

# OFFICE OF THE INFORMATION COMMISSIONER (QLD)

**Decision No. 96009**  
**Application S 49/95**

## **Participants:**

CHRISTOPHER ANDREW HANSEN  
**Applicant**

QUEENSLAND INDUSTRY DEVELOPMENT CORPORATION  
**Respondent**

## **DECISION AND REASONS FOR DECISION**

FREEDOM OF INFORMATION - jurisdictional issue - whether documents to which the applicant has sought access are excluded from the application of the *Freedom of Information Act 1992 Qld* by s.11A of that Act and s.35 of the *Queensland Industry Development Corporation Act 1994 Qld* - documents in issue relate to a review of the respondent's decision to terminate the applicant's employment - whether the documents were received, or brought into existence, in carrying out activities of the respondent conducted on a commercial basis.

*Freedom of Information Act 1992 Qld* s.10, s.11(1), s.11(1)(o), s.11A, s.34(1), s.40(c), s.40(d), s.52, s.73(3)

*Acts Interpretation Act 1954 Qld* s.14B

*Queensland Industry Development Corporation Act 1985 Qld* s.10, s.18(5)

*Queensland Industry Development Corporation Act 1994 Qld* s.8, s.35

*Rural Adjustment Authority Act 1994 Qld*

*Christie and Queensland Industry Development Corporation, Re* (1993) 1 QAR 1

## **DECISION**

I find that the documents to which the applicant requested access, under cover of a letter to the respondent dated 1 November 1994, are not excluded from the application of the *Freedom of Information Act 1992 Qld* by s.11A of that Act, and s.35 of the *Queensland Industry Development Corporation Act 1994 Qld*, and I therefore have jurisdiction to review the respondent's refusal of access to those documents.

Date of decision: 14 June 1996

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F N ALBIETZ  
**INFORMATION COMMISSIONER**

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**Respondent**

## **REASONS FOR DECISION**

### **Background**

1. The applicant contends that certain documents held by the respondent (which relate to a review of the respondent's decision to terminate the applicant's employment) are subject to the application of the *Freedom of Information Act 1992* Qld (the FOI Act), and that he is entitled to access to the documents. The respondent, on the other hand, contends that the documents are not subject to the application of the FOI Act, or that, if they are, they are exempt matter under s.40(c) and s.40(d) of the FOI Act. This decision deals with the first issue, i.e., whether or not the documents are subject to the application of the FOI Act.
2. The applicant was formerly employed by the Queensland Industry Development Corporation (the QIDC) at its Mackay office. His employment was terminated on 23 June 1993 following his refusal to accept a transfer to the QIDC's Atherton office. At the time of his termination, the applicant was informed of his rights under s.18(5) of the *Queensland Industry Development Corporation Act 1985* Qld to make a written submission to the Board of the QIDC disputing the decision and requesting a review of the process by which the decision was made. The applicant subsequently made such a submission, and in June 1994 a panel of three persons was appointed to conduct a review in accordance with s.18(5) of the *Queensland Industry Development Corporation Act 1985*. The panel furnished its report on 2 August 1994. By letter dated 1 November 1994, Mr Hansen applied, through his solicitors, for access under the FOI Act to that report and other documents relating to the panel's review of the decision to terminate Mr Hansen's employment.
3. By letter dated 8 November 1994, Mr D C Solomon, a legal officer of the QIDC, wrote to Mr Hansen's solicitors, referring to s.11A of the FOI Act and s.35 of the *Queensland Industry Development Corporation Act 1994* Qld (an Act which repealed and replaced the *Queensland Industry Development Corporation Act 1985*). The effect of these provisions is that the FOI Act does not apply to a document received or brought into existence by the

QIDC in carrying out its activities conducted on a commercial basis. Mr Solomon went on to say:

*All aspects of the [QIDC's] operation are conducted on a commercial basis and s.11A of the [FOI] Act and s.35(3) of the QIDC Act exempt the [QIDC] from the operation of the provisions of the [FOI] Act. Accordingly the [QIDC] refuses your client access to the documents requested.*

