OFFICE OF THE INFORMATION COMMISSIONER (QLD)

Decision No. 98003
Application S 75/94

Participants:

KT
Applicant

BRISBANE NORTH REGIONAL HEALTH AUTHORITY
Respondent

DECISION AND REASONS FOR DECISION

FREEDOM OF INFORMATION - refusal of access - applicant seeking access to identifying information concerning an individual who had provided foster care for the applicant's birth child prior to the placement of that child for adoption - whether such information concerns the personal affairs of the foster carer - whether such information concerns the personal affairs of the birth parent - whether disclosure of the information would, on balance, be in the public interest - application of s.44(1) and s.44(2) of the *Freedom of Information Act 1992* Qld.

FREEDOM OF INFORMATION - refusal of access - secrecy provisions of other enactments - whether s.144 of the *Children's Services Act 1965* Qld prohibits disclosure of identifying information concerning foster carer - whether disclosure of the information is required by a compelling reason in the public interest - application of s.48(1) and s.48(2) of the *Freedom of Information Act* 1992 Qld - words and phrases: meaning of "publish" in s.144(3) of the *Children's Services Act 1965* Qld.

Freedom of Information Act 1992 Qld s.6, s.22(e), s.44(1), s.44(2), s.48(1), s.81
Freedom of Information Act (Review of Secrecy Provision Exemption) Amendment Act 1994 Qld
Adoption of Children Act 1964 Qld
Children's Services Act 1965 Qld s.144(1), s.144(1A), s.144(1AA), s.144(1B), s.144(2), s.144(2A), s.144(3), s.144(3A), s.144(4), s.144(5)

"B" and Brisbane North Regional Health Authority, Re (1994) 1 QAR 279
Baran and Secretary, Department of Primary Industries and Energy, Re (1989) 18 ALD 379
Colakovski v Australian Telecommunications Corporation (1991) 100 ALR 111

DECISION

I set aside the decision under review (being the internal review decision made on behalf of the respondent by Dr C B Campbell on 16 March 1994). In substitution for it, I decide that the matter remaining in issue (which is identified in paragraph 8 of my accompanying reasons for decision) is exempt matter under s.44(1) and s.48(1) of the FOI Act.

Date of decision: 26 March 1998

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INFORMATION COMMISSIONER

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REASONS FOR DECISION

Background

1. This review arises out of a decision of the Brisbane North Regional Health Authority (the Authority) to refuse the applicant (identified herein as "KT") access to certain matter contained in documents requested under the *Freedom of Information Act 1992* Qld (the FOI Act).

2. By letter dated 26 December 1993, the applicant sought access under the FOI Act to documents held by the respondent concerning the applicant and her son. Specifically, the documents sought were the "complete medical and social worker records" concerning the applicant's attendances at the Royal Women's Hospital, Brisbane during 1986-1987 and the "complete medical and nursery records" concerning the birth at that facility in 1987 of the applicant's son, and his relinquishment for adoption shortly after birth.

3. In response to the applicant's FOI access application, the Authority's FOI Decision-Maker, Mr Bill Evans, decided to grant access to the entire 64-page file in question, except for a small portion of matter on page 47 and all of page 64 of that file, access to which was refused under s.22(e) of the FOI Act.

4. Mr Evans' decision was affirmed, on internal review, in Dr C B Campbell's decision dated 16 March 1994. On 11 April 1994, the applicant made application to me for external review, under Part 5 of the FOI Act, of Dr Campbell's internal review decision.

The matter in issue

5. The two documents in issue in this review comprise:

page 47: a Royal Women's Hospital - Social Work Department form, signed by the applicant in April 1987 to indicate that she accepted responsibility for her newborn infant until she had made a decision regarding his future (on which the portion of matter claimed to be exempt comprised the name of the infant).

page 64: a letter from the Department of Children's Services [now the Department of Families, Youth and Community Care] to the Sister-in-Charge at the Royal Women's Hospital, written for the purpose of introducing the individual who would be providing foster care for the applicant's son until his placement for adoption.

External review process

6. A member of my staff undertook preliminary consultations with staff in the FOI Units of both Queensland Health, and the Department of Families, Youth and Community Care (which under its present title, and all previous titles, is hereinafter referred to as "the Department"), concerning the applicability of s.22(e) to the matter in issue. On the basis of those consultations, and my assessment of the matter in issue, I conveyed to the Authority my preliminary view that neither document (or any portion thereof) qualified for exemption on the basis claimed.

7. With respect to page 47, I conveyed to the Authority my preliminary view that the small portion of matter on that document claimed to be exempt did not qualify for exemption under any of the exemption provisions in the FOI Act, and that accordingly the applicant was entitled to have full access to page 47. With respect to page 64, I conveyed to the Authority my preliminary view that, with the exception of two small portions of matter which properly qualified for exemption under s.44(1) of the FOI Act, the letter should be released to the applicant. The two portions of matter which, in my preliminary view, were exempt matter under s.44(1) consisted of identifying information concerning the foster carer, namely:

(a) three words, comprising the title (i.e., Mr/Mrs), and the Christian name and surname of the foster carer; and

(b) two words, comprising the Christian name and surname of the foster carer.

8. In reply, the Authority advised that it accepted my preliminary views regarding both documents, and it subsequently provided the applicant with access to an unedited copy of page 47, and a copy of page 64 subject to the deletion of the two small portions of matter considered to be exempt matter under s.44(1) of the FOI Act. As a result, the only matter which remains in issue in this review comprises the two small portions of matter recorded on page 64, which consist of identifying information about the foster carer named therein, for which the Authority claims exemption under s.44(1) and s.48(1) of the FOI Act.

9. By letter dated 25 May 1994, I conveyed to the applicant my preliminary view that the Authority was correct in asserting that the two small portions of matter on page 64 which remain in issue are exempt under s.44(1) of the FOI Act, and my reasons for having formed that preliminary view. No reply to that letter was received from the applicant, and subsequent efforts to contact her by telephone were unsuccessful.

10. It was not until March 1995 that my office was able to re-establish contact with the applicant, who advised that she had not received my letter dated 25 May 1994. On 11 April 1995, I wrote to the applicant to confirm my earlier preliminary view that the matter remaining in issue qualified for exemption under s.44(1) of the FOI Act. At that time, I also advised the applicant that, in my preliminary view, the matter in issue also qualified for exemption under s.48(1) of the FOI Act. I extended to the applicant the opportunity to advise me whether she accepted my preliminary view, and in the event that she did not, to provide a written submission in response to the issues raised in my letters to her concerning the application to the matter in issue of s.44(1) and s.48(1) of the FOI Act.

