OFFICE OF THE INFORMATION COMMISSIONER (QLD)

Decision No. 97020
Application S 192/96

Participants:

KERSTIN ALLANSON
Applicant

QUEENSLAND TOURIST AND TRAVEL CORPORATION
Respondent

DECISION AND REASONS FOR DECISION

FREEDOM OF INFORMATION - jurisdiction of the Information Commissioner - application for review made pursuant to s.79(1) of the *Freedom of Information Act 1992* Qld on the basis of a deemed refusal of access to requested documents - whether the Information Commissioner lacks jurisdiction to review because the relevant access applications were invalid for failure to pay required $30 application fees - relevance of the respondent's failure, in breach of obligations imposed on it by s.27(2)(c) and s.27(5) of the *Freedom of Information Act 1992* Qld, to notify the applicant of a decision that $30 application fees were payable - observations on the interpretation of s.6 of the *Freedom of Information Regulation 1992* Qld.

FREEDOM OF INFORMATION - entitlement of an agency to refuse to deal with an FOI access application on the ground that to do so would substantially and unreasonably divert the resources of an agency from the performance of its functions - application of s.28(2) of the *Freedom of Information Act 1992* Qld.

Freedom of Information Act 1992 Qld s.25(2)(b), s.27(2)(c), s.27(4), s.27(5), s.28(2)(a), s.28(2)(b), s.28(4), s.52, s.77(1), s.79(1)
Freedom of Information Regulation 1992 Qld s.6(1)
Queensland Tourist and Travel Corporation Act 1979 Qld s.13(1), s.13(2)

Fraser Island Defenders Organisation Limited v Hervey Bay Town Council [1983] 2 Qd R 72
Price and Surveyors Board of Queensland, Re (Information Commissioner Qld, Decision No. 97017, 27 October 1997, unreported)
Ryder and Department of Employment, Vocational Education, Training and Industrial Relations, Re (1994) 2 QAR 150
Stewart and Department of Transport, Re (1993) 1 QAR 227

DECISION

1. I set aside the decision under review, being the decision the respondent was deemed to have made under s.79(1) of the *Freedom of Information Act 1992* Qld, refusing to grant access to documents requested in the applicant's FOI access applications dated 5 June 1996 and 7 June 1996.

2. In substitution for it, I decide that the respondent should refuse to deal with the applicant's FOI access applications dated 5 June 1996 and 7 June 1996, pursuant to s.28(2) of the *Freedom of Information Act 1992* Qld.

Date of decision: 30 December 1997

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F N ALBIETZ
INFORMATION COMMISSIONER

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REASONS FOR DECISION

Background

1. In this case, the respondent submits that I should rule that it is entitled to refuse to deal with the applicant's two access applications under the *Freedom of Information Act 1992* Qld (the FOI Act), dated 5 June 1996 and 7 June 1996, on one or more of the following grounds—

   (a) the FOI access applications were invalid because payment of a required $30 application fee had not been made at the time of their lodgment, and (further) the Information Commissioner has no jurisdiction to deal with an alleged deemed refusal of access, under s.79 of the FOI Act, in respect of access applications that were invalid for that reason;

   (b) the FOI access applications were invalid because they did not comply with the requirements of s.25(2)(b) of the FOI Act, in that they did not provide such information concerning the requested documents as was reasonably necessary to enable a responsible officer of the respondent agency to identify the requested documents;

   (c) the respondent is entitled, pursuant to s.28(2) of the FOI Act, to refuse to deal with the FOI access applications because the work involved in dealing with them would substantially and unreasonably divert the resources of the respondent from their use in the performance of its functions; and

   (d) the FOI access applications, and the application for review, were frivolous, vexatious, misconceived and lacking in substance, and the Information Commissioner should exercise the discretion conferred on him by s.77(1) of the FOI Act by deciding not to review, or not to review further.

2. The applicant's FOI access application dated 5 June 1996 sought access to 50 separate and broad-ranging categories of documents, and her FOI access application dated 7 June 1996 sought access to 29 separate and broad-ranging categories of documents (in both cases, many of the categories comprised multiple sub-categories). By a letter dated 16 July 1996, the Minister for Tourism, Small Business and Industry informed the applicant's solicitors that the applicant's FOI access applications to the respondent did not comply with the requirements of the FOI Act, and invited the applicant to respond to certain suggestions in previous correspondence from the respondent that would assist the applicant in making her access applications in a way that complied with the FOI Act. The applicant did not respond to those suggestions, and the respondent took no further steps to deal with her FOI access applications dated 5 June and 7 June 1996. By a letter received in my office on 2 January 1997, the applicant applied for external review, under Part 5 of the FOI Act, on the basis that the respondent was deemed, under s.79(1) of the FOI Act, to have made a decision refusing access to the documents requested in her FOI access applications dated 5 June and 7 June 1996.