4. The applicant's solicitors wrote to me on 6 January 1995 seeking review of Mr Solomon's decision. By letter dated 13 January 1995, the Deputy Information Commissioner informed the applicant's solicitors that the terms of s.73(3) of the FOI Act meant that the applicant was not entitled to apply for external review of that decision (which had not been made by the QIDC's principal officer) unless an application had been made under s.52 of the FOI Act in relation to the decision. By letter dated 11 January 1995, the applicant's solicitors applied to the QIDC for internal review, pursuant to s.52 of the FOI Act, of Mr Solomon's decision. On 19 January 1995, Mr Solomon wrote a letter to the applicant's solicitors in which he stated that his letter dated 8 November 1994 was not a decision under s.34(1) of the FOI Act (which deals with notification of decisions and reasons), asserted that the applicant did not have a right to apply for internal review, and restated his contention that the QIDC was not subject to the provisions of the FOI Act.
5. The applicant's solicitors wrote to me again, on 1 March 1995, seeking review, under Part 5 of the FOI Act, of the QIDC's refusal to give the applicant access to the documents specified in the applicant's FOI access application dated 1 November 1994.

#### **External review process**

6. The Deputy Information Commissioner wrote to the QIDC on 8 March 1995 indicating that an application for external review had been received from Mr Hansen, and that it was necessary to investigate the preliminary question of whether or not the Information Commissioner had jurisdiction to conduct an external review. He sought from the QIDC copies of documents falling within the terms of Mr Hansen's FOI access application, and a written submission in support of the QIDC's contention that the FOI Act did not apply to those documents.
7. The QIDC supplied copies of a number of documents (the documents in issue) together with a submission dated 28 April 1995. The applicant was provided with an edited copy of the submission and invited to lodge a submission and/or evidence in reply. The applicant replied by letter dated 24 May 1995, a copy of which was provided to the QIDC. The QIDC made no submission in response other than to provide me with a copy of a letter dated 5 May 1995 from the then Treasurer, relating to the matter. Relevant parts of the material submitted by the participants are set out below.

#### **Relevant legislative provisions**

8. Section 11A of the FOI Act provides:

*11A. This Act does not apply to documents received, or brought into existence, in carrying out activities of a GOC mentioned in schedule 2 to the extent provided under the application provision mentioned for the GOC in the schedule.*

9. Schedule 2 of the FOI Act lists the QIDC as a GOC (Government Owned Corporation), and lists s.35 of the *Queensland Industry Development Corporation Act 1994* as the relevant

"application provision". Section 35 of the *Queensland Industry Development Corporation Act 1994* provides:

***Application of Freedom of Information Act and Judicial Review Act***

**35.(1)** *In this section—*

**"commercial activities"** *means activities conducted on a commercial basis.*

**"community service obligations"** *has the same meaning as in the GOC Act.*

**"excluded activities"** *means—*

- (a) *commercial activities; or*
- (b) *community service obligations prescribed by regulation.*

**(2)** *A regulation may declare the activities of QIDC that are taken to be, or are taken not to be, activities conducted on a commercial basis.*

**(3)** *The Freedom of Information Act 1992 does not apply to a document received or brought into existence by QIDC in carrying out its excluded activities.*

**(4)** *The Judicial Review Act 1991 does not apply to a decision of QIDC made in carrying out its excluded activities.*

10. No regulation has been made under s.35(2). As noted above, the effect of these provisions is that the FOI Act does not apply to a document received or brought into existence by the QIDC in carrying out its activities conducted on a commercial basis. Section 11A of the FOI Act and s.35 of the *Queensland Industry Development Corporation Act 1994* are hereinafter referred to as "the exclusion provisions".
11. Reference is also made in these reasons for decision to s.18(5) of the *Queensland Industry Development Corporation Act 1985* (repealed with effect from 1 October 1994) which provided:

**(5) (a)** *An officer of the Corporation aggrieved by a decision of the Board resulting in disciplinary action against him or a denial to him of promotion may by writing signed by him furnish to the Board a submission disputing the decision and requesting that there be carried out a review of the process by which the decision was made.*

