



## Decision and Reasons for Decision

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**Application Number:** 21440

**Applicant:** Mr Stiller

**Respondent:** Department of Transport

**Decision Date:** 11 February 2009

**Catchwords:** **FREEDOM OF INFORMATION – Section 50(c)(i) of the *Freedom of Information Act 1992 (Qld)* – infringe the privileges of Parliament – Section 28A of the *Freedom of Information Act 1992 (Qld)* – whether reasonable basis for agency to be satisfied the documents sought do not exist – sufficiency of the agency’s searches – whether all reasonable steps taken to find the documents sought**

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## REASONS FOR DECISION

### Summary

1. In respect of the document to which the applicant was refused access under section 50(c)(i) of the *Freedom of Information Act 1992* (Qld) (**FOI Act**) I am satisfied that the document:
  - was prepared for the Minister in anticipation of a possible Parliamentary question
  - constitutes an act done for the purposes of, or incidental to, transacting business in the Assembly
  - qualifies for exemption under section 50(c)(i) of the FOI Act.
2. In respect of the sufficiency of search issue I am satisfied that access to:
  - the majority of the documents sought can be refused under section 28A(1) of the FOI Act on the basis that the documents sought do not exist
  - two of the documents sought can be refused under section 28A(2) of the FOI Act on the basis that although these documents should be in QT's possession, QT has taken all reasonable steps to locate the documents but they cannot be found.
3. Items 1 and 20 are outside of the scope of the FOI Application.
4. The applicant's letters dated 1 October 2007, 8 October 2007 and 15 October 2007 and any documents generated by these letters are post application documents in respect of which the applicant is not entitled to a review under Part 5 of the FOI Act.
5. Some aspects of the external review application are misconceived and on this basis, under section 77(1)(a) of the FOI Act, I decline to further deal with these parts of the application.

### Background

6. By letter dated 24 September 2007 (**FOI Application**) to the Department of Transport, known as Queensland Transport (**QT**), the applicant sought access to:

*hard copies of all documentation, letters, faxes, memos, notes, directives, advice, emails and other information held by, or accessible by, Queensland Transport, in relation to the requests by me, Kevin Stiller, for information, advice, assistance and action, relating to the restoration, modification, modification approval and registration of my 1929 Dodge Brothers motor vehicle, chassis No. DA31715.*
7. By letter dated 28 September 2007 the applicant provided some specific information to QT about the documents sought.
8. QT indicates in its decision dated 15 November 2007 (**Original Decision**) that 486 documents respond to the FOI Application and these documents were released to the applicant.
9. By letter dated 30 November 2007 the applicant sought responses from QT regarding a number of the documents released under the FOI Act.
10. By letter dated 12 December 2007 (**IR Application**) the applicant sought internal review of the Original Decision.

11. In a letter dated 15 January 2008 (**IR Decision**) QT responded to the applicant's letters dated 21 November 2007 and 30 November 2007 as well as his request for internal review:
- a) indicating that:
    - QT had identified some documents that were not released to the applicant with the Initial Decision
    - new copies of some documents were enclosed
    - further searches were requested in relation to the sufficiency of search issues raised
    - some additional documents relevant to the FOI Application were located and all of these documents except one were released to the applicant
    - the FOI Act does not require a government department to provide '*any additional information, comment or interpretation about the documents held by the particular department*' and that the provision of additional information is not within the scope of the FOI Application
    - under the FOI Act there is no requirement for the agency to bring documents into existence, where none previously existed, to respond to a request
    - inquiries regarding documents of an organisation other than QT must be directed to the organisation concerned
  - b) deciding that one document qualifies for exemption under section 50(c)(i) of the FOI Act
  - c) refusing access to the documents sought under section 28A of the FOI Act on the basis that all reasonable steps had been taken to locate the documents requested and that beyond the documents released, no further documents either exist or could be found.
12. By application and letter dated 8 February 2008 (**ER Application**) the applicant sought external review of the IR Decision.

### **Decision under review**

13. Under section 52(6) of the FOI Act, if on internal review, an agency does not decide an application and notify the applicant of the decision within 28 days after receiving the application, the agency's principal officer is taken to have made a decision at the end of the period affirming the original decision.
14. The decision-maker states in the IR Decision that the IR Application was received by QT on 18 December 2007. On the basis of the information available to me, a decision on internal review was to be notified to the applicant by 15 January 2008 (28 days from receipt of the IR Application). The IR Decision is dated 15 January 2008 and was sent to the applicant by post either on or after this date. Accordingly, in the ordinary course of post, the applicant would have been notified of the IR Decision on 16 January 2008 at the earliest.
15. The principal officer of QT is therefore taken to have affirmed the Original Decision, and on this basis, the deemed affirmation of the Original Decision is the decision under review (**Affirmed Decision**).