External review process

3. On 15 January 1997, a member of my staff conferred with representatives of the respondent to ascertain the respondent's explanation for its refusal to deal with the applicant's FOI access applications, and to assess whether there were any possible solutions to the impasse that had developed. No possible avenue of informal resolution was evident, and, by letter dated 24 January 1997, the respondent was invited to lodge evidence and written submissions in support of its case that it was entitled to refuse to deal with the applicant's FOI access applications dated 5 June and 7 June 1996.

4. Through its solicitors, Allen, Allen and Hemsley, the respondent lodged a statutory declaration made on 7 March 1997 by Mr Glen Robert Brown, the respondent's Finance Manager and nominated FOI officer, plus a ten page written submission.

5. By letter dated 11 March 1997, I forwarded copies of those documents to the applicant, together with my observation that the respondent had made out a strong case for the application of s.28(2) of the FOI Act, and invited her to lodge evidence and submissions in response. Since then, the applicant has forwarded a number of letters and facsimile transmissions to my office; however, most of them do not address the issues raised in the respondent's evidence and written submission. Under cover of one letter dated 20 April 1997, the applicant lodged a document headed "Response to Submission made by the Queensland Tourism and Travel Corporation relating to the 'Freedom of Information Act 1992'." However, even this document contained little of relevance to the issues raised by the respondent for my determination. Nevertheless, I forwarded a copy of it to the respondent's solicitors, who saw no need to lodge a reply.

6. In the view I have reached, I find it necessary to give detailed consideration only to grounds (a) and (c) of the four grounds relied upon by the respondent, as set out in paragraph one above. I will merely observe, in respect of ground (b), that I consider that some of the many separate categories of documents specified by the applicant in her FOI access applications dated 5 June and 7 June 1996 are framed in terms sufficiently precise as to satisfy the requirement imposed by s.25(2)(b) of the FOI Act, but most are not. Since there is evidence before me that the respondent extended to the applicant, through her then solicitors, Purvis Duncan, a reasonable opportunity of consultation with a view to making an FOI access application in a form that complied with the requirement imposed by s.25(2)(b) of the

FOI Act, it may well have been open to me to also find that the respondent was entitled to refuse to deal with the applicant's FOI access applications because they did not comply with the requirement imposed by s.25(2)(b) of the FOI Act.

Whether an application for external review, based on a deemed refusal of access under s.79(1) of the FOI Act, is precluded by the invalidity of the relevant FOI access application for failure to pay a $30 application fee

7. The nature of the respondent's case in this regard is set out in the following extract from the respondent's written submission (at pp.2-4):

> *It is not in dispute that the $30 application fee for each of the letters of 5 June or 7 June 1996 was not paid by Ms Allanson at the time the requests were made. Accordingly, no application was in fact made by Ms Allanson.*
>
> *Subsequently, a cheque for $30.00 has been (indirectly) delivered to QTTC at the end of February 1997 - presumably in respect of one of the two requests. Accordingly, for the reasons set out below, no application has ever been made in respect of one of her requests, and an application has only been made in late February 1997 in respect of the other.*
>
> *In* Re Stewart and Department of Transport *(1993) 1 QAR 227 the decision under review was the decision of the Department of Transport that ... "Therefore the required fee [$30] must be paid before your request can be accepted as an application under the Act." (see page 231)*
>
> *The Information Commissioner, after finding that a request for access to documents need seek only one document which does not concern the personal affairs of the applicant to attract the imposition of the $30 application fee, affirmed the decision under review (see page 269).*
>
> *It is submitted that the decision is plainly correct, given the clear and mandatory terms of regulation 6 of the FOI regulations, which states:*
>
> > "An applicant who applies for access to a document that does not concern the applicant's personal affairs *must* pay an application fee of $30 *at the time the application is made*."
>
> *There is no question that Ms Allanson's requests seek access to a multitude of documents that do not concern her personal affairs. For example, the requests seek access to:*
>
> > "... documents and correspondence to establish the role and responsibilities of the QTTC as set down by the Commonwealth from 1992 and through the ATC - Partnership signed in December 1993" (see Ms Allanson's letter of 5 June 1996).
>
> *Access is also sought to*:
>
> > "Written information as to when the QTTC as a statutory body and a State Government owned enterprise will be subject to the Trade Practices Act through legislation in Parliament according to the Agreement made in respect of the Hilmer Report" (see Ms Allanson's letter of 7 June 1996).