*A submission under this paragraph shall not raise or be directed to raising a comparison of the submitter or his seniority or efficiency with another officer of the Corporation or his seniority or efficiency.*

**(b)** *Upon receipt of a submission in accordance with paragraph (a) the Board may by writing request the Chief Executive Officer to select a person who was not, or a panel consisting of at least 2 persons who were not, involved in the making of the decision out of which the submission arose.*

*A person or panel may be or, as the case may be, may consist of officers of the Corporation.*

*(c) The person or, as the case may be, panel of persons so selected shall review the decision in question in such manner as he or it thinks fit and thereupon shall furnish to the Board his or its recommendations.*

*The Board may take upon the recommendations such action as it thinks fit.*

*The practice and procedure upon a review in accordance with this paragraph shall be as prescribed or, so far as not prescribed, as the person or panel determines from time to time.*

### **Jurisdiction of the Information Commissioner**

12. I have previously discussed my powers and role in determining my jurisdiction as Information Commissioner in *Re Christie and Queensland Industry Development Corporation* (1993) 1 QAR 1, at pp.4-7 (paragraphs 5-16). For the reasons there stated, I consider that I have the power, and a duty, to embark upon a consideration of issues relating to the limits of my jurisdiction, when they are raised as an issue in an application for review lodged with me.
13. In the Deputy Information Commissioner's letter to the QIDC dated 8 March 1995, the nature of the jurisdictional issue raised by Mr Hansen's application for review was stated (at pp.3-4 of that letter), and the QIDC was requested to supply copies of documents falling within the terms of Mr Hansen's FOI access application. The QIDC has supplied me with a number of documents which it accepts would fall within the terms of Mr Hansen's FOI access application, if the documents were subject to the application of the FOI Act. There is no doubt that the QIDC is an "agency", as defined in the FOI Act, and that the documents provided to me by the QIDC are "documents of an agency" (as defined in the FOI Act), subject only to the operation of the exclusion provisions. Therefore, I will have jurisdiction to conduct a review under Part 5 of the FOI Act in respect of any of the documents in issue which are not excluded from the application of the FOI Act by the exclusion provisions. In deciding whether I have jurisdiction to conduct this external review, I must, therefore, determine whether any of those documents are so excluded.

### **Participants' submissions**

14. The QIDC has submitted that the effect of the exclusion provisions is to exclude all documents held by it from the application of the FOI Act, because all of its activities are conducted on a commercial basis. The QIDC contends:

*As a direct result of the [Information] Commissioner's comments in Re Christie the GOE Unit, in consultation with the [QIDC], aimed to clarify the application of both the FOI Act and the JR Act to the [QIDC]. At the time the QIDC Act was drafted it was intended that, although the [QIDC's] Government Schemes Division would become more autonomous, the [QIDC] would still be responsible for the administration of Schemes of assistance. Accordingly it was inappropriate that the [QIDC] receive a complete exemption from the operation of the FOI and JR Act. Hence s.11(1)(k) of the FOI Act was repealed and a new s.11A inserted ... [the exclusion provisions were then set out]. It should be noted that s.16 of the Government Owned*

Corporations Act 1993 (*"the GOC Act"*) defines Corporatisation, inter alia, as a structural reform process for nominated Government entities that changes the conditions under which the entities operate so that they operate, as far as practicable, on a commercial basis and in a competitive environment.

... the Treasurer, in his second reading speech in support of the introduction of the QIDC Act on 30 August, 1994 stated:

"The Act removes the application of the Freedom of Information Act and the Judicial Review Act from the commercial activities of the QIDC. Complementary amendments are being made to those Acts **to ensure that QIDC is not disadvantaged in competition by the application of provisions which do not apply to its competitors.**" (our emphasis).

Section 8 of the QIDC Act specifically states the [QIDC's] objective is "to achieve a commercial return on its business undertakings".

The [QIDC] has been formally corporatised in order that it may compete in the financial sector "on a level playing field" with its competitors.