16. For the purposes of the review I have treated the IR Decision as if it were submissions received from QT.

### Steps taken in the external review process

17. By letters dated 15 February 2008, the Office of the Information Commissioner (the **Office**) indicated to the parties that the ER Application had been accepted and asked:
  - QT to provide a copy of the document to which the applicant had been refused access
  - the applicant to clarify some issues in the review and to provide submissions in relation to his assertion that QT had failed to locate all relevant documents in response to the FOI Application.
18. On 19 February 2008 QT provided a copy of the document claimed to qualify for exemption under section 50(c)(i) of the FOI Act to the Office.
19. By letter dated 22 February 2008 the applicant indicated that:
  - the Office mistakenly considered the scope of the applicant's freedom of information application to have been narrowed by his letter of 28 September 2007
  - the letter of 28 September 2007 had been provided to QT for the purpose of assisting QT and making the search effort easier but not with the intention of narrowing the scope of the application
  - he believed that he had already provided the information sought in relation to the sufficiency of search issues.
20. In a telephone discussion on 10 March 2008, the Manager, (FOI & Privacy), QT, indicated to me that in processing the FOI Application QT did not limit the scope of the FOI Application to the items listed in the applicant's letter of 28 September 2007, had always dealt with it in terms of the applicant's application of 24 September 2007 and had taken the view that all documents concerning the applicant would be considered for release. He also indicated that thorough searches had been conducted and that all documents except one had been released. However, if any documents had not been filed and the personnel in receipt of those documents had moved on, such documents may be unlocatable.
21. By letter dated 11 March 2008 to the applicant, Acting Information Commissioner Rangihaeata confirmed that the scope of the FOI Application is as stated in the application of 24 September 2007.
22. In a telephone discussion on 13 May 2008 I indicated to the Manager, FOI & Privacy, QT that the IR Decision indicated that some documents were outside of the scope of the application. I therefore sought clarification of the scope of the searches undertaken. The Manager, FOI & Privacy, QT confirmed his previous statement to me that QT staff had searched for every document concerning the applicant and all were disclosed except the document claimed to qualify for exemption from disclosure under section 50(c)(i) of the FOI Act (**MBN**).
23. In a telephone discussion with the Manager, FOI & Privacy, QT on 23 May 2008 I inquired as to whether QT would consider administratively releasing the MBN.

24. By letter dated 26 May 2008, Assistant Commissioner Henry sought information from QT regarding the searches undertaken in response to the FOI Application as well as contextual information regarding the MBN.
25. By email dated 27 May 2008, QT provided records of searches undertaken in response to the FOI Application.
26. By facsimile dated 6 June 2008, QT indicated that it wished to maintain its claim that the MBN qualifies for exemption under section 50(c)(i) of the FOI Act and provided further information about the MBN.
27. By letter dated 19 June 2008, Assistant Commissioner Henry sought further and more detailed information from QT regarding the searches undertaken as well as information regarding the audit report referred to by the applicant at S-B.31 of his letter to QT dated 30 November 2008.
28. By facsimile dated 27 June 2008, QT responded to the letter referred to at paragraph 27 above.
29. In a telephone discussion on 29 July 2008, the Manager, FOI & Privacy, QT indicated to me that, following further inquiries with the Director of Internal Audit and Land Transport and Safety, he had confirmed that:
  - no audit was conducted because of the generalised nature of the complaints made by the applicant
  - whilst QT staff understood that the applicant had contacted the Queensland Ombudsman, the Queensland Ombudsman had not contacted QT.
30. By letter dated 6 August 2008, I provided the applicant with copies of QT's submissions to this review and QT's records of searches undertaken as well as indicating that it was my preliminary view that:
  - the MBN qualifies for exemption under section 50(c)(i) of the FOI Act
  - QT's search efforts have been reasonable in the circumstances
  - there are no reasonable grounds to believe that there are further documents responding to the FOI application in the possession of or under the control of QT
  - QT was entitled to refuse the applicant access to the documents in accordance with section 28A of the FOI Act (**Preliminary View**).

I indicated to the applicant that if he did not accept the Preliminary View he was invited to provide submissions to this review by 22 August 2008.