> The decision in Re Stewart requiring the payment of a $30 application fee before a request can be accepted as an application under the Act was applied again by the Information Commissioner in Re Ryder and Department of Employment, Vocational Education, Training and Industrial Relations (1994) 2 QAR 150.

Accordingly, if one treats the 2 letters of 5 June 1996 and 7 June 1996 as constituting 2 separate requests (as was the case in Re Ryder*), Ms Allanson was required to first pay two fees of $30 before either request constituted an application under the FOI Act. As one fee was paid at the end of February, only at that time was QTTC obliged to deal with that single application.*

In addition to the Information Commissioner's own decisions, there is considerable case authority in Queensland in which it has been held that an application which is not accompanied by a prescribed application fee is not an application duly made and that no obligation to consider the application arises until such a prescribed fee has been paid: see Fraser Island Defenders Organisation Limited v Hervey Bay Town Council *[1983] 2 Qd R 72;* Brisbane City Council v Mainsell Investments Pty Ltd *[1989] 2 Qd R 204;* Citie Centre Projects (No. 2) Pty Ltd v Council of the Shire of Albert *[1992] QPLR 258.*

In particular, the decision of Connolly J in Fraser Island *(supra) is directly on point. There, the relevant by-law of the Hervey Bay Town Plan required that an application fee be lodged "at the time of making the application". This is also the case with regulation 6 of the FOI regulations.*

His Honour held that, as the prescribed fee had not been paid, no application had been duly made, and therefore no obligation to consider an application had arisen. His Honour further held that the application should not have been dealt with and decided by the relevant council and that the decision upon the application was void.

The present facts of Ms Allanson's requests are directly on point. Further, there is no suggestion that the requirement for the fee was waived by the QTTC. In any event, QTTC would not have the power to waive the fee prescribed as it is by regulation.

It is suggested in correspondence from the Information Commissioner that QTTC somehow has placed upon it a legal obligation to inform Ms Allanson that a $30 application fee is payable. This suggestion is, with respect, incorrect. There is no obligation under the FOI Act for QTTC to so inform Ms Allanson (cf. ss25 and 28) of the legal requirements of the FOI Act regarding payment of an application fee. Such a requirement to, in effect, give legal advice to Ms Allanson would be nonsensical. [I should observe, at this point, that this paragraph of the respondent's submission is clearly incorrect, having apparently been prepared without regard to s.27(2)(c) and s.27(5) of the FOI Act - see the discussion below on the effect of those provisions.]

> *To put it simply, no applications have ever been made at all until one was made at the end of February 1997. On this basis, not only is QTTC not obliged to have dealt with Ms Allanson's requests but, as Connolly J points out, any such dealings would have been void.*
>
> *The correspondence from the Information Commissioner also suggests that the Information Commissioner has the jurisdiction to conduct an external review. Again, it is respectfully submitted that this is incorrect.*
>
> *Whilst the Information Commissioner may have the power to* consider *whether he has standing to conduct an external review, the clear substantive answer is that he does not have jurisdiction to so conduct a review, given that only one application has been made at all and that it was only made at the end of February 1997.*
>
> *Section 79 (the section relied upon for external review, based upon a deemed refusal) has an express condition precedent to its application that (inter alia) "... an application has been made to an agency or Minister under this Act" and that "the time period provided in section 20(2), 27(4) or 57 has ended". Clearly, based on the case authorities set out above, no such application has been made (save for one made in late February) and no requisite time limits have expired. Accordingly, the Commissioner's only basis for invoking s79 does not exist.*

8. I do not accept the respondent's contentions, which pay no regard to the obligations imposed on the respondent by s.27(2)(c) and s.27(5) of the FOI Act, and their implications for the proper interpretation of s.79 of the FOI Act as a provision inserted for the benefit of users of the FOI Act in the event of a failure or refusal by an agency to comply with its obligations under the FOI Act.

9. Sections 27(2), s.27(4), s.27(5) and s.79(1) of the FOI Act are relevant to the discussion which follows, and I will reproduce them for ease of reference:

> ***27.(2)*** *After considering the application* [for access to a document], *the agency or Minister must decide—*
>
> *(a) whether access is to be given to the document; and*
>
> *(b) if access is to be given—any charge that must be paid before access is granted; and*
>
> *(c) any charge payable for dealing with the application.*
>
> *...*
>
> ***(4)*** *If the agency or Minister fails to decide an application and notify the applicant under section 34 within—*
>
> *(a) the appropriate period; or*