The QIDC Act, FOI and JR Act were all specifically amended, in light of Re Christie, to exclude the [QIDC] from the application of those Acts because they do not apply to the [QIDC's] competitors. In this way the [QIDC] is placed on the same footing as its competitors. For the reasons mentioned above the exclusion could not be absolute.

Prior to the [QIDC's] corporatisation, it was decided that the administration of Government Schemes of Assistance would be more properly served by the establishment of a completely separate and autonomous administering entity. As a result, the Rural Adjustment Authority Act 1994 was passed creating the Queensland Rural Adjustment Authority and that body is now charged with the administration of Government Schemes of Assistance. We would submit that there is no longer any justification for not providing the [QIDC] with the same complete exemption from the application of the FOI Act as is provided to Suncorp Insurance and Finance in s.11(1)(o) of the FOI Act. We have made this representation to the Treasurer and await his response.

Accordingly, the [QIDC's] response to Mr. Hansen's application for access to information pursuant to the provisions of the FOI Act has been dealt with by the [QIDC] in accordance with the **new** provisions of the QIDC Act and the FOI Act and in light of the information supplied to the [QIDC] by the GOE Unit prior to Corporatisation.

We respectfully submit that the [QIDC's] response to Mr. Hansen was appropriate in light of the changes in legislation **since** the decision in Re Christie and the [QIDC's] understanding of those legislative changes.

On the basis of the above advices we submit that **all** of the [QIDC's] activities are commercially orientated and therefore come within the definition of

*"excluded activities" in s.35 of the QIDC Act. The [QIDC's] activities in respect to its personnel are no exception.*

*Just as the [QIDC] must compete in the financial market place and be competitive with its interest rates and products, so too the [QIDC] competes in the Human Resources market place in obtaining, securing and dismissing personnel.*

*In order to be competitive in that market place the [QIDC] must make commercially orientated decisions concerning every facet of Human Resources Management including recruitment, remuneration, training, and termination. After Cost of Funds the [QIDC's] costs associated with Human Resources are its second largest expense and amount to approximately \$20 million each year. That cost has a direct effect on the [QIDC's] overall ability "to achieve a commercial return on its business undertakings".*

*We submit that the [QIDC's] activities in relation to personnel, **cannot** be segregated from its commercial orientation and, are an intrinsic part of its overall commercial activity.*

15. The applicant argued that the exclusion provisions could not be interpreted as a general exemption for all QIDC documents. The applicant's submission dated 24 May 1995 focused on the interpretation of the term "commercial activity":

*In response to the submission made on behalf of QIDC we confirm our client's previous stance that it can in no way be accepted that QIDC was, when determining the matters concerning our client, dealing in matters that were "excluded activities" as provided for in s.35(3) of the QIDC Act. The excluded activities are defined in s.35(1) of the QIDC Act as meaning "(a) commercial activities; or (b) community service obligations prescribed by regulation."*

*Commercial activities is defined as being activities conducted on a commercial basis. The activities of the [QIDC] in relation to their dealing with our client, in particular his dismissal, and subsequent review of his dismissal were not activities conducted on a commercial basis. Those activities were activities undertaken within the administrative functions of QIDC and not relating to the activity of the [QIDC] in the finance sector within which it operates.*

*The submission by QIDC that the second reading speech of the Treasurer supports their contention is also rejected. Clearly the Treasurer is again referring to the commercial activities of the [QIDC] and not all activities of the [QIDC] as is sought to be advanced by QIDC.*

16. The QIDC was given the opportunity to respond to the applicant's submission dated 24 May 1995. The QIDC replied briefly, by letter dated 13 June 1995, stating that Mr Hansen's submission raised no new matters for the QIDC to address. The letter went on to inform me that the QIDC's Chairman *"has raised this matter with the Treasurer and a copy of the Treasurer's response is enclosed for your interest."* Those words do not make it clear whether the QIDC intended that I should take the then Treasurer's response into account in support of the QIDC's case on the jurisdictional issue. The then Treasurer's response does



not fall within the categories of "extrinsic material" to which consideration may be given if the "extrinsic material" will assist the interpretation of a provision of an Act, in the circumstances contemplated by s.14B of the *Acts Interpretation Act 1954* Qld. Nevertheless, I have considered on its merits, as if it were an argument addressed in support of the QIDC's case on the jurisdictional issue, the material contained in the then Treasurer's response to the QIDC, the relevant parts of which are as follows:

*To achieve competitive neutrality with regard to the applicability of FOI to Government Owned Corporations (GOCs) including the QIDC, the Government decided that the FOI Act should only apply to a GOC's regulatory activities, [Community Service Obligations] (unless prescribed to be exempt) and activities carried out under statutory power.*

*It was the clear intention of the Government that activities such as personnel administration, where undertaken in support of a GOC's commercial activities, should also be exempt from FOI. If this were not the case, GOCs would be competing on unfair terms with their private sector counterparts which are not accountable in this way. The amendments to the FOI and QIDC Acts were intended to operate on this basis.*

*To the extent that, as a result of corporatisation, the QIDC does not currently undertake any [Community Service Obligation] activities nor have any regulatory or statutory powers impinging on fundamental legislative principles and, as such, is operating in a strictly commercial environment, I would not see the FOI Act being applicable to the Corporation.*

*Accordingly, I would disagree with the Information Commissioner's interpretation of s.11A of the FOI Act and s.35 of the QIDC Act regarding the external review application to which you refer. I understand that the Corporation has provided to the Commissioner documents requested by him with regard to this matter. Consequent upon the Commissioner's ruling after he has studied the relevant material, I have asked the GOE Unit to prepare for my consideration, should it be necessary, a draft regulation under s.35(2) of the QIDC Act to clarify the Government's policy in respect of the applicability of FOI to the Corporation.*

### **Application of exclusion provisions**

17. The QIDC argues (see paragraph 14 above) that all of its activities are conducted on a commercial basis and that the effect of the exclusion provisions is to afford it a complete exclusion from the application of the FOI Act.
18. There are two obvious responses to the QIDC's argument. The first is that all but one of the documents in issue were received, or brought into existence, by the QIDC before it became a GOC on 1 October 1994 (the exception being a document containing brief minutes of the consideration by the QIDC Board, on 26 October 1994, of a matter arising from its previous consideration of the report (received by the QIDC on 2 August 1994) by the panel appointed under s.18(5) of the *Queensland Industry Development Corporation Act 1985*). While there is no doubt that the QIDC had commercial activities prior to 1 October 1994, this point is worth making in view of the emphasis in the QIDC's submissions (see paragraphs 14 and 16 above) that since it became a GOC all of its activities are conducted on a commercial basis. I note, merely by way of illustration, that s.8 of the *Queensland Industry Development*

*Corporation Act 1994* states that "QIDC's objective is to operate as a financier to Queensland's primary, secondary and tertiary industries in order to achieve a commercial return on its business undertakings", whereas s.10 of the *Queensland Industry Development Corporation Act 1985* had provided that "The objectives of the [QIDC] shall be to facilitate, encourage and promote the development and expansion of economic activity in Queensland, with a view to enhancing economic growth, and employment opportunities in the State and for the public benefit".

19. The second obvious response to the QIDC's arguments is that the very words employed by Parliament in the exclusion provisions are inconsistent with an intention on the part of Parliament to confer on the QIDC a complete exclusion from the application of the FOI Act. If that had been Parliament's intention, it could have been achieved, simply and unequivocally, by either—
  - (a) inserting in s.11(1) of the FOI Act a new paragraph, in like terms to s.11(1)(o) (by which Suncorp Insurance and Finance is excluded from the application of the FOI Act), thus: "This Act does not apply to ... Queensland Industry Development Corporation; ..."; or
  - (b) providing in s.35 of the *Queensland Industry Development Corporation Act 1994* that the excluded activities of the QIDC were "all activities" or, perhaps, "all activities except those prescribed by regulation" (to preserve some flexibility to deal with unforeseen circumstances).