11. By letter dated 16 May 1995, the applicant, through her solicitors, lodged written submissions addressing the matters discussed in my 11 April 1995 letter to her. Under cover of a letter dated 3 July 1995, the respondent lodged written submissions, in which it claimed exemption for the matter in issue under both s.44(1) and s.48(1) of the FOI Act. In response to an invitation to respond to the matters discussed in the respondent's submissions, a further written submission was lodged by the applicant's solicitors in March 1996.

12. In formulating my decision and reasons for decision in this matter, I have had regard to the matters discussed in the correspondence between the applicant and the respondent (as referred to in paragraphs 2-4 above), and the applicant's 11 April 1994 application for external review. I have also had regard to the following evidence and written submissions lodged with me (and exchanged between the participants for reply) by the participants during the course of this review:

- written submissions lodged by Kingsford Legal Centre (John Godwin, Solicitor), on behalf of the applicant, dated 16 May 1995;
- written submissions of the respondent, dated 3 July 1995; and
- points of reply lodged by Kingsford Legal Centre, on behalf of the applicant, dated 11 March 1996.

Exemption claim under s.44(1)

13. Section 44(1) and s.44(2) of the FOI Act provide:

> ***44.(1)*** *Matter is exempt matter if its disclosure would disclose information concerning the personal affairs of a person, whether living or dead, unless its disclosure would, on balance, be in the public interest.*
>
> ***(2)*** *Matter is not exempt under subsection (1) merely because it relates to information concerning the personal affairs of the person by whom, or on whose behalf, an application for access to a document containing the matter is being made.*

14. An analysis of the applicability of s.44(1) and s.44(2) of the FOI Act to the matter in issue in this review involves consideration of three separate issues.

15. Firstly, as I stated at p.345 (paragraph 179) of my reasons for decision in *Re "B" and Brisbane North Regional Health Authority* (1994) 1 QAR 279, the terms in which the s.44(1) exemption is framed require an initial judgment as to whether disclosure of matter in a document would disclose information concerning the personal affairs of a person, whether living or dead. However, as I went on to point out at paragraph 179 of my reasons for

decision in *Re "B"*, a finding that certain matter does concern the personal affairs of an individual is not itself decisive as to whether the matter is exempt under s.44(1) of the FOI Act. The effect of the public interest balancing test, as contained in s.44(1), is that once an initial judgment is made that the matter in issue concerns the personal affairs of a person, then it will have been established that there is a *prima facie* justification in the public interest for non-disclosure of the matter, unless the further judgment is made that the *prima facie* ground is outweighed by other public interest considerations, such that disclosure of the matter in the document "would, on balance, be in the public interest".

16. In addition to the two elements of s.44(1), as set out in the preceding paragraph, consideration must also be given to the potential applicability of s.44(2) of the FOI Act which, as I stated at pp.343-344 (paragraphs 174-176) of my decision in *Re "B"* (and as discussed further in paragraphs 27-32 below), operates as an exception to the s.44(1) exemption provision.

17. The participants in this review disagree on each of the three issues set out above. I shall now consider, in turn, the operation and effect of the two elements of the s.44(1) exemption, and of the s.44(2) exception to that exemption, and the participants' submissions in respect of each issue.

Whether the matter in issue is information concerning the personal affairs of a person

18. In my reasons for decision in *Re Stewart and Department of Transport* (1993) 1 QAR 227, I discussed in detail the meaning of the phrase "personal affairs of a person" (and the relevant variations thereof) as it appears in the FOI Act. In particular, I said in *Re Stewart* that information concerns the "personal affairs of a person" if it concerns the private aspects of a person's life and that, while there may be a substantial grey area within the ambit of the phrase "personal affairs", that phrase has a well accepted core meaning which includes:

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

Whether or not information 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.

19. At pp.259-261 (paragraphs 86-90) of my reasons for decision in *Re Stewart*, I noted with approval the decision of the New South Wales Court of Appeal in *Commissioner of Police v The District Court of New South Wales and Perrin* (1993) 31 NSWLR 606, and the judgment of Lockhart J, sitting as a member of a Full Court of the Federal Court of Australia in *Colakovski v Australian Telecommunications Corporation* (1991) 100 ALR 111 (at p.119), which had held that, viewed in the abstract, an individual's name could not be considered as ordinarily falling within the meaning of the phrase "personal affairs". I stated that, in my view, a person's name was one of the matters which fall within the grey area, rather than within the core meaning of the phrase "personal affairs of a person", and that the proper characterisation of such information depends upon the particular context in which it appears.

20. In their submissions, both of the participants in this review indicated their agreement with my analysis of the relevant principles, as set out above. However, the participants disagree as to the proper characterisation of the matter in issue, in the specific context in which that matter appears.

21. In her submission dated 16 May 1995, the applicant argued:

> *The fostering of children is a public rather than a private affair, akin to a position, office or other public activity. It is a highly regulated role in which interaction is required with government and community bodies. Consequently the names of those individuals who partake in such activities, as identified on official documents, such as the letter from the* [Department] *to the Sister-in-Charge at the Royal Women's Hospital, cannot be held to be the "personal affairs of a person".*

22. In its 3 July 1995 submission, the respondent (which bears the onus of proof in this review, in accordance with s.81 of the FOI Act) stated:

> *Foster parents are approved in accordance with section 104 of the* Children's Services Act. *They are not employed by the* [Department]. *The only financial assistance they receive from that Department is a maintenance payment for the child.*
>
> *Being a foster parent is not a job. The process of recruitment and assessment of potential foster parents is instructive in this regard.* [Reference to the relevant portions of the Department's Practice Framework discloses that the assessment of potential foster parents] *focuses on the most intimate aspects of a foster family's life. They are asked questions about their marriage, their childhood, their significant relationships, personal crises, religion, physical and emotional health, criminal history etc. To foster a child is to, albeit temporarily, include, the foster child in the family.*
>
> *There is no publicity given to the names and location of foster parents. All foster placements of children are made through the* [Department] *or approved foster care agencies. It is agreed that it is a role which, in part, is governed by both legislation and regulation. However, this in itself does not mean it is automatically a "public" affair. Many aspects of individuals' "private affairs" are governed by regulation (eg. Birth, marriage, death, etc.). However, the existence of secrecy provisions within the relevant legislation is evidence that the information is not intended to be "public".*

23. As I stated at p.256 (paragraph 76) of my reasons for decision in *Re Stewart*, I consider that when difficult and marginal cases are encountered in the grey area, an appropriate guiding principle should be that the phrase "personal affairs of a person" extends to the kinds of information concerning the affairs of a person which a notional reasonable bystander, applying the current community standards of persons of ordinary sensibilities, would regard as information the dissemination of which the person (whose affairs the information concerns) ought to be entitled to control, and hence, which should be capable of being claimed to be exempt from mandatory disclosure under the FOI Act.