> *(b) if action is required under section 51 in relation to the application—a period equal to the appropriate period plus 15 days;*
>
> *the agency or Minister is taken to have refused access to the document to which the application relates at the end of the period.*
>
> ***(5)** If the agency or Minister decides that the applicant is liable to pay a charge in relation to the application or the provision of access to a document, the agency or Minister must notify the applicant in writing of the amount of the charge and of the basis on which the amount of the charge was calculated.*
>
> ***79.(1)** Subject to this section, if—*
>
> *(a) an application has been made to an agency or Minister under this Act; and*
>
> *(b) the time period provided in section 20(2), 27(4) or 57 has ended; and*
>
> *(c) notice of a decision on the application has not been received by the applicant;*
>
> *the principal officer of the agency or the Minister is, for the purpose of enabling an application to be made to the commissioner under section 73, taken to have made a decision on the last day of the relevant time period refusing—*
>
> *(d) to publish a statement of affairs under section 20, or to ensure that a statement of affairs complies with Part 2; or*
>
> *(e) to grant access to the document; or*
>
> *(f) to amend the information.*

10. The respondent has placed reliance on my decisions in *Re Stewart and Department of Transport* (1993) 1 QAR 227 and *Re Ryder and Department of Employment, Vocational Education, Training and Industrial Relations* (1994) 2 QAR 150. Both were cases in which the relevant respondent agencies had properly complied with the obligations imposed on them by s.27(2)(c) and s.27(5) of the FOI Act to notify the respective applicants for access of their obligation, pursuant to s.6 of the *Freedom of Information Regulation 1992* Qld (the FOI Regulation), to pay a $30 application fee before the agency was obliged to accept the respective FOI access applications as validly made, and commence processing them. The respective applicants were therefore given the opportunity of accepting the decision that a $30 application fee was payable, or challenging that decision, and it is appropriate in those circumstances that time should cease to run (for the purpose of applying s.27(4) and s.79 of the FOI Act) until the $30 application fee, if properly payable under s.6 of the FOI Regulation, has been paid. (An applicant for access in those circumstances also has the option of paying the $30 application fee under protest, so that time commences to run for processing the FOI access application, while pursuing a challenge to the decision that a $30 application fee was payable. If the applicant's challenge succeeds, the respondent agency would be obliged to refund the $30 application fee.)

11. In the present case, the respondent did not comply with the obligations imposed on it by s.27(2)(c) and s.27(5) to decide whether or not a $30 application fee was payable in respect of each of the applicant's FOI access applications dated 5 June and 7 June 1996, and to notify the applicant in writing of any decision in the affirmative. In those circumstances, I do not consider that the respondent is entitled to object to the validity of the application for review invoking s.79 of the FOI Act, or to the Information Commissioner's power to conduct a review under that head of jurisdiction, on the basis of the applicant's non-payment of a $30 application fee that was properly payable.

12. The obvious purpose of enacting s.79(1) of the FOI Act was to provide users of the FOI Act with a means of invoking the review jurisdiction of the Information Commissioner (as the independent external review authority appointed under the FOI Act) in the event of a failure or refusal by an agency to deal with an application made to it under the FOI Act, in accordance with the obligations imposed on agencies by the FOI Act. In my opinion, the relevant provisions of the FOI Act do not permit an agency to fail or refuse to process an FOI access application (where there is also a failure or refusal to comply with the obligations imposed by s.27(2)(c) and s.27(5) of the FOI Act) within the statutory time limit imposed by s.27(4) and s.27(7) of the FOI Act, and subsequently use the non-payment of a $30 application fee as a basis for that conduct, and for objecting to the jurisdiction of the Information Commissioner to review the agency's handling of the FOI access application. In those circumstances, an applicant for access should have, and in my opinion does have (on the correct, purposive interpretation of s.79(1) of the FOI Act), the right to invoke the jurisdiction of the Information Commissioner under s.79(1) of the FOI Act in order to ensure that the FOI access application is properly processed.

13. Of course, I would take the view that the proper processing of an FOI access application required that, where a $30 application fee was properly payable under s.6 of the FOI Regulation, the fee should be paid by the applicant for access before any decision was made in respect of the applicant's entitlement to access to requested documents. (I have informed the applicant in those terms in the present review, by letters dated 3 February 1997, 24 February 1997 and 11 March 1997, and the applicant has since validated her two FOI access applications, by paying the required application fees to the respondent.)

14. However, that situation is clearly preferable to the patent unfairness in an access applicant receiving no decision on access within the statutory time limit, and no notice that a $30 application fee is payable (a question which in many instances is not clear-cut, turning as it does on whether the applicant has sought access to at least one document which contains no information concerning the personal affairs of the applicant: see *Re Stewart; Re Price and Surveyors Board of Queensland* (Information Commissioner Qld, Decision No. 97017, 27 October 1997, unreported) at paragraphs 26-32) and then being further delayed by an objection to the Information Commissioner's review jurisdiction under s.79 of the FOI Act on the basis that the relevant FOI access application was not validly made because a $30 application fee required under s.6 of the FOI Regulation had not been paid.