31. By letter dated 13 August 2008, the applicant indicated that he did not accept the Preliminary View and provided submissions to this external review.
32. In making my decision in this matter, I have taken the following into consideration:
  - the applicant's FOI Application, IR Application and ER Application
  - the applicant's letters to QT of 28 September 2007 and 30 November 2007
  - the applicant's written submissions dated 22 February 2008 and 13 August 2008
  - the Department's Original Decision and IR Decision
  - records of telephone conversations between the staff of the Office and the Department on 10 March 2008, 13 May 2008, 23 May 2008, 30 May 2008 and

29 July 2008, 16 January 2009, 21 January 2009, 23 January 2009 and 10 February 2009

- the Department's submissions and/or evidence of searches and/or information provided on 27 May 2008, 6 June 2008, 27 June 2008, 29 July 2008
- QT email dated 12 October 2006
- the matter in issue
- the documents released to the applicant in response to the FOI Application (**Released Documents**)
- relevant provisions of the FOI Act and other legislation as identified in this decision
- previous decisions of the Information Commissioner of Queensland and decisions and case law from other Australian jurisdictions as identified in this decision.

### Issues in this review

33. In this review it is necessary to determine:

- whether the MBN (matter in issue) qualifies for exemption under section 50(c)(i) of the FOI Act
- there are reasonable grounds for QT to be satisfied that additional documents sought by the applicant do not exist or cannot be located and accordingly, whether access can be refused under sections 28A(1) and/or (2) of the FOI Act.

### Findings

34. QT claims that one document, the MBN which is a Ministerial briefing note qualifies for exemption under section 50(c)(i) of the FOI Act.

### **Relevant law – section 50(c)(i) of the FOI Act**

35. Section 50(c)(i) of the FOI Act provides:

**50 Matter disclosure of which would be contempt of Parliament or contempt of court**

*Matter is exempt matter if its public disclosure would, apart from this Act and any immunity of the Crown—*

...

(c) *infringe the privileges of—*

(i) *Parliament; or*

...

36. The concept of 'Parliamentary privilege' is based on the notion that 'a member of Parliament should be able to speak in Parliament with impunity and without any fear of the consequences.'<sup>1</sup> Consequently, the privilege essentially provides immunity from the general law in certain circumstances.

37. Section 8 of the *Parliament of Queensland Act 2001* (Qld) (**PQ Act**) provides that 'the freedom of speech and debates or **proceedings in the Assembly** can not be

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<sup>1</sup> *Sankey v Whitlam* (1978) 142 CLR, per Gibbs ACJ.

impeached or questioned in any court or place out of the Assembly'.  
**[my emphasis]**

38. The meaning of the term 'proceedings in the Assembly' is defined in section 9 of the PQ Act which relevantly provides:

**9 Meaning of 'proceedings in the Assembly'**

- (1) *'Proceedings in the Assembly' include all words spoken and acts done in the course of, or for the purposes of or incidental to, transacting business of the Assembly or a committee.*

...

39. To determine whether the MBN qualifies for exemption under section 50(c)(i) of the FOI Act, it is necessary to consider whether the MBN constitutes an act done for the purpose of, or incidental to, transacting business in the Assembly.

**QT's submissions**

40. QT submits that:<sup>2</sup>

- the MBN:
  - was housed in a database titled QT briefing notes
  - the QT briefing notes database houses various types of briefs required by the Minister
  - the MBN was stored in the database under the heading 'Parliamentary'
  - the MBN was to provide the Minister of the day with a brief containing the facts regarding contentious matters that may be raised in Parliament or that he may wish to raise for discussion in Parliament
  - the MBN was prepared by the Land Transport and Safety Division of Queensland for the then Minister for Transport and Main Roads
  - the MBN was prepared for the 22 to 24 May 2007 Parliamentary sitting
- briefing notes such as the MBN:
  - are prepared and updated prior to the Parliamentary sitting, with the Minister being provided with the briefing folder to use as his resource to actively participate in transacting business in Parliament
  - are not requested to be created for any other purpose but to brief the Minister for the purpose of transacting business in Parliament.

**Applicant's submissions**

41. Although the applicant provided submissions in relation to the sufficiency of search issue addressed below, he did not provide submissions in respect of the MBN.

**Public disclosure**

42. It was noted in *Sharples and Queensland Police Service*<sup>3</sup> that *'only an intentional general waiver of parliamentary privilege (most commonly, through tabling, or other authorised publication, of a document) may be taken into account in the application of s.50 of the FOI Act'.*

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<sup>2</sup> In its submissions dated 6 June 2008.

<sup>3</sup> (Unreported, Office of the Information Commissioner, 7 December 2001) at paragraph 20.



43. Electronic searches of the Queensland Parliament website and Hansard for 22 to 24 May 2007 do not disclose any intentional general waiver of the MBN.

**Findings on material questions of fact**

44. I have carefully read and considered the MBN as well as a screen print which shows where the MBN was accessed in the QT database. On the basis that the MBN:
- is stored in a database of briefing notes within a file titled Parliamentary – PPQ<sup>4</sup>
  - poses a question, lists speaking points in response to that question and provides some additional information about the issues addressed
  - also identifies the sitting dates 22-24 May 2007
  - has not been publicly disclosed

I find that the MBN is a document prepared to assist the Minister to answer questions that might be asked of the Minister in the Assembly.