24. In the present case, for the purpose of determining whether the foster carer's name comprises exempt matter under s.44(1) of the FOI Act, I considered that information not in the abstract, but in the particular context in which it appears in page 64. Disclosure of the foster carer's name, in the context of page 64, would identify the person named therein as a foster care-giver for the Department, and as the individual who provided foster care for the applicant's son prior to his placement for adoption.

25. I consider that the identification of an individual as a person who has provided foster care to children in need has such a strong connection to the domestic and personal spheres of an individual's life that it is properly to be characterised as information concerning that individual's personal affairs. I do not think there is any doubt on that issue, but if there were, it would be appropriate to resort to the guiding principle referred to in paragraph 18 above. In that regard, I consider that the foster carer's name, in the context in which it appears in page 64, is information concerning "matters of private concern to the individual" which "relate to the private aspects of a person's life" (see paragraphs 54-55 of *Re Stewart*), the dissemination of which that individual ought to be able to control. I find that the identifying references to the foster carer, where they appear in the context of page 64, comprise information concerning that individual's "personal affairs", within the meaning of s.44(1) of the FOI Act, and are therefore *prima facie* exempt under s.44(1) of the FOI Act.

26. Having made the determination that the matter in issue is *prima facie* exempt under s.44(1), I must consider the possible application of the s.44(2) exception to the s.44(1) exemption, and, if that is not applicable, apply the public interest balancing test which is incorporated within s.44(1).

Applicability of the s.44(2) exception

27. In my decision in *Re "B"*, I analysed the considerations which arise when the matter in issue concerns the 'shared personal affairs' of the applicant for access and another person or persons, as well as the scope and operation of the s.44(2) exception. In particular, I stated at pp.343-344 (paragraphs 173-176) of that decision:

> ***173.*** *The application of the Queensland FOI Act to matter that concerns the personal affairs of more than one person becomes a trifle complex. The starting point is the general right of access conferred by s.21 of the FOI Act, by which any person has a legally enforceable right to be given access, under the Act, to documents of an agency or official documents of a Minister, subject only to such reservations and exceptions as are to be found in the scheme of the FOI Act itself.*
>
> ***174.*** *When dealing with an FOI access application an agency or Minister has a discretion to refuse access to exempt matter. Applied literally, the opening words of s.44(1) would produce the result that information concerning the personal affairs of an applicant is* prima facie *exempt matter. Section 44(2) therefore provides for an exception to the operation of s.44(1), i.e., that matter is not exempt under s.44(1) merely because it relates to information concerning the personal affairs of the applicant. Section 44(2) cannot be construed as a provision which confers a personal right of access to information concerning an applicant's personal affairs. There is only one provision in the FOI Act which confers a right of access, and that is s.21; moreover, the scheme of the Act makes it clear that information relating solely to an applicant's personal affairs may be exempt under any applicable exemption provision in Part 3, Division 2. Section 44(2) is, according to its plain terms, no more than an exception to an exemption provision.*

175. *The presence of the word "merely" in s.44(2) places a significant qualification on the scope of the exception, and one which is directly relevant to the circumstances under consideration. In paragraph 49 of my decision in* Mr S T Hudson as agent for Fencray Pty Ltd and Department of the Premier, Economic and Trade Development (1993) 1 QAR 123, *I expressed the view that the word "merely" in the phrase "merely factual matter" in the former s.36(2) of the FOI Act (since amended by the* Freedom of Information Amendment Act 1993 *Qld) meant purely factual matter, or solely or no more than factual matter . The English word "mere" comes from the Latin merus, meaning "pure, unmixed". Thus the Collins English Dictionary (Australian edition) gives the meaning of the word "mere" as "being nothing more than something specified". The correct sense of s.44(2) would be conveyed by paraphrasing it as - matter is not exempt under subsection (1) purely by reason that it relates to information concerning the personal affairs of the applicant for access.*

176. *Thus, if matter relates to information concerning the personal affairs of another person as well as the personal affairs of the applicant for access, then the s.44(2) exception to the s.44(1) exemption does not apply. The problem here arises where the information concerning the personal affairs of the applicant is inextricably interwoven with information concerning the personal affairs of another person. The problem does not arise where some document contains discrete segments of matter concerning the personal affairs of the applicant, and discrete segments of matter concerning the personal affairs of another person, for in those circumstances:*

(a) the former will fall within the s.44(2) exception;

(b) the latter will be exempt under s.44(1) (unless the countervailing public interest test applies to negate the prima facie ground of exemption); and

(c) s.32 of the FOI Act can be applied to allow the applicant to have access to the information concerning the applicant's personal affairs, by the provision of a copy of the document from which the exempt matter has been deleted.

Where, however, the segment of matter in issue is comprised of information concerning the personal affairs of the applicant which is inextricably interwoven with information concerning the personal affairs of another person, then:

(a) severance in accordance with s.32 is not practicable;

(b) the s.44(2) exception does not apply; and

(c) the matter in issue is prima facie exempt from disclosure to the applicant according to the terms of s.44(1), subject to the application of the countervailing public interest test contained within s.44(1).

28. The applicant contends that the matter in issue in this review falls within the s.44(2) exception on the basis that *"information with respect to one's newborn children is in fact information regarding one's personal affairs"*.

29. In response to the specific point raised by the applicant, the respondent submitted that the FOI Act does not differentiate in relation to age, and that there is no automatic inclusion of children's personal affairs information in their parents' personal affairs information. Instead, the respondent argued, that *"each person is treated as a single entity at all times from birth"*, and that this separation of parents' and children's personal affairs was commonly followed by the respondent, and by the Department, in dealing with FOI access applications, and was supported by legal authority (citing *Haines v Neves and Another* (1987) 8 NSWLR 442; *Gillick v West Norfolk and Wisebeck Area Health Authority* [1986] 1 AC 112).