15. The respondent has contended that the decision of Connolly J in *Fraser Island Defenders Organisation Limited* [FIDO] *v Hervey Bay Town Council* [1983] 2 Qd R 72 is directly in point, but, in my view, that decision is distinguishable. In the *FIDO* case, the relevant by-law required that a prescribed application fee be lodged "at the time of making the application".
However, the relevant regulatory scheme in the *FIDO* case had no provisions comparable to s.27(2)(c) and s.27(5) of the FOI Act, requiring the agency dealing with the application to notify the applicant of its decision that an application fee was payable.

16. It is true that s.6(1) of the FOI Regulation uses the word "must" in providing:

> ***6.(1)*** *An applicant for access to a document that does not concern the applicant's personal affairs must pay an application fee of $30 at the time the application is made.*

17. However, when due regard is had to the provision made by s.27(2)(c) and by s.27(5) of the FOI Act, being provisions also expressed in mandatory terms but which are only capable of being complied with by an agency after receipt and consideration of an access application which has already been made to the agency (and when due regard is had to the practical considerations referred to in parentheses in paragraph 14 above), then, in my opinion, the conclusion is inescapable that, while the obligation to pay a $30 application fee to obtain access to a document that does not concern the applicant's personal affairs is mandatory (in accordance with the use of the word "must" in s.6(1) of the FOI Regulation), the requirement that the $30 application fee be paid at the time the access application is made, is merely directory. The very existence of s.27(2)(c) and s.27(5) indicates that it cannot have been intended that an access application would be void/of no effect unless a $30 application fee, if required, was paid at the time of making the access application. Rather, the existence of s.27(2)(c) and s.27(5) indicates that an access application that is not valid by reason of the failure or omission to pay a required $30 application fee at the time of making the access application, may subsequently be validated by payment of the $30 application fee, after the applicant receives notice of the relevant agency's decision that payment of a $30 application fee is required.

18. In practical terms, this means that if an applicant applies to an agency for access under the FOI Act to a document that does not concern the applicant's personal affairs, but omits to pay the $30 application fee required by s.6 of the FOI Regulation at the time the access application is made, the access application is not a mere nullity (as contended in the respondent's submission). The access application will still be one that an agency is obliged to deal with, at least to the extent of discharging the obligations imposed by s.27(2)(c) and s.27(5) of the FOI Act (and perhaps other obligations such as those imposed by s.25(4) or s.28(4) of the FOI Act). And the access application will still constitute "an application [that] has been made to an agency under [the FOI] Act", within the terms of s.79(1)(a) of the FOI Act, for the benefit of an applicant who wishes to invoke s.79(1).

19. If, however, the agency gives the applicant written notice, in accordance with s.27(2)(c) and s.27(5) of the FOI Act, of its decision that a $30 application fee is payable in respect of the access application, the applicant will not be entitled to have the agency process the access application or to obtain access to the requested documents, until the applicant pays the $30 application fee, or successfully challenges the agency's decision that a $30 application fee was payable. In the meantime, time would cease to run for the purposes of the application of s.79 of the FOI Act, because the applicant has received notice of a decision on the application, i.e., that the applicant is not entitled to have the agency process the access application, or to obtain access to the requested document(s), until the $30 application fee required under s.6(1) of the FOI Regulation is paid. In my view, time would commence to run again, for the purposes of the application of s.79 of the FOI Act, from the date when the $30 application fee is subsequently paid, or from the date on which the decision to require payment of a $30 application is overturned by a decision on a review under s.52, or under Part 5 of the FOI Act.

20. In summary, I am satisfied that I do have jurisdiction to conduct a review, in accordance with s.79(1) of the FOI Act, of the respondent's deemed refusal to grant the applicant access to the documents requested in her FOI access applications dated 5 June and 7 June 1996.

Application of s.28(2) of the FOI Act

21. Section 28(2) and s.28(4) of the FOI Act provide:

> ***28.(2)*** *If—*
>
> *(a) an application is expressed to relate to all documents, or to all documents of a specified class, that contain information of a specified kind or relate to a specified subject matter; and*
>
> *(b) it appears to the agency or Minister dealing with the application that the work involved in dealing with the application would, if carried out–*
>
> *(i) substantially and unreasonably divert the resources of the agency from their use by the agency in the performance of its functions; or*
>
> *(ii) interfere substantially and unreasonably with the performance by the Minister of the Minister functions;*
>
> *having regard only to the number and volume of the documents and to any difficulty that would exist in identifying, locating or collating the documents within the filing system of the agency or the office of the Minister;*
>
> *the agency or Minister may refuse to deal with the application.*
>
> ...
>
> ***(4)*** *An agency or Minister must not refuse access to a document under subsection (2) or (3) without first giving the applicant a reasonable opportunity of consultation with a view to making an application in a form that would remove the ground for refusal.*

22. The statutory declaration by Mr Glen Brown is directed to the application of s.28(2) of the FOI Act. It describes the resources available to the respondent to process the applicant's FOI access applications, and then analyses a sample of the categories of documents specified in the relevant access applications, describing the work entailed in processing each of those categories.