**Analysis**

45. In view of the legal requirements discussed at paragraphs 35 to 38 and my findings of material questions of fact identified in paragraph 44 above, I am satisfied that the MBN constitutes an act done for the purposes of, or incidental to, transacting business in the Assembly.

**Conclusion on section 50(c)(i) of the FOI Act**

46. The MBN qualifies for exemption under section 50(c)(i) of the FOI Act.

**Issues in relation to sufficiency of search**

47. The applicant states in the External Review Application that *'[t]his application is made as a result of my belief that QT FOI have not supplied me with all of the documentation to which I am entitled under the Freedom of Information Act due to a lack of sufficiency of search.'*
48. QT has relied on sections 28A(1) and (2) of the FOI Act on the basis that all documents responding to the FOI Applicant have already been provided to the applicant and no further documents exist or can be found.

**Relevant law - section 28A(1) and (2) of the FOI Act**

49. Section 28A(1) and (2) of the FOI Act provide:

**28A Refusal of access—documents nonexistent or unlocatable**

- (1) *An agency or Minister may refuse access to a document if the agency or Minister is satisfied the document does not exist.*

Example—

*documents that have not been created*

- (2) *An agency or Minister may refuse access to a document if—*

- (a) *the agency or Minister is satisfied the document has been or should be in the agency's or Minister's possession; and*

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<sup>4</sup> Which I understand to refer to 'Possible Parliamentary Question.'

- (b) *all reasonable steps have been taken to find the document but the document can not be found.*

Examples—

- *documents that have been lost*
- *documents that have been disposed of under an authority given by the State Archivist.*

### **Subsections (1) and (2) of section 28A are mutually exclusive**

50. In *PDE and the University of Queensland*<sup>5</sup> (*PDE*) the Acting Information Commissioner indicates that:<sup>6</sup>

*Sections 28A(1) and (2) of the FOI Act address two different scenarios faced by agencies and Ministers from time to time in dealing with FOI applications: circumstances where the document sought does not exist and circumstances where a document sought exists (to the extent it has been or should be in the agency's possession) but cannot be located. In the former circumstance, an agency or Minister is required to satisfy itself that the document does not exist. If so satisfied, the agency or Minister is not required by the FOI Act to carry out all reasonable steps to find the document. In the latter circumstance an agency or Minister is required to satisfy itself that the document sought exists (to the extent that it has been or should be in the agency's possession) **and** carry out all reasonable steps to find the document before refusing access.*

### **'Satisfied'**

51. In *PDE* the Acting Information Commissioner also considered how an agency was to satisfy itself as to the non-existence of documents sought by an applicant and indicated that to be satisfied that a document does not exist, it is necessary for the agency to rely upon its particular knowledge and experience with respect to various key factors including:

- the administrative arrangements of government
- the agency structure
- the agency's functions and responsibilities (particularly with respect to the legislation for which it has administrative responsibility and the other legal obligations that fall to it)
- the agency's practices and procedures (including but not exclusive to its information management approach)
- other factors reasonably inferred from information supplied by the applicant including:
  - the nature and age of the requested document/s
  - the nature of the government activity the request relates to.

52. To be satisfied under section 28A(2) of the FOI Act that a document can not be found an agency must take all reasonable steps to locate a document. Section 28A(1) is silent on the issue of how an agency is to satisfy itself that a document does not exist. When proper consideration is given to the key factors discussed at paragraph 51 and a conclusion reached that the document sought does not exist, it may unnecessary for the agency to conduct searches. However, where searches are used to substantiate a conclusion that the document does not exist, the agency must take all reasonable steps to locate the documents sought.<sup>7</sup>

<sup>5</sup> (Unreported, Office of the Information Commissioner, 9 February 2009).

<sup>6</sup> At paragraph 34.

<sup>7</sup> See *PDE*.

**Relevant questions - section 28A(1) of the FOI Act**

53. Therefore, in the context of applying section 28A(1) of the FOI Act it is relevant to ask:

*Are there reasonable grounds to be satisfied that the requested documents do not exist?*

In this review, because QT undertook searches to support its decision to refuse access on the basis that the documents do not exist, it is appropriate in reviewing the searches undertaken to also ask:

*Has QT taken all reasonable steps to find the documents?*

**Relevant questions - section 28A(2) of the FOI Act**

54. In the context of applying section 28A(2) of the FOI Act it is relevant to ask:

*Are there reasonable grounds to be satisfied that the requested documents have been or should be in QT's possession?*

*and*

*Has QT taken all reasonable steps to find the document/s?*

**The applicant's submissions**

55. In a letter to QT dated 30 November 2007 the applicant states:

*Please supply me with full documentation to support your following statements.*

The applicant then uses a classifying system to refer to documents released to him under the FOI Act by QT. Many of the items comprise or refer to quotes from these documents. I include and/or summarise the relevant parts of the applicant's submissions in the consideration of each category of documents the applicant asserts QT has failed to locate.