30. As set out in my analysis at paragraph 27 above, the s.44(2) exception to the s.44(1) exemption applies only to information which comprises discrete segments of matter relating to information concerning the personal affairs of the applicant for access. Matter which solely concerns the personal affairs of another person, or which relates to information concerning the personal affairs of another person as well as the personal affairs of the applicant for access, does not fall within the scope of the s.44(2) exception. In the circumstances of the present case, I am satisfied that the matter in issue concerns the personal affairs of a person (the foster carer whose identity it comprises) other than the applicant for access. Arguably (and as apparently conceded by the applicant in her submission), the matter in issue also concerns the personal affairs of the adopted person for whom the foster carer provided temporary care for a short period prior to his adoption.

31. I accept the Department's submission noted at paragraph 29 above (supported by *Haines v Neves* and *Gillick's* case) that the personal affairs of a child are not necessarily also the personal affairs of the child's parents (though it will often be the case that information concerning the care and welfare of a child is also information concerning the personal affairs of a parent if it concerns the discharge by the parent of the parent's legal responsibility for the care and welfare of that child). However, in circumstances in which the birth mother of a child has given written consent to the child's adoption, the legislative scheme of the *Adoption of Children Act 1964* Qld (as applicable to the circumstances of the applicant's case) provides that all decisions concerning the child's future (including placement in foster care or with adoptive parents) become the responsibility of the Department. In such circumstances, the birth mother ceases to have any legal responsibility for the care and welfare of the child upon the giving of that written consent. The birth mother has no right to any further contact with the child, or to any involvement in decisions concerning the child's upbringing. Accordingly, I cannot see how information concerning the person providing temporary foster care for a child, by arrangement with the Department after the birth mother had consented to the child's adoption, could be properly characterised as information relating to or concerning the personal affairs of the child's birth mother.

32. I find that the matter in issue cannot properly be characterised as matter which relates to information concerning the personal affairs of the applicant, and accordingly, the matter in issue does not fall within the s.44(2) exception. It is therefore exempt under s.44(1) of the FOI Act (unless the public interest balancing test in s.44(1) applies so as to negate the *prima facie* ground of exemption).

Application of s.44(1) public interest balancing test

33. The meaning of the phrase "public interest" was discussed in some detail in my decision in *Re Eccleston*; see in particular pp.78-81 (paragraphs 49 to 57) of that decision, of which the following is presently relevant:

54. Likewise, under freedom of information legislation, the task of determining, after weighing competing interests, where the balance of public interest lies, will depend on the nature and relative weight of the conflicting interests which are identifiable as relevant in any given case.

55. While in general terms, a matter of public interest must be a matter that concerns the interests of the community generally, 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 *(1990) 64 ALJR 627). Thus, there is a public interest in individuals receiving fair treatment in accordance with the law in their dealings with government, as this is an interest common to all members of the community. Similarly, the fact that individuals and corporations have, and are entitled to pursue, legitimate private rights and interests can be given recognition as a public interest consideration worthy of protection, depending on the circumstances of any particular case.*

56. Such factors have been acknowledged and applied in several decisions of the Commonwealth AAT; for example in Re James and Others and Australian National University *(1984) 6 ALD 687 at p.701, Deputy President Hall said:*

> In [Re Burns and Australian National University (1984) 6 ALD 193] my colleague Deputy President Todd concluded that, for the purposes of the Freedom of Information Act, the concept of public interest should be seen as embodying public concern for the rights of an individual.
> Referring to a decision of Morling J, sitting as the former Document Review Tribunal (*Re Peters and Department of Prime Minister and Cabinet (No. 2)* (1983) 5 ALN No. 218) Deputy President Todd said:
>
> > *But what is important is that his Honour clearly considered that there was a public interest in a citizen having such access in an appropriate case, so that if the citizen's 'need to know' should in a particular case be large, the public interest in his being permitted to know would be commensurately enlarged. (at 197)*
>
> I respectfully agree with Mr Todd's conclusion ... The fact that Parliament has seen fit to confer upon every person a legally enforceable right to obtain access to a document of an agency or an official document of a minister, except where those documents are exempt documents, is to my mind a recognition by Parliament that there is a public interest in the rights of individuals to have access to documents - not only documents that may relate more broadly to the affairs of government, but also to documents that relate quite narrowly to the affairs of the individual who made the request.'

34. The force of this principle has been recognised, at least in so far as it relates to documents concerning the personal affairs of an applicant for access, in s.6 of the FOI Act, which provides:

> *6. If an application for access to a document is made under this Act, the fact that the document contains matter relating to the personal affairs of the applicant is an element to be taken into account in deciding—*
>
> *(a) whether it is in the public interest to grant access to the applicant; and*
>
> *(b) the effect that the disclosure of the matter might have.*

35. In the 16 May 1995 written submission lodged on behalf of the applicant, it was argued, in respect of both the s.44(1) and s.48(1) exemption claims, that there were a number of public interest grounds which *"establish*[ed] *that* [the applicant] *should be provided with the information at issue:*

> *1. It is in the best interests of* [the applicant] *and her son that if, in the event that they are reunited,* [the applicant] *is fully informed as far as practicable of her son's life while he is not in her care, including his experiences in foster care.*
>
> *2. It is in the interests of the foster parents themselves to know that a relinquishing mother is concerned for the welfare of her child. Further, it is in the public interest that foster parents are given the opportunity to inform concerned relinquishing mothers of the welfare of their children during foster care.*
>
> *3. As expressly recognised in the* Freedom of Information Act 1992*, individuals have the right to information regarding their personal affairs (see particularly ss.6 and 44(2)). Information with respect to one's newborn children is in fact information regarding one's personal affairs.*
>
> *4. To date,* [the applicant] *has been provided with insufficient information with respect to her son's health and welfare by the* [Department]*. In fact the information with which she has been supplied on a number of occasions ... has been identical on each occasion. It would be in the public interest if the satisfactory status of her son's welfare at certain times could be corroborated by other sources, such as by her son's foster parents.*
>
> *5.* [The applicant] *has suffered and continues to suffer psychological trauma with respect to the loss of her son through adoption. It is in the public interest that* [the applicant's] *trauma be lessened by release of information regarding her son's temporary placement in foster care. The Queensland Government has a duty to minimise any injury such as trauma that may have arisen as a result of the adoption process.*

