.46(1)(a). In any event, I find that they clearly do not qualify for exemption under s.46(1)(a), since they do not record any information communicated to Mr Shennan in confidence.

102. Turning to paragraphs 27-32, I note that I have already found that most of paragraph 31 is exempt matter under s.42(1)(g) of the FOI Act (see paragraph 21 above), so I do not need to consider the application of s.46(1)(b) to that segment of paragraph 31.

103. The elements which must be satisfied to establish that matter is exempt under s.46(1)(b) of the FOI Act are identified and explained in *Re "B"* at pp.337-341. I need not repeat them here, because I can identify only one sentence in paragraphs 27-32 (the first sentence in paragraph 28) which records information communicated by other persons to Mr Shennan. The balance of the matter in paragraphs 27-32 comprises expressions of opinion by Mr Shennan, or statements of fact about things Mr Shennan has said or done, and cannot qualify for exemption under s.46(1)(b) as matter communicated to Mr Shennan in confidence. Most of it is matter of a kind mentioned in s.41(1)(a) of the FOI Act (the terms of which are set out at paragraph 67 above), and hence, because of the effect of s.46(2), does not qualify for exemption under s.46(1) of the FOI Act, given that Mr Shennan was acting in the capacity of an officer of an agency (for a detailed explanation of the effect of s.46(2), see *Re "B"* at p.292, paragraphs 35-36, and *Re Cairns Port Authority and Department of Lands* (1994) 1 QAR 663 at pp.683-687, paragraphs 40-46).

104. The first sentence of paragraph 28 summarises information said to have been communicated to Mr Shennan by a number of prison officers, all voicing a similar complaint. In my opinion, it comprises matter of a kind mentioned in s.41(1)(a) of the FOI Act (being expressions of opinion obtained, prepared or recorded for the purposes of the deliberative processes of Mr Shennan in compiling his report, and/or the deliberative processes of senior management of the QCSC in considering, and taking action in response to, Mr Shennan's report), and since the information was given to Mr Shennan by prison officers in their capacities as officers of an agency, it is not eligible for exemption under s.46(1) of the FOI Act, because of the effect of s.46(2).

105. Even if this information were eligible for exemption under s.46(1)(b) of the FOI Act, I could not be satisfied that disclosure of complaints of this nature could reasonably be expected to prejudice the making of similar complaints to the QCSC in future, and hence the first sentence of paragraph 28 would not qualify for exemption under s.46(1)(b) in any event.

106. I find that none of the matter contained in paragraphs 27-32 of the Eames Report is exempt matter under s.46(1)(b) of the FOI Act.

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

107. The QCSC has claimed that paragraphs 3, 5, 6, 15, 17 and 19 of the Eames Report, or parts of them, contain exempt matter under s.44(1) of the FOI Act, which provides:

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

108. In applying s.44(1) of the FOI Act, one must first consider whether disclosure of the matter in issue would disclose information that is properly to be characterised as information concerning the

personal affairs of a person. If that requirement is satisfied, a *prima facie* public interest favouring non-disclosure is established, and the matter in issue will be exempt, unless there exist public interest considerations favouring disclosure which outweigh all identifiable public interest considerations favouring non-disclosure, so as to warrant a finding that disclosure of the matter in issue would, on balance, be in the public interest.

109. 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. I held 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
- 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.

110. There is a small amount of matter in the body of the Eames Report which refers in passing to personal relationships between prisoners and members of their respective families. This is information which clearly falls within what I have described above as the core meaning of the phrase "personal affairs". Moreover, it is information the disclosure of which would not in any way serve to further the public interest in accountability of the QCSC in respect of the death of prisoner Eames. I can think of no public interest considerations which tell in favour of the disclosure of this personal affairs information, and accordingly I find that the following matter in the body of the Eames Report is exempt matter under s.44(1) of the FOI Act:

(a) subparagraph 3e. (including the notation under it, which precedes subparagraph 3f.);
(b) the notation appearing at the end of subparagraph 15c.; and
(c) the last line of paragraph 17.

111. The other material claimed by the QCSC to be exempt under s.44(1) mostly comprises information about criminal offences for which Mr Eames, and the prisoners charged with his murder, had been convicted, plus security classifications, sentence details and like information. Whether the fact that a person has been convicted of a particular criminal offence, and sentenced to a term of imprisonment for it, is information which concerns that person's personal affairs seems to me to involve difficult questions of judgment. Subject to proper exceptions (see s.62(1) of the *Juvenile Justice Act 1992* Qld and the *Criminal Law (Sexual Offences) Act 1978* Qld), and the inherent jurisdiction of a court to suppress the publication of information concerning a proceeding in the interests of the proper administration of justice (see *J v L & A Services Pty Ltd* [1995] 2 Qd R 10 and *SRD & Australian Securities Commission & Anor*, cited above, at p.732), the administration of criminal justice takes place in open court, and information of the kind in question becomes a matter of public record.
Arguably, there could be some difficulty in characterising such information as information which concerns the private aspects of a person's life. On the other hand, legislation like the *Criminal Law (Rehabilitation of Offenders) Act 1986* Qld provides for the suppression of records of less serious offences, after a qualifying period in which the offender must not re-offend, in the

interests of aiding the prospects of rehabilitation of offenders.