23. In his statutory declaration, Mr Brown has outlined the operating structure of the QTTC and stated that the only division of the QTTC capable of assisting in the processing of an FOI access application is the Finance and Administration Department which has 26 full-time employees, all of whom provide specific financial and administrative support to the QTTC. There is no full-time FOI officer employed by the QTTC, but rather, Mr Brown, who is the Finance Manager, has responsibility as the QTTC's FOI officer. In paragraph 9 of his statutory declaration, Mr Brown has stated that to process Ms Allanson's FOI access

applications according to their terms would require significant involvement by (in addition to Mr Brown himself) the Chief Executive Officer of the QTTC, the Director of Finance and Administration, the Corporate Communications Manager, two administrative officers, the retail managers of 10 interstate QTTC offices, and the managers of 9 international QTTC offices. At paragraphs 10 and 11, Mr Brown continued:

> *10. To divert these staff from their operational duties in attempting to identify, locate and collate the documents covered by Ms Allanson's FOI request, particularly given the extraordinarily large number and volume of such documents would have a significantly onerous impact on the operations and functioning of the QTTC and, in my opinion, would certainly constitute a substantial and unreasonable diversion of the resources of the QTTC from their use by the QTTC in the performance of its functions.*
>
> *11. The QTTC would, in addition to the allocation of the above employees, have to source external staff to provide secretarial/administrative support to identify, locate and collate the necessary documentation. I conservatively estimate that, based on the specific examples referred to in this declaration alone, that at least two FTE's* [Full Time Equivalents] *would need to be employed, at a cost to the Corporation of approximately $60,000 per annum.*

24. Mr Brown then selected 8 of the 50 separate categories of requested documents in the FOI access application dated 5 June 1996, and 6 of the 29 separate categories of requested documents in the FOI access application dated 7 June 1996, and described the work involved in processing each of the selected categories of documents (in the terms in which they are framed), in order to demonstrate the incredible breadth of the access applications and the nature of the difficulties that would exist in identifying, locating or collating the documents within the records and filing systems of the QTTC.

25. Mr Brown's evidence in that regard is credible and compelling. I need only illustrate the substance of it by referring to his analysis of two of the requested categories of documents in the 5 June 1996 access application, and one of the requested categories of documents in the 7 June 1996 access application.

26. In the 26th category of documents specified in her 5 June 1996 access application, the applicant sought access to:

> *... any written correspondence to and from the QTTC and the following tourist operators in respect of participating in JMA Programmes:-*
>
> - *Australian Coachlines*
> - *Ansett Airlines*
> - *Compass*
> - *Eastwest Airlines*
> - *Qantas*
> - *Brisbane Visitors & Convention Bureau*
> - *Regional Tourist Associations*
> - *Air New Zealand*
> - *Singapore Airlines*
> - *Overseas tour operators.*

27. Mr Brown's evidence about that category of requested documents is as follows:

> *21. This request is not even date specific and as such would involve the QTTC reviewing all of its numerous correspondence files (and other associated files) regarding each of these tourism operators at each of its interstate, international and Brisbane offices for the period from 1992 (the date of creation of the JMA programmes) to the present date.*
>
> *22. I do not understand precisely what Ms Allanson is referring to by the term "JMA". If (as I assume she is) she means joint marketing agreements, she is referring to the various different types of agreements between QTTC and the tourist operators and regional tourist associations referred to by her. There are numerous such agreements which encompass the majority of the largest operators in the tourism and travel industry. These agreements would encompass operations of well over a decade.*
>
> *23. Given the size and nature of each of these operators in the tourism and travel industry, QTTC would have to provide an indeterminable but a very significant amount of documentation to fulfil this request. It would involve, at a minimum, tens of thousands of documents. Such action would significantly, substantially and unreasonably divert the resources of QTTC at each of these locations from their use by QTTC in the performance of its functions.*

28. In the 28th category of documents specified in her FOI access application dated 5 June 1996, the applicant sought access to:

> *... correspondence related to the ATLAS System and the key role of the international products distribution system and any refusal by the Corporation and Jim Kennedy to accept the establishment of a <u>new system</u> to be managed/operated by the ATC* [which I take to mean the Australian Tourism Commission].