**Categories of documents the applicant asserts QT has failed to locate**

56. The table below summarises<sup>8</sup> and itemises the categories of additional documents which the applicant believes are held by QT.

<b>Item</b>	<b>Applicant's<sup>9</sup> reference</b>	<b>Document sought and/or statement from QT document/s for which the applicant seeks supporting documentation</b>
<b>1</b>	S-A1, (a) page 7 of 16	Microfiche record of original registration of vehicle (1929)

<sup>8</sup> Compiled from the applicant's letter of 30 November 2007, External Review Application and submissions of 13 August 2008.

<sup>9</sup> I note that the applicant has used various references in his correspondence. These references are from the applicant's letter to QT of 30 November 2007.

Item	Applicant's <sup>9</sup> reference	Document sought and/or <i>statement from QT document/s for which the applicant seeks supporting documentation</i>
2	S-A1(b)	<p><i>'On 10 September 2007, Rob Gibson and Keith Hammond met with QT Approved Persons Engineer ... to set up a meeting between Kevin Stiller and [the QT Approved Persons Engineer]</i></p> <p>Copy of letter from QT to Kevin Stiller regarding meeting with [the QT Approved Persons Engineer]</p>
3	S-A11 (a),(b),(c)	Copies of 4 letters from the applicant to QT dated 24 September 2007, 1 October 2007, 8 October 2007 and 15 October 2007 and the QT documentation generated by these letters
4	S-A25(a)	Hard copy of the law, rule or regulation that requires a person to be a current member of a car club to obtain Special Interest Vehicle concessional registration
5	S-A25 (b)(c) and (e)	<p>Documentation showing:</p> <ul style="list-style-type: none"> <li>• Redcliffe CSC's reason for refusing to grant the applicant registration on: <ul style="list-style-type: none"> <li>○ 25 July 2007</li> <li>○ 26 July 2007</li> </ul> </li> <li>• Strathpine CSC's reason for refusing to grant the applicant registration on 9 August 2007</li> </ul>
6	S-A25 (h)	Names and positions of the QT CSC staff who served the applicant at Redcliffe QT CSC on 25 July 2006 and 26 July 2006 and at Strathpine on 9 August 2006
7	A-26	<p>The applicant refers to a meeting at 85 George Street on 22 August 2006 and indicates that important parts of the discussions were about (a1) the precedent of a specified photo, (a2) the applicant's objection to the manner in which the approval was overridden.</p> <p>The applicant also quotes <i>'I note the allegations you have made regarding the conduct of the QT officers in their dealings with you'</i></p>
8	A-26(c)	<p><i>'you may wish to contact the Queensland Ombudsman's Office'</i></p> <p>Documents regarding the Ombudsman's contact with QT regarding his concerns</p>
9	S-A 29(b)	Missing comments, action, advice etc generated by the applicant's two Affidavits
10	S-A 90	<p><i>'Redcliffe CSC was the second CSC approached regarding registration of this vehicle'</i></p> <p>The applicant states that he requires documentation to support the claim</p>
11	S-B.4	<p><i>'Mr Stiller has modified the chassis ...'</i></p> <p>The applicant states that he requires documentation to support the claim</p>