36. As part of its 3 July 1995 submission, the Authority lodged a statement, prepared by Ms C G Peltola, Assistant Divisional Head of the Protective Services Branch of the Department. In that undated statement, which bears the heading "Release of Identity of Pre-Adoptive Foster Parents", Ms Peltola first described her qualifications and area of responsibilities within the Department:

> *My name is Carol Gwendoline Peltola. I have a B.A. with Honours in Psychology awarded by the University of Queensland in 1979 and am registered as a psychologist in Queensland.*

I have been employed by the [Department] *since 1981 and am currently the Assistant Divisional Head, Protective Services, responsible for policy and programs relating to child abuse and neglect, alternative care for children, and adoptions.*

37. Ms Peltola's statement then set out extensive arguments as to why disclosure of the matter in issue in this review would not, on balance, be in the public interest:

> ...
>
> *Pre-adoptive foster parents, who foster new-born infants prior to their placement with approved adoptive parents and subsequent adoption, are by the very nature of their role, part of the operational proceedings to an adoption. Their role is central in ensuring babies available for adoption are provided with the individual care and attention which maximises early developmental opportunities and which would not be possible in the institutional setting of a hospital. They always have contact with the adoptive parents, over a number of practical matters pertaining to the infant. They can provide the adoptive parents with information about sleeping and eating patterns, health and development. ...*
>
> *... pre-adoptive foster parents are not provided with identifying birth details of the infant. They do not have contact with the birth parents of newly born infants available for adoption, unless the consent has been revoked and the adoption does not proceed. Any provision for such contact or for the provision of the names and addresses of these foster parents to birth parents would create the possibility of the infant's adoptive identity being revealed, either directly or inadvertently, to the birth parents. Because of the confidential nature of adoption, any contact by the birth parents would effectively prevent the foster parents having contact with the adoptive parents. For the reasons outlined in the previous paragraph, this would not be in the long term best interests of the child.*
>
> *In addition I am of the view that it would be contrary to the letter and spirit of the Adoption legislation for the foster parents' details to be released to* [the applicant].
>
> *The disclosure of identifying information about an adoption is governed by the provisions of the* Adoption of Children Act, *as amended as recently as 1990 and 1991. These amendments were subject to considerable public debate. The debate, by its very nature, explored the factors to be balanced in determining the public interest and the Parliament determined that the disclosure of adoption information should occur after the adopted person reaches the age of 18 years and if there is no objection to such disclosure. ... .*
>
> *From time to time I receive representations from members of the public which reflect a range of views. While I acknowledge the sensitive nature of this matter and the depth of feeling experienced by some people involved in the adoption process, I am of the view that the current legislative provisions reflect the Queensland community's position.*

38. In response to the specific 'public interest factors' which the applicant, in her 16 May 1995 submission, contended favoured the release of the matter in issue, Ms Peltola stated:

> [The applicant] *has been kept as fully informed of her son's circumstances as the law currently permits.*
>
> *... relinquishing parents are not denied access to information on the child's experience and development during the foster placement. The Department acts as a "letter box" through which information can be exchanged between the foster parents and the relinquishing parent without undermining the confidentiality provisions.*
>
> *There is currently no legislative provision in the* Adoption of Children Act *requiring adoptive parents to provide ongoing information on the infant's progress and well-being to the birth parents. The provision of such information is reliant on the goodwill of both parties and is processed through the Department. There is no other way of corroboration of this information from other sources.*
>
> *To date, the Department has made every effort to assist* [the applicant] *with the information she is seeking. All possible information available has been passed on to* [the applicant].
>
> ...
>
> *The Department is well aware of the depth of grief and loss experienced by relinquishing parents, particularly birth mothers, and that this experience can have life-long ramifications.*
>
> *Officers have taken considerable time and effort to respond as fully as possible to* [the applicant] *and to her particular needs. They will continue to do so, and to provide her with any future information on the well-being and development of her son, immediately it is received. This, of course, will be dependent on the provision of such information by the child's adoptive parents.*

39. By letter dated 11 March 1996, the applicant's solicitors lodged points of reply to the matters discussed in the respondent's 3 July 1995 written submissions:

> *The submission appears to only advance one public interest argument against disclosure. … It is argued that the provision of the foster parent's details would create the possibility of the child's adoptive identity being revealed to the birth mother. It is argued that this is contrary to the spirit of the* Adoption of Children Act.
>
> *This argument assumes that* [the applicant's] *motive in contacting the foster parents is to establish contact with the adoptive parents. However,* [the applicant] *is prepared to undertake not to attempt to ascertain the identity of the adoptive parents from the foster parents. Her motivation in identifying the foster parents is to obtain information about her son when he was in their care. As there is no intention to subvert the* Adoption of Children Act, *the only argument advanced by the Authority as to public interest does not hold. Therefore the Commissioner must accord weight to the public interest factors raised by* [the applicant] *in favour of disclosure.*

> *Contrary to the suggestion in Ms Peltola's statement …,* [the applicant] *was not given "extensive information to ensure that (she would) understand the far-reaching nature of the adoption process". Rather, she received very little information and* [the applicant] *was traumatised by the adoption process. She has been under therapy in relation to this trauma. The obtaining of information about her son's wellbeing in the period of foster care will ease her trauma and be therapeutic for her, and in the long term best interests of both herself and her son.*
> *It is obviously in the public interest to take reasonable measures to reduce unnecessary trauma to relinquishing parents. This can be done in* [the applicant's] *case by releasing the foster parent's details while taking other measures to ensure that doing so poses no actual threat to the policy of the* Adoption of Children Act *that the identity of the adoptive parents be protected from disclosure.*
>
> *There is no reason why the release of the foster parent's details need contravene the* Adoption of Children Act. *The release of the information could be made conditional upon* [the applicant] *agreeing not to contact the adoptive parents except on the adoptive parents' request, and that the adoptive parents' identities remain secret from* [the applicant] *except if disclosure is initiated by the adoptive parents.*
>
> *We submit that it is unreasonable to justify a refusal to disclose information under the FOI Act on the basis of mere speculation that there is a hypothetical possibility of the information being misused contrary to the spirit of another piece of legislation.*
>
> *The approach to exercising the discretion to release information is to ask whether there is a compelling public interest in disclosure. In the circumstances of* [the applicant's] *case, where she has a therapeutic need for access to information about her son's care, we submit that the public interest weighs in favour of disclosure.*

40. I note that the above submission makes no reference to the proper weight (which, in my view, is considerable) to be accorded to the public interest in protecting the privacy of information concerning the personal affairs of the foster carer who is identified in the matter in issue (i.e., the public interest consideration which is inherent in the satisfaction of the test for *prima facie* exemption under s.44(1) of the FOI Act). Disclosure of the matter in issue would expose the foster carer to uninvited contact by the applicant, attempting to elicit information about foster care given to the applicant's son for a period of less than a month, almost 11 years ago.