29. Mr Brown has noted in his statutory declaration that a number of other requested categories of documents referred to documents associated with the development, use, retailing, licensing, management and sale of the ATLAS System. At paragraph 26 of his statutory declaration, Mr Brown described the ATLAS System, which, in brief terms was a computer program developed by a number of employees of the QTTC in the early 1980's which constituted a computer reservation system capable of use in the travel industry. From 1983 onwards, the ATLAS System was licensed to a number of other governments and tourism bodies, both within and outside Australia, and in 1994 the ATLAS System was acquired by the Telstra Corporation. At paragraphs 32-34 of his statutory declaration, Mr Brown continued:

> *The request relating to the ATLAS System would alone involve tens of thousands of separate pieces of documentation and correspondence regarding the system. Aside from the many thousands of pages of computer printouts and associated documents, the ATLAS System is the base booking system that the QTTC's commercial operations use to arrange travel accommodation. This is one of the primary functions of the QTTC and an extraordinarily large number of booking confirmations, ticket copies, payment advices, itinerary details and invoices* [would be involved].

> *By way of example, in an action commenced in the Supreme Court of Queensland by QTTC in 1992, QTTC sued (amongst others) the Western Australian Tourism Commission for an alleged breach of copyright and/or confidence in respect of the ATLAS system. Further, various documents relating to the ATLAS system (the system being the operating system by which the QTTC operates its commercial operations) would be extremely difficult to identify, locate and collate, as documentation would be held in all of the offices under the control of the QTTC both in Australia and overseas.*
>
> *Some of the documents relating to those proceedings, presently held by QTTC's solicitors, Allen Allen & Hemsley (only a fraction of the total documents relating to the ATLAS system) take up 42 boxes of documents held at the offices of Allen Allen & Hemsley. All of these documents would need to be considered in order to identify, locate or collate a fraction of one of the numerous requests made by Ms Allanson in one of her two letters.*

30. In the category numbered (1)(g) in her FOI access application dated 7 June 1996, the applicant sought access to:

> *Documents related to revenue earnings to the QTTC from the use of the ATLAS System from 1989 in terms of fees and sales - commissions from sales and bookings.*

31. At paragraph 51 of his statutory declaration, Mr Brown stated that, for the period 1989 to 1996, the ATLAS System generated total sales in the sum of almost $843,000,000, and commission earned by the QTTC through the use of the ATLAS System during that time amounted to almost $140,000,000. At paragraph 53 of his statutory declaration, Mr Brown stated:

> *Although the scale of this request prevents the QTTC from accurately determining precisely how many documents will be involved in complying with such a request, I would anticipate that, at a minimum, tens of thousands of documents would be involved. These documents would be located in almost every office and different department of the QTTC commercial divisions, Sunlover Holidays, the Queensland Government Travel Centre, along with the Finance and Administration Department.*

32. It is clear to me that the applicant's FOI access applications utilise the method contemplated by s.28(2)(a), that is, in relation to each category set out in the relevant FOI access applications, the applicant seeks access to documents by reference to a specified class, or information of a specified kind or relating to a specified subject matter. I am satisfied that the s.28(2)(a) precondition to the exercise of the discretion conferred by s.28(2) of the FOI Act is satisfied in respect of each of the applicant's relevant FOI access applications.

33. In relation to the s.28(2)(b) precondition to the exercise of the discretion conferred by s.28(2) of the FOI Act, the QTTC submits that the work involved in dealing with either of the two relevant FOI access applications would substantially and unreasonably divert the resources of the QTTC from their use by the QTTC in the performance of the QTTC's functions. The functions of the QTTC are set out in sections 13(1) and 13(2) of the *Queensland Tourist and Travel Corporation Act 1979* Qld as follows:

Functions of Corporation

13(1) *The functions of the Corporation are:*

(a) to promote and market, both domestically and internationally, tourism and travel;

(b) to make tourism and travel arrangements;

(c) to provide tourism and travel information services;

(d) to encourage the development of the tourist and travel industry;

(e) to prepare a State tourist industry strategy plan;

(f) to advise the Minister on matters relating to paragraphs (a) to (e) that are referred to the Corporation by the Minister for advice.

(2) *In carrying out its functions under this Act the primary responsibility of the Corporation shall be to promote, market, develop and arrange tourism and travel to and within Queensland.*

34. The applicant's FOI access applications dated 5 June and 7 June 1996 have been put on such a far-reaching scale and such a level of complexity, that it is virtually self-evident that to require an agency operating on a full commercial footing, such as the QTTC, to identify, locate and collate all of the requested documents would significantly affect its operations for a considerable period of time. There is no doubt that the work involved in processing the applicant's FOI access applications would involve a substantial diversion of the QTTC's resources from their use in the performance of the QTTC's functions.