Item	Applicant's <sup>9</sup> reference	Document sought and/or <i>statement from QT document/s for which the applicant seeks supporting documentation</i>
12	S-B. 18	<p><i>'The matters raised by Mr Stiller have been examined. The result of this examination and the facts in issue are outlined in this brief'</i></p> <p>The applicant states <i>'the result is not listed'</i></p>
13	SB.(19)(c)	<p><i>'Mr Miller and Mr Bow did not plate the vehicle due to safety concerns'</i></p> <p>The applicant seeks the documentation on which QT bases this claim.</p> <p>The applicant indicates that QT's claim is very important and could not/should not be made without adequate written proof.</p>
14	S-B.20(a).(b) and (c)	<p><i>'[an approved person (AP)] was then contacted by Mr Clinton Harry, A/Senior Engineer, to establish if the modifications had been fully assessed and approved in accordance the DOP.'</i></p> <p>Documentation showing instructions to Mr Harry to contact [the AP] with the time and date of these instructions.</p> <p><i>'[the AP] subsequently liaised with Mr Stiller to reassess the vehicle'</i></p> <p><i>'Mr Stiller also sought to have the vehicle (as modified) registered under the Special Interest Vehicle (SIV) concession on 27 July 2006'</i></p>
15	S-B.21	<p><i>'This advice and consideration of his actions in relation to Mr Stiller's vehicle will be confirmed in writing to [the AP] ...'</i></p>
16	S-B.31	Copy of Internal Audit regarding applicant's bullying allegation
17	S-B.129	The applicant's past correspondence with the Queensland Combined Council of Historic Vehicles Club ( <b>QCCHVC</b> )
18	S-B.224	The Director General's response to Mr Stiller's questions regarding a possible bribe
19	S-B. 227(a)	Documents that support QT's statement <i>'I understand that the engineer you originally chose declined to certify the vehicle and as a result a second engineer, Mr Gary Bow, was consulted by you ...'</i>
20	S-B. 227(b)	<p><i>'As the braking capacity for this vehicle is not known to be sufficient, your engineer has informed QT that his assessment of the modifications is such that, in his capacity as a registered professional engineer, he cannot approve the completed vehicle in its current configuration.'</i></p> <p>Details of a named person's vehicle which the applicant identifies as being substantially similar to his vehicle.</p>
21	S-B. 227(c)	<i>'QT cannot override a decision from a professional engineer regarding the safety of a modified vehicle and allow the vehicle to be registered without approval.'</i>
22	S-B. 233	Documentation to support the statement <i>'This responsibility lies with yourself and the recognised AP you choose'</i>

Item	Applicant's <sup>9</sup> reference	Document sought and/or <i>statement from QT document/s for which the applicant seeks supporting documentation</i>
23	S-B. 248	<p><i>'No extra or additional payments beyond the advertised, gazetted or regulated charges are required by QT in order to have your vehicle modifications approved or to gain registration'</i></p> <p>The applicant requests full documentation of notes, advice, recommendations etc resulting from his previous enquiries to the Minister for Transport's Office as to whether QT required a bribe</p>
24	S-B. 302	An A3 page of photos that is missing from S-B.302

### QT's submissions

57. In the Internal Review Decision and the record of searches undertaken by the Land Transport and Safety Unit, QT has attempted to respond to many of the issues raised by the applicant. It also appears from the Released Documents that QT has attempted on a number of occasions to address the applicant's concerns and to provide relevant information.
58. QT submits that:
- it has conducted thorough searches for all documents concerning the applicant
  - all documents except the MBN have been released to the applicant
  - QT cannot locate any additional documents in its possession or control concerning the applicant.

### Findings on material questions of fact

59. In relation to the sufficiency of search issue I make the following findings on material questions of fact:
- QT located and released 486 documents to the applicant in accordance with the Original Decision
  - on internal review QT located some additional documents which it released in full to the applicant except for the document claimed to qualify for exemption under section 50(c)(i) of the FOI Act (which is discussed at paragraphs 34 to 46 above)
  - QT has undertaken searches in the following areas of the Department:
    - Land Transport and Safety
    - Services Division
    - South-East Queensland – North Compliance; and
    - Departmental Liaison Unit
  - the above areas were searched because QT determined that these were the only areas that would hold documents responding to the FOI Application
  - QT has provided details of the files searched, the names and positions of the personnel undertaking the searches and the time taken to search
  - a minimum of 11 QT staff (including senior staff) spent a minimum of 31 hours searching for documents and responding to the request
  - QT FOI personnel have made further inquiries with Departmental staff in response to inquiries from the Office.

### **Items 1 and 20 – scope of the FOI Application**

60. Although the applicant entered into correspondence with QT particularising some of the documents to which he sought access in his FOI Application, the scope of the application is as detailed in the FOI Application.<sup>10</sup>
61. In his submissions the applicant indicates that he seeks access to:
- a microfiche record of the original registration of his vehicle
  - details about another person's vehicle.
62. The applicant submits in relation to item 1 that his request is valid *'as QT management deliberately and knowingly fabricated false information within internal documents for the purpose of discrediting'* his lawful rights and in relation to item 20 that as QT has raised the issue it is reasonable for him to ask QT to provide documentation to support their claim. Further, that he is entitled to ask QT to provide documentation to support their 'utility' claim and that QT are obliged to supply him with copies of the original registration records.
63. The applicant is aggrieved by QT's actions in relation to his vehicle modification application. However, the applicant's assertions and submissions do not address the issue of the scope of the FOI Application.
64. Having considered the FOI Application, I am satisfied that the documents described in paragraph 61 above do not fall within the scope of the FOI Application because they do not comprise information concerning the applicant's requests for information, advice, assistance and action relating to the restoration, modification, modification approval and registration of his vehicle.