Instead, Parliament was careful to differentiate and describe categories of excluded activities of the QIDC.

20. The QIDC contends that the failure to provide a complete exclusion came about because at one time its functions included the administration of "schemes of assistance", but that those functions have been taken over by the Queensland Rural Adjustment Authority (the QRAA) pursuant to the *Rural Adjustment Authority Act 1994* Qld, and that the FOI Act no longer applies to any documents of the QIDC. However, there is really no basis for such a speculative interpretation of the exclusion provisions. The decision to remove the function of administering "schemes of assistance" from the QIDC, and to give that function to the QRAA, was made before the QIDC became a GOC. Both the *Queensland Industry Development Corporation Act 1994* and the *Rural Adjustment Authority Act 1994* came before the Parliament, as Bills, at the same time, and both Acts commenced on 1 October 1994. If Parliament's sole intention in designating "commercial activities" as "excluded activities" (in s.35 of the *Queensland Industry Development Corporation Act 1994*) had been to retain access by members of the public to documents relating to the administration of "schemes of assistance", the Parliament, then being aware that the function of administering "schemes of assistance" would no longer lie with the QIDC, could have amended the *Queensland Industry Development Corporation Bill 1994* to give the QIDC a complete exclusion from the application of the FOI Act. It did not do this; rather, it employed the specific wording found in the exclusion provisions.
21. The QIDC suggests that the wording of the then Treasurer's second reading speech lends force to the argument that all activities of the QIDC should be excluded. In my view, neither the second reading speech nor the relevant explanatory notes enhance, to any significant extent, the understanding of the intention of Parliament that is to be gained from a reading of the exclusion provisions themselves. That part of the second reading speech which the QIDC has emphasised in its submission (in bold type in paragraph 14 above) does not say that there

can be no legislative provisions applying to it which do not apply to its competitors. It says that the intention is that QIDC will not be "disadvantaged in competition" by any such legislative provisions. The means by which Parliament chose to achieve that end was to distinguish between the "commercial activities" of the QIDC and any other activities not conducted on a commercial basis. My role is to interpret the legislation according to its ordinary meaning in the statutory context in which it appears. In my view, Parliament clearly envisaged that, while the activities of the QIDC were predominantly "commercial activities", there had in the past been, and there would or may in the future be, other activities of the QIDC not conducted on a commercial basis. (Given the unlimited retrospective reach of the FOI Act, as provided for in s.10, and the fact that the QIDC was not to be given an agency-based exclusion from the application of the FOI Act in the same manner as Suncorp Insurance and Finance, the legislature would have appreciated that the QIDC may be required to deal with applications for access to documents received or brought into existence at a time when its statutory objective was not confined to achieving a commercial return on its business undertakings.) There is nothing ambiguous in the wording of the exclusion provisions, and nothing in the second reading speech, or any other extrinsic materials, which would indicate that I must accept that all activities of the QIDC are commercial activities.

22. The application of the exclusion provisions requires a determination of the nature of the activity carried out by the QIDC, in the course of which each of the documents in issue was received or brought into existence, and a determination as to whether that activity is a commercial activity of the QIDC, that is, an activity conducted by the QIDC on a commercial basis.
23. I have examined the documents in issue. They comprise—
  - the report of the panel appointed under s.18(5) of the *Queensland Industry Development Corporation Act 1985* to review the process by which the decision was made to terminate the applicant's employment for refusing to accept a transfer to the QIDC's Atherton Office;
  - correspondence passing between the QIDC and the members of the panel, and material submitted to the panel by the QIDC; and
  - minutes of Board meetings of the QIDC relating to its consideration of the panel's report.
24. All of the documents to which Mr Hansen seeks access were received or brought into existence in carrying out the QIDC's activity of dealing with the submission made by Mr Hansen pursuant to the statutory right conferred by s.18(5) of the *Queensland Industry Development Corporation Act 1985* to dispute the decision to terminate his employment for refusal to accept a transfer. (A small number of the documents are copies, provided to the panel for its assistance, of documents which were initially created in the course of QIDC's dealings with Mr Hansen about the transfer, the termination of his employment, or related matters. However, it is clear that the copies were created for the purposes of the panel's review of the decision to terminate Mr Hansen's employment.)
25. Major dictionaries give the primary meaning of the adjective "commercial" as "of, connected with, or engaged in, commerce; mercantile" (Collins English Dictionary, Third Aust. Ed), "of, engaged in, bearing on, commerce" (Australian Concise Oxford Dictionary), "of, or of the nature of, commerce" (Macquarie Dictionary). The corresponding primary meaning of the noun "commerce" is "the activity embracing all forms of the purchase and sale of goods and services" (Collins English Dictionary, Third Aust. Ed.), "exchange of merchandise or services ... buying and selling" (Australian Concise Oxford Dictionary), "interchange of goods or