35. The QTTC plays an integral role in one of the most important income-generating industries in Queensland, and any substantial diversion of the QTTC from its normal operations could have significant consequences for tourism operators (and their clients), large and small.
I cannot see any basis on which I could properly find that the substantial diversion of the resources of the QTTC that would be involved in dealing with the applicant's relevant FOI access applications would be a reasonable diversion of resources, in all the circumstances of this case. The access applications are not, for example, directed to information the disclosure of which would clearly be in the wider public interest. It is apparent from the material submitted to me by the applicant that the applicant is pursuing an alleged personal pecuniary interest. In its written submissions, the QTTC described the nature of the applicant's claims in the following terms:

> *It is apparent from Ms Allanson's requests that the basis for her requests is her misconception that (amongst others) QTTC and/or the Department of Tourism, Small Business and Industry, have engaged in a conspiracy of some nature whereby QTTC and/or the Department has somehow breached copyright and/or breach of confidence in some manner of concept allegedly created by Ms Allanson. It is this alleged infringement of intellectual property which is the subject matter providing the common link to all of Ms Allanson's requests.*

> *Although it is difficult to ascertain precisely what Ms Allanson believes has occurred, the parties to the alleged conspiracy are stated to include (amongst others) QTTC, the Department, various Ministers, various Chief Executives of QTTC and QIDC. In subsequent correspondence to the Information Commissioner (see letter ... dated 15 February 1997) Ms Allanson also suggests that the Premier and the Police Minister have been involved in the purported conspiracy by using s183 of the* Copyright Act. *The allegations suggest that the conspiracy extended as far as the enactment of legislation to amend the QTTC Act and the obtaining of s183 approvals under the* Copyright Act.
>
> *All of the assertions made by Ms Allanson are, of course, without any basis in fact or law and are entirely misconceived.*

36. I have no jurisdiction to rule on the merits of the applicant's claims in respect of alleged infringement of intellectual property. (I note that the applicant has commenced some kind of proceeding in the Copyright Tribunal, where at least her use of Tribunal procedures to seek access to documents held by Queensland government agencies can be regulated by reference to their relevance to the issues for determination in the proceeding.) Nevertheless, the applicant has placed before me a considerable volume of material said to evidence her claims.
That material comprises unverified assertions by the applicant, including assertions of admissions made to her by named officials concerning the theft of her intellectual property - none of them supported by evidence on oath from the named officials. I have seen nothing by way of credible evidence on oath from independent witnesses that supports the applicant's claims.

37. In the circumstances, I am satisfied that the work involved in dealing with the applicant's FOI access applications dated 5 June and 7 June 1996 would, if carried out, substantially and unreasonably divert the resources of the QTTC from their use by the QTTC in the performance of its functions, having regard only to the number and volume of the documents requested, and to the difficulties that would exist in identifying, locating or collating the documents within the filing system of the QTTC, and I find that, pursuant to s.28(2) of the FOI Act, the QTTC should refuse to deal with the applicant's FOI access applications dated
5 June and 7 June 1996.

38. I note that the applicant has submitted that s.28(4) applies (the terms of which are set out at paragraph 21 above), so that the QTTC must not refuse to give access to a document by applying s.28(2) without first giving the applicant a reasonable opportunity of consultation with a view to making an application in a form which would remove the grounds for refusal. The QTTC addressed the application of s.28(4) in its written submissions. In a segment of those submissions headed "Background", the QTTC outlined the relevant history. I am satisfied, from the material before me, that the facts in that segment of the QTTC's written submission are correct, and that they (in particular the letter dated 16 July 1996 from the Minister for Tourism, to the applicant's then solicitors - see paragraph 2 above) establish that the applicant was given a reasonable opportunity of consultation with a view to lodging her FOI access applications in a form which complied with the requirements of the FOI Act, and which removed the grounds for a refusal to deal with the applications, pursuant to s.28(2) of the FOI Act.

Conclusion

39. It is appropriate that I set aside the decision under review, being the decision the respondent was deemed to have made under s.79(1) of the FOI Act, refusing to grant access to documents requested in the applicant's FOI access applications dated 5 June and 7 June 1996. In substitution for it, I decide that the respondent should refuse to deal with the applicant's FOI access applications dated 5 June 1996 and 7 June 1996, pursuant to s.28(2) of the FOI Act.

.....
F N ALBIETZ
INFORMATION COMMISSIONER