### **Item 2 – letter regarding meeting with QT Approved Persons Engineer**

65. The applicant seeks a copy of the letter to him from QT regarding a meeting with [a QT AP].
66. The Memorandum in relation to searches undertaken by the Land Transport and Safety Unit, QT, a copy of which has been provided to the Applicant, indicates that QT intended making a particular arrangement for the applicant regarding modifications advice. This arrangement was to be notified to the applicant in a letter. This is confirmed in a Brief for Noting to a Senior Policy Advisor from the Land Transport and Safety Unit dated 18 September 2007 (which was released to the applicant). However, the Memorandum notes *'the letter [advising of the arrangement] was not sent on a decision of the Senior Policy Advisor to the Minister'* and *'unfortunately the decision to not send the letter was not linked back to the action in the unit and has since been reported against as it (sic) the letter had been sent'*.
67. In the circumstances it is understandable that in the first instance the applicant took the view that the letter sought existed and had not been released to him. However, I accept QT's explanation of the circumstances and am satisfied that:
- there are reasonable grounds for QT to be satisfied that the document requested under item 2 does not exist
  - access to the document sought under item 2 can be refused under section 28A(1) of the FOI Act.

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<sup>10</sup> As confirmed in the applicant's letter to this Office of 22 February 2008.

## Post application documents

### Item 3 – the applicant’s letters to QT and documentation generated by those letters

68. In relation to item 3 the applicant seeks access to copies of four letters from the applicant to QT dated 24 September 2007, 1 October 2007, 8 October 2007 and 15 October 2007 as well as the documentation generated by QT in response to the applicant’s letters. The letters refer to the applicant’s concern regarding a person identified as ‘john’ who made postings on the applicant’s website.
69. The applicant submits that:
- he handed the letters to security personnel at 85 George Street, Brisbane
  - *‘all of these letters<sup>11</sup> include comments by ‘john’ and asked QT to enquire into the identity of john, if he was a QT staffer, or operating under instructions from a QT staffer’*
  - at a meeting with a number of QT officers, a QT officer indicated that he had investigated the identity of ‘john’ and ‘gave the impression that he knew who ‘john’ was but would not disclose this to the applicant
  - he believes that two other QT officers know who ‘john’ is
  - in his view it is inconceivable that QT would not have accumulated a considerable documentation regarding ‘john’
  - as ‘john’s’ letters can reasonably be claimed to be unlawful vilification, it is reasonable for him to expect the Office to make special and detailed requests from QT for the supply of information withheld
  - the persons to whom he sent the letters should be required to make written statements regarding their knowledge of the identity and operation of ‘john’
  - the practice of unlawful vilification is such a serious offence that when brought to QT’s notice there would have been a detailed inquiry and documentation
  - if QT staff were not involved then QT would make this information available.

### ***The letters dated 1 October 2007, 8 October 2007 and 15 October 2007***

70. Subsection (3) of section 25 of the FOI Act provides that an FOI application *‘is taken only to apply to documents that are, or may be, in existence on the day the application is received’*. A document created after an FOI application is received is referred to as a ‘post-application document’ under the FOI Act.<sup>12</sup>
71. The FOI Application is dated 24 September 2007 and the decision-maker notes in the Original Decision that the FOI Application was received by QT on 25 September 2007. Accordingly, the letters dated 1 October 2007, 8 October 2007 and 15 October 2007 and any documentation generated by these letters are post-application documents. The post-application documents are not within the scope of the FOI Application and therefore I will not consider them further.

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<sup>11</sup> [my footnote] that is, the applicant’s letters to QT.

<sup>12</sup> Section 25(4) of the FOI Act.



***The letter dated 24 September 2007 and documents generated by this letter***

72. I accept that the applicant handed the letter dated 24 September 2007 to security personnel at 85 George Street, Brisbane. I do not know the date on which the applicant delivered the letter. However, assuming the applicant hand-delivered the letter the same day it was written, it is within the scope of the FOI Application. However, if any documentation were generated by the letter of 24 September 2007 it is likely that such documentation would post-date receipt of the FOI Application and therefore be outside of the scope of the FOI Application.
73. The applicant submits that I should require QT personnel to 'make written statements regarding their knowledge of the identity and operation of 'john'. In this submission the applicant is in effect requesting that QT create documents to provide the information that he is seeking.
74. The right of access under the FOI Act does not extend to requiring an agency to create documents and is instead confined to documents of an agency in existence on the day the relevant freedom of information application is received.
75. Accordingly, my role in relation to this aspect of the review is to determine whether QT has taken the necessary steps to satisfy itself that it does not have in its possession or control the applicant's letter of 24 September 2007 or any documentation generated by that letter on either 24 September 2007 or 25 September 2007.