41. I also note that, in applying the public interest balancing test in s.44(1) to the matter in issue, s.6 of the FOI Act does not assist the applicant, since the matter in issue does not relate to the applicant's personal affairs, for the reasons explained at paragraphs 31-32 above.

42. It is my view that, while the factors cited by the applicant as public interest considerations favouring the disclosure to her of the matter in issue are clearly reflective of the applicant's strong personal desire to obtain information concerning her son's health during the period of his foster care placement prior to adoption, they do not reflect the broader public interest.
I consider that the legislative scheme governing the disclosure of identifying information about the parties to an adoption has been carefully framed by the legislature, after extensive consideration of the competing interests of privacy and the right to information, and reflects the legislature's view of where the balance of public interest lies.

43. In the particular circumstances of the present case, I consider it significant that the period of foster care, provided to the applicant's son by the person whose identity is in issue (between the child's birth in 1987 and his adoption in that same year), was so short - less than a full month. I also note that, as indicated in Ms Peltola's statement, the Department has responded to the applicant's repeated expressions of concern about the state of her son's health, by providing her with as much information known to the Department as can be disclosed without breaching the strict confidentiality requirements of the *Adoption of Children Act*. I concur with the Department's submissions that disclosure of the foster carer's identity to the applicant could result in the direct or inadvertent disclosure to the applicant of information concerning the post-adoption identity of the applicant's son, which would be contrary to the intent of the comprehensive legislative scheme regarding access to identifying information set out in Part 4A of the *Adoption of Children Act*. (In this regard,
I note that, in accordance with the provisions of Part 4A of that Act, no identifying information about an adopted person is released by the Department until that person has attained 18 years of age, and that the applicant's son would be entitled (in the year 2005, upon attaining the age of 17 years and 6 months) to lodge an objection to the release of identifying information to the applicant, or to contact being made by the applicant.)

44. With respect to the applicant's suggestion that disclosure to her of the matter in issue could be made conditional on her undertaking not to contact the adoptive parents, I consider that any such undertaking on the applicant's part would be unenforceable in practice, and in any event the proposal takes no account of the privacy interest which is directly threatened, being that of the foster carer who is identified in the matter in issue.

45. In light of all of the above, I consider that any public interest considerations which may favour disclosure to the applicant of the matter in issue are not of sufficient weight to overcome the public interest in non-disclosure which is inherent in the satisfaction of the test for *prima facie* exemption under s.44(1) of the FOI Act. Accordingly, I find that the matter in issue is exempt matter under s.44(1) of the FOI Act.

Exemption claim under s.48(1)

46. In my 25 May 1994 letter to the applicant (see paragraph 9 above), I did not express any preliminary view concerning the applicability of s.48 to the matter in issue since, at that time, the scope of the s.48 exemption was under review, with the exemption provision originally enacted in August 1992 due to expire in mid-August 1994. The Queensland Law Reform Commission had reported to the Attorney-General in March 1994, recommending which secrecy provisions in Queensland legislation should be given a special status in the application of the FOI Act (i.e., by not being overridden, so far as the operation of the access scheme in the FOI Act is concerned, by s.16(1) of the FOI Act). Subsequently, as a result of the *Freedom of Information Act (Review of Secrecy Provision Exemption) Amendment Act 1994*, in late August 1994, s.48 was amended to provide:

> ***48.(1)*** *Matter is exempt matter if its disclosure is prohibited by an enactment mentioned in the schedule 1 unless disclosure is required by a compelling reason in the public interest.*
>
> ***(2)*** *Matter is not exempt under subsection (1) if it relates to information concerning the personal affairs of the person by whom, or on whose behalf, an application for access to the document containing the matter is being made.*

(I subsequently addressed the question of the application of s.48(1) to the matter in issue in my letter to the applicant dated 11 April 1995: see paragraph 10 above.)

47. In applying s.48 of the FOI Act, three issues must be considered:

(a) whether there is an enactment mentioned in Schedule 1 to the FOI Act which prohibits the disclosure of the matter in issue (this will generally require examination of the correct interpretation and application of the relevant enactment mentioned in Schedule 1 to the FOI Act in order to establish whether it applies so as to prohibit disclosure of the particular matter in issue);

(b) whether, notwithstanding the existence of any such specific prohibition, disclosure of the matter in issue is required by a compelling reason in the public interest; and

(c) whether the s.48(2) exception applies to the matter in issue, such that the matter is not exempt from disclosure under s.48(1).

Relevant enactment in Schedule 1 to the FOI Act

48. Schedule 1 to the FOI Act bears the heading "SECRECY PROVISIONS GIVING EXEMPTION ... section 48 of the Act", and then sets out, for the purposes of that section, a list of specific provisions contained in ten Queensland statutes. The respondent contends that the relevant portion of Schedule 1 is the reference contained therein to "*Children's Services Act 1965*, section 144".

49. Section 144 of the *Children's Services Act*, as presently in force, provides:

> ***Secrecy provisions***
>
> ***144.(1)*** *The director and every other person appointed (whether before or after the commencement of this Act) to the department for the purposes of this Act or of any Act repealed by this Act shall take and subscribe and abide by the prescribed oath of fidelity and secrecy which may in any case be administered by any justice.*
>
> ***(1A)*** *A person engaged in work for the purposes of this Act is authorised to communicate information, which has come to the person's knowledge in the person's official capacity under this Act and that in the person's opinion is or is likely to be material to detecting, preventing or dealing with cases of child abuse or neglect, to all or any of them, the chief health officer, any officer of the Department of Health acting in aid of the chief health officer in connection with child abuse or neglect and such legally qualified medical practitioner, police officer, person approved by the director, or person acting with the approval of the chief health officer in connection with child abuse or neglect as appears to the person in this subsection first mentioned to have a legitimate interest in possessing that information.*
>
> ***(1AA)*** *A person purporting in good faith to act under subsection (1A), who discloses information referred to therein to any person or persons referred to therein shall incur no liability at law by reason of such disclosure.*
>
> ***(1B)*** *Save as is prescribed by subsection (1A), a person engaged in work for the purposes of this Act shall preserve and aid in preserving secrecy with respect to all*

matters that come to the person's knowledge in the person's official capacity under this Act and shall not communicate any such matter to any person except—

(a) for the purpose of carrying this Act into effect; or
(b) to a lawfully constituted court or tribunal.