I note that in three cases decided in other jurisdictions, it has been held that references to a person's criminal charges or convictions comprise exempt matter under exemption provisions which correspond to s.44(1) of the FOI Act (see *Re Kahn and Australian Federal Police* (1985) 7 ALN N190; *Re O'Sullivan and Victoria Police Force (No. 5)*, Victorian AAT, No. 1989/39673, Fricke J, 23 March 1990, unreported; *Re Pasamonte and Victorian Police*, Victorian AAT, No. 1992/35274, Deputy President Dimtscheff, 18 May 1993, unreported), though in each case, the finding appears to have been treated as self-evident, with no supporting analysis.

112. Because of concessions made by the PLS, I do not need to decide this issue (which had not been fully argued by the participants in any event). Even assuming that such information concerns the personal affairs of Mr Eames and the prisoners who were charged with his murder, I am inclined to the view that disclosure of information about the nature of their respective convictions, and their prison security classifications, would, on balance, be in the public interest. In the context of the Eames Report, this information is integral to an understanding of Mr Shennan's assessment of weaknesses in systems and methods of control at Townsville Correctional Centre, and its disclosure would serve the public interest in accountability that is addressed in paragraphs 76-82 above.

113. It is not necessary for me to rule on the QCSC's claims for exemption in respect of this matter, since the PLS has indicated that it does not wish to pursue access under the FOI Act to matter of this kind, concerning Mr Eames and the prisoners who were charged with his murder.
I understand that the PLS already has sufficient knowledge of these matters for its purposes.
The matter in the body of the Eames Report which is no longer in issue in this review, in accordance with the concession by the PLS, is -

(a) subparagraphs 3b., 3c. and 3d.;
(b) the information contained in points (1), (2), (3), (4) and (5) of subparagraphs 15a., 15b. and 15c. respectively;
(c) the information contained in points (1), (2), (3) and (4) of subparagraph 15d.; and
(d) the second, third, fourth and fifth lines of paragraph 17.

114. In respect of the matter which remains in issue, the names of the prisoners charged with Mr Eames' murder, and the names of some other prisoners, are mentioned in Mr Shennan's account of incidents leading up to the fatal assault on Mr Eames. I consider that the names appear in the context of information which concerns the personal affairs of the prisoners (under either of the second and third dot-point subparagraphs in paragraph 80 of *Re Stewart*).
However, with the exception of the incident referred to in subparagraph 5b. of the Eames Report, all the incidents, and the names of the prisoners involved, have been thoroughly canvassed in the committal hearing and Supreme Court jury trial, and in my opinion the weight to be attached to any privacy interest of the prisoners involved in the incidents is negligible.
Because it relates directly to the fate which befell Mr Eames, and because it is integral to an understanding of Mr Shennan's analysis and recommendations (disclosure of which would serve the public interest in accountability that is addressed at paragraphs 76-82 above), I find that disclosure of this information, including prisoners' names, would, on balance, be in the public interest, and hence, that it is not exempt matter under s.44(1) of the FOI Act.

115. The incident referred to in subparagraph 5b. of the Eames Report appears to have had no connection to Mr Eames, but is of significance in demonstrating shortcomings in security measures at Townsville Correctional Centre prior to the fatal assault on Mr Eames.
Subparagraph 5b. should be disclosed for that reason, but the names of the prisoners involved are irrelevant to an understanding of the significance of the incident in the context of the Eames Report. I consider that identifying references to the prisoners should be deleted from

paragraph 5b. as exempt matter under s.44(1) of the FOI Act, in accordance with the principle stated in *Re Stewart* at p.258 (paragraph 81). I find that the following matter in subparagraph 5b. of the Eames Report is exempt matter under s.44(1) of the FOI Act -

(a) the names, and the words in brackets after them, appearing in lines 1 and 2, respectively;
(b) all names appearing in lines 3, 4, and 5; and
(c) the words in brackets at the start of line 5.

116. After taking into account the concessions made by the PLS (see paragraph 113 above), and the matter which I have found to be exempt under s.44(1) of the FOI Act, I am not satisfied that any of the other matter claimed by the QCSC to be exempt matter under s.44(1) qualifies for exemption under that provision.

Conclusion

117. For the foregoing reasons, I set aside the decision under review. In substitution for it, I decide that, after taking into account the matter in the Eames Report which is no longer in issue following concessions made by the applicant (see paragraphs 8 and 113 above) -

(a) the matter in issue which is identified in the findings stated at the ends of paragraphs 21, 49, 96, 110 and 115 above is exempt matter under the FOI Act; and

(b) the balance of the matter in issue is not exempt matter under the FOI Act, and the applicant therefore has a right to be given access to it under the FOI Act.

.....
F N ALBIETZ
INFORMATION COMMISSIONER