commodities" (Macquarie Dictionary). The activity I have described in paragraph 24 above does not involve the purchase or sale of goods or services.

26. There is a subsidiary meaning of the adjective "commercial" which may be appropriate to the context of the phrase "activities conducted on a commercial basis" in s.35 of the *Queensland Industry Development Corporation Act 1994*, that is, "having profit as the main aim" (Collins English Dictionary, Third Aust. Ed.), "capable of returning a profit; ... preoccupied with profits or immediate gains" (Macquarie Dictionary). However, I am satisfied that the activity described in paragraph 24 above does not answer any of these descriptions.
27. It is clear, in my opinion, that s.18(5) of the *Queensland Industry Development Corporation Act 1985* was intended to confer on employees of the QIDC a right of appeal, in the nature of a grievance procedure, as a measure of protection or relief against certain kinds of decisions having an adverse impact on employees. The activities of the QIDC in dealing with such an appeal cannot, in my opinion, be properly characterised as commercial activities, or activities conducted on a commercial basis.
28. The QIDC submits that its activities in relation to personnel cannot be segregated from its commercial orientation, that it competes in the human resources market place in obtaining, securing and dismissing personnel, and that it must make commercially oriented decisions concerning every facet of human resources management including recruitment, remuneration, training, and termination. For reasons already addressed above, I do not consider that the words employed by Parliament in the exclusion provisions contemplate or necessarily require that all activities conducted by a GOC (which, by definition, will necessarily have a commercial orientation) must be characterised as commercial activities. Moreover, the fact that a commercially oriented decision is made in the conduct of an activity does not necessarily make the activity a commercial activity, or an activity conducted on a commercial basis. Whatever the position may be in respect of recruitment of staff, I doubt that the dismissal of personnel could invariably be characterised as an activity conducted on a commercial basis. I do not consider that the termination of Mr Hansen's employment on account of his refusal to accept a transfer was an activity conducted on a commercial basis; and I am satisfied that the activities of the QIDC in response to Mr Hansen's submission disputing the QIDC's decision to terminate his employment (in accordance with s.18(5) of the *Queensland Industry Development Corporation Act 1985*) were not activities conducted on a commercial basis.
29. I am satisfied that documents falling within the terms of the applicant's FOI access application, made under cover of a letter to the QIDC dated 1 November 1994, are not excluded from the application of the FOI Act by the exclusion provisions, and that I have jurisdiction to conduct a review, under Part 5 of the FOI Act, of the QIDC's refusal to give the applicant access to those documents.
30. I will write to the QIDC separately giving directions for filing evidence and submissions in support of any claims it wishes to advance that the documents in issue are exempt under one or more of the exemption provisions contained in Part 3, Division 2 of the FOI Act. In due course, I will also give directions to the applicant in respect of filing evidence and submissions in support of his case.

**Conclusion**

31. I find that the documents to which the applicant requested access, under cover of a letter to the respondent dated 1 November 1994, are not excluded from the application of the *Freedom of Information Act 1992* Qld by s.11A of that Act, and s.35 of the *Queensland Industry Development Corporation Act 1994* Qld, and I therefore have jurisdiction to review the respondent's refusal of access to those documents.

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F N ALBIETZ

**INFORMATION COMMISSIONER**