(2) *A person appointed for the purposes of this Act or a person assisting such an appointee in carrying this Act into effect who inserts or publishes in the records of the department or makes or gives any allegation, comment or opinion in respect of any matter touching or concerned with the history, family background or welfare of any child shall not thereby incur any liability if the person has acted in good faith and without malice and with reasonable care.*

(2A) *In any proceeding taken against any such person on account of such an insertion or publication the burden of proof that such person has acted otherwise than in good faith or with malice or without reasonable care shall lie upon the plaintiff.*

(3) *Save where the person is purporting in good faith to act under authority conferred by subsection (1A), a person shall not publish any information which—*

(a) is of a confidential nature; and

(b) to the person's knowledge, is contained in the records of the department or which has been given to the person by an officer of the department or other person engaged in carrying this Act into effect or which has been given to the person for the purposes of the department.

Maximum penalty—100 penalty units or 1 year's imprisonment.

(3A) *A court shall not convict a person of a contravention of this subsection if it is satisfied that—*

(a) the publication of such information was made for the purpose of carrying this Act into effect; or

(b) the welfare of the child concerned in such information demanded such publication.

(4) *The provisions of subsection (3) shall not apply to a publication of such information—*

(a) made pursuant to an order of the Supreme Court or a Circuit Court;

(b) made in a proceeding before any court which involves the child concerned in such information; or

(c) made, with the approval of the Minister, to any person with a view to the social or educational benefit of children in care generally.

> ***(5)*** *For the purposes of this section—*
> ***"records of the Department"*** *includes any report of an investigation or examination made in relation to any person upon an order of a court pursuant to this Act.*
>
> [No 42 of 1965, as amended by 1970 No 17, s 35 Sch; 1979 No. 75, s 4; 1987 No. 32 s 69 Sch; 1992 No. 44 s 235 sch 3]

50. The respondent submits that disclosure of the matter in issue is prohibited by s.144(3) of the *Children's Services Act*, while the applicant contends that disclosure to her of the matter in issue would not constitute a contravention of s.144(3) of the *Children's Services Act.*

51. In order to meet the requirements of s.144(3), four separate elements must be satisfied in respect of the information in issue, although I consider that, for practical purposes, the first could be dispensed with when one is examining a prospective disclosure of information in response to an FOI access application:

(a) the disclosure must not be one made in good faith under the authority of s.144(1A), or one made under the authority of s.144(4);

(b) the information must be of a confidential nature;

(c) the information must be contained in the records of the Department, or given to a person by an officer of that Department or another person engaged in carrying the *Children's Services Act* into effect, or given to a person for the purposes of the Department; and

(d) the disclosure of that information would constitute "publication" for the purposes of s.144(3).

Information of a confidential nature

52. No issue is taken by the applicant as to the second element set out in the preceding paragraph. In any event, I am satisfied that, in keeping with the statutory requirements of the *Adoption of Children Act*, the identity of an individual providing foster care for a particular child prior to that child's placement for adoption is clearly "information of a confidential nature", and is consistently treated as such by the Department, in order to preserve secrecy regarding the identities of all parties to an adoption.

Information contained in the records of the Department, etc.

53. The applicant also does not take issue with respect to the third requisite element of s.144(3), as set out at paragraph 51 above. While the particular document containing the matter in issue in the present case is in the possession or control of the respondent Authority, the specific information it contains which is in issue in this case (i.e., the foster carer's identity) originated from the Department (namely Ms M Toohey, a Child Care Officer with the Department), and would certainly be information "contained in the records of the Department". Further, that information was given to the respondent Authority by an officer of the Department (i.e., Ms M Toohey) for a purpose directly connected with the provisions of the *Children's Services Act* (specifically, Part X of that Act dealing with the placement of children in care with foster parents).

Whether disclosure by the Authority would constitute a "publication" under s.144(3) of the *Children's Services Act*

54. It is in respect of this element of s.144(3) of the *Children's Services Act* that the participants in this review disagree. Essentially, the applicant contends that the disclosure to her of the matter in issue would not constitute "publishing" of that information:

> *We contend that the supply of this information to* [the applicant] *does not amount to publishing, as prohibited by s.144(3) of the* Children's Services Act 1965. ... [*T*]*he term 'publish' is not defined in the* Children's Services Act 1965 *or the* Acts Interpretation Act 1954. *We agree therefore that the term should be afforded its ordinary meaning and argue that the term refers to situations where information is made known to a general or 'public' audience as opposed to an individual, such as our client, who has a direct interest in the subject matter of the information by reason of the relationship between her then newborn son and the foster parents.* [applicant's written submission dated 16 May 1995]

55. In response to the applicant's written submission, the respondent relevantly stated in its 3 July 1995 written submission:

> … [the applicant's] *solicitors have challenged the applicability of s.144(3) on the basis that to release the information under FOI would not constitute "publishing" the material. An analysis of section 144(3) from the Crown Solicitor clarifies why this is not the case. This document is attached.*

56. The analysis of s.144(3) by the Crown Solicitor discussed, at some length, cases which had considered the meaning of the word "publish" (or variations thereof) in a variety of statutory contexts: *Myer Queenstown Garden Plaza Pty Ltd v Port Adelaide City Corporation* (1975) 11 SASR 504; *Roget v Flavel* (1987) 47 SASR 402; *Re Baran and Secretary, Department of Primary Industries and Energy* (1989) 18 ALD 379; *Sullivan v Hamel-Green* [1970] VR 156; *Leveridge v McCann* [1951] NZLR 855. It also made reference to the following dictionary definitions, from the Shorter Oxford English Dictionary (3rd ed., p.1614), as referred to in the cases cited above:

> ***publication*** *The act of publishing or that which is published. 1. The action of making publicly known; public notification or announcement; promulgation;* ***b*** *spec. in Law. Notification or communication to those concerned, or to a limited number regarded as representing the public ... .*
>
> ***publish*** *To make publicly or generally known, to declare openly or publicly, to tell or noise abroad, also to propagate; 2. To announce in a formal or official manner and to pronounce (a judicial sentence), to promulgate a law or edict, to proclaim; 3. To proclaim a person publicly as something or in some capacity or connection; 4. To issue or cause to be issued for sale to the public (copies of a book, engraving etc.) said of an author, editor or specifically of a professional publisher, to make generally accessible or available.*

57. In *Myer Queenstown*, Wells J stated (at p.537):

> *The word 'publish', like so many English words in general use, takes its final shape and colour from its context.*

58. Similar comments recognising the necessity of interpreting the meaning of the word in the particular statutory context in which it appears were made by Cox J and Starke J, respectively, in their decisions in *Roget v Flavel* and *Sullivan v Hamel-Green*, supra.
Adapting the words of Cox J from *Roget v Flavel* (at p.405) to the specific case at hand, my task is to decide the meaning of the word "publish" in light of the context in which it is used (in s.144(3) of the *Children's Services Act*), the mischief which that legislation is designed to overcome, and the need to construe the scheme created by s.144(3) in a way that will make it workable.

59. I find that the word "publish" is employed in s.144(3) of the *Children's Services Act* in its broad sense (similar to that employed in defamation law) to mean any disclosure by one individual to another. I am drawn to that conclusion after examining the general scheme of the *Children's Services Act*, and the specific scheme of secrecy provisions contained in s.144 of that Act. In particular, I note that the provisions in s.144(3) prohibiting the publication of information of a confidential nature are expressly made subject to s.144(1A). All of the instances of authorised communication in s.144(1A) refer to communication between individuals. If those individual communications are expressly authorised exceptions to the s.144(3) prohibition on publishing information, it follows that the s.144(3) prohibition on publishing information must apply to individual communications. Further support is found in the wording of the s.144(4)(c) exception to s.144(3), which is stated to apply to a publication "*made, with the approval of the Minister, **to any person** … .*". [my emphasis]

60. I therefore find that in the context of the statutory framework in which s.144(3) appears (i.e., secrecy provisions regarding information of a confidential nature held by the Department) that provision is intended to operate so as to prohibit any communication of such information, with the exception of the situations specifically provided for in s.144(1A) and s.144(4). On that basis, I find that the matter in issue falls within the scope of the secrecy provision in s.144(3) of the *Children's Services Act*, and that, by virtue of that secrecy provision's inclusion in Schedule 1 to the FOI Act, the matter in issue is, *prima facie*, exempt under s.48(1) of the FOI Act (subject to the application of the public interest balancing test incorporated in 48(1) of the FOI Act, and the possible applicability of the s.48(2) exception to the s.48(1) exemption).

Applicability of the s.48(2) exception

61. The submissions made by the participants in this review in respect of s.48(2) duplicate the arguments advanced in respect of s.44(2), which I have discussed at paragraphs 27-32 above.

62. I note that there is a material difference in wording between s.48(2) and s.44(2):

> ***44.(2)*** *Matter is not exempt under subsection (1) **merely because it relates** to information concerning the personal affairs of the person by whom, or on whose behalf, an application for access to a document containing the matter is being made.*

…

> ***48.(2)*** *Matter is not exempt under subsection (1)* ***if it relates*** *to information concerning the personal affairs of the person by whom, or on whose behalf, an application for access to the document containing the matter is being made.*
> [my emphasis]

63. I consider the difference in wording to be significant, and that the s.48(2) exception is not intended to operate in precisely the same way, and with precisely the same effect, as the s.44(2) exception. The specific formula of words employed in s.44(2) was necessary, for the reasons explained in *Re "B"* at p.343, paragraphs 172-174. However, the s.48(2) exception is worded in such a way that if matter relates to information concerning the personal affairs of the applicant for access, it does not qualify for exemption under s.48(1), irrespective of whether it also relates to information concerning the affairs of another person. I have already found that the matter in issue does not relate to information concerning the personal affairs of the applicant (see paragraphs 31-32 above); hence, the s.48(2) exception is not applicable in the particular circumstances of the present case.

Application of s.48(1) public interest balancing test

64. Section 48(1) of the FOI Act provides that the *prima facie* exempt status of information, the disclosure of which is prohibited by an enactment mentioned in Schedule 1 to the FOI Act, can be overridden in circumstances in which disclosure of such information "is required by a compelling reason in the public interest".

65. I note that s.48(1) is one of only two exemption provisions in Part 3, Division 2 of the FOI Act which employ this particular verbal formula in a public interest balancing test (the other is s.39(2), which is not relevant for present purposes). I have previously discussed at length the other formulations of public interest balancing tests, to which the majority of the Part 3 exemption provisions are subject (in particular, see my decision in *Re Eccleston* at pp.67-87; paragraphs 14-75).

66. In my view, the imposition of a more demanding test for disclosure in the public interest, i.e., the test of a "compelling reason in the public interest" must have been intended by Parliament to indicate that it regards the public interest consideration favouring non-disclosure, which is inherent in the satisfaction of the test for *prima facie* exemption under s.48(1), as one deserving of very great weight, such that it is to be overborne only by a compelling reason requiring disclosure in the public interest. I have already found that the public interest considerations put forward by the applicant as favouring disclosure of the matter in issue are not of sufficient weight to satisfy the less demanding formulation of a public interest balancing test incorporated in s.44(1) of the FOI Act. I am not satisfied that those public interest considerations satisfy the more demanding standard required under the public interest balancing test incorporated in s.48(1) of the FOI Act. Rather, I consider that there are strong reasons for keeping the information confidential (to preserve confidentiality of the identities of the parties to an adoption), as reflected in the legislative scheme set out in the *Adoption of Children Act*. I find that the matter in issue is exempt matter under s.48(1) of the FOI Act.

Conclusion

67. In the course of this review, the respondent conceded that the ground which had been relied upon in the decision under review for withholding the matter in issue from the applicant (i.e., s.22(e) of the FOI Act) did not apply to the matter in issue. I have determined that the matter in issue is exempt under s.44(1) and s.48(1) of the FOI Act, as contended by the respondent in the course of this review. In the circumstances, it is appropriate that I set aside the decision under review (being the decision made on behalf of the respondent by Dr C B Campbell on 16 March 1994). In substitution for it, I decide that the matter in issue is exempt matter under s.44(1) and s.48(1) of the FOI Act.

……..
F N ALBIETZ
INFORMATION COMMISSIONER