***Documents generated by the letter dated 24 September 2007***

76. The applicant provided the Office with copies of a number of postings by 'john' on the applicant's website. The applicant indicates that he believes it is most probable that 'john' is a QT officer because QT are the only people who opposed his restoration and *"john' shows the same opposition as QT."*
77. I have reviewed the postings provided by the applicant. Apart from the words *'you ... have no idea what is involved in modifications'*, which may be a reference to the applicant's issues with QT, 'john's' comments comprise essentially derogatory and personal comments about the applicant. The postings appear to be in response to information on the applicant's website, which is publicly available and invites comment. The applicant's issues with QT have also received some media coverage as evidenced in documents released to the applicant.
78. In my view, there is nothing in the postings that suggests that 'john' is a QT officer. Accordingly, I do not accept the applicant's contention that it is inconceivable that QT would not have accumulated a considerable documentation regarding 'john'. On the contrary, in my view, the lack of any evident connection with QT staff supports the conclusion that it is unlikely that the applicant's contentions generated any documentation.
79. There is no evidence to suggest that the applicant's letter of 24 September 2007 generated any QT documentation.
80. QT has relied on searches to substantiate its claim that it is satisfied that no further documents exist in respect of this aspect of the FOI Application. In accordance with the requirements of section 28A(1), where an agency relies on searches to satisfy itself that a document does not exist, it must take all reasonable steps to locate the document. QT's searches are discussed below.

***The letter dated 24 September 2007 and item 24***

81. In my view it is reasonable to conclude that the applicant's letter of 24 September 2007 should be in QT's possession but QT is unable to locate the document. I hold a similar view in relation to item 24 in respect of which the applicant states '*S-B302 is a set of drawings. Its mate is missing. It's an A3 of photos*'.
82. In accordance with section 28A(2) of the FOI Act, where there are reasonable grounds to be satisfied that a requested document has been, or should be, in the agency's possession, it is necessary to consider whether the agency has taken all reasonable steps to locate the document. The decision as to whether the agency has taken all reasonable steps to find the document must be made on a case by case basis, and where relevant, with reference to:
- the key factors in the FOI and internal review applications including the nature of the documents sought
  - the date the documents may have been created and the personnel who may have been responsible for creating them
  - the regulatory obligations and/or aspect of service delivery that might be involved
  - departmental approval processes and delegations in relation to the document or service in respect of which documents are sought
  - the agency's record keeping practices, including where and in what form the documents sought may be stored, multiple locations, requirements under the *Public Records Act 2002* (Qld) including retention and disposal regimes.
83. To have appropriate regard to the factors above it may be necessary for an FOI Officer to seek out additional information to inform the search and/or inquiry process. If the FOI officer is uncertain as to what service may have been delivered or what the statutory or procedural requirements are for departmental officers, it may be necessary to take steps to ascertain all the possible areas of the agency that may have been involved before conducting searches. If difficulty is experienced in locating documents, discussions with personnel from the relevant business unit or who were involved in some aspect of the service delivery may also be necessary.
84. QT conducted searches to locate the documents responding to the FOI Application and has subsequently provided information to the Office regarding those searches.

**The locations searched**

85. In the first instance QT sought additional information from the applicant regarding the documents he sought access to. This information was provided to the persons undertaking searches in QT.
86. QT indicates in the Internal Review Decision that as the applicant raised sufficiency of search grounds on internal review, further searches were requested in the following areas of the agency:
- Land Transport and Safety
  - Services Division
  - South-East Queensland – North Compliance
  - Departmental Liaison Unit.

87. On 27 May 2008 QT provided to the Office, copies of the search request sheets that were completed by each of these areas in QT at the time the internal review was conducted.
88. By facsimile dated 27 June 2008, QT provided the Office with copies of retrieval request forms completed by Land Transport and Safety and the Departmental Liaison Unit.

### **Why the above locations were identified for searches**

89. In response to telephone inquiries from the Office on 30 May 2008 the Manager (FOI & Privacy), QT, indicated that he had considered and was satisfied that documents in all areas of QT that the applicant had had contact with would be accessible through searches of the above areas, including contact with regional offices and the Minister's Office.

### **How the identified locations were searched**

90. QT submits that:

*Queensland Transport has done various rigorous searches across the key divisions that would have had anything to do with Mr Stiller. As part of our initial search and internal review search processes, the relevant areas are required to undertake searches and sign off search request sheets.*

91. The search request sheets and retrieval request forms provide evidence of the searches undertaken by QT.
92. Each of the search request sheets includes a memorandum from the Director, Legal and Legislation Branch which:
  - requests that a further search for documents be initiated
  - includes the substance of the applicant's letter to QT dated 15 November 2007
  - attaches a copy of the Internal Review Application as well as the applicant's letters to QT dated 21 November 2007 and 30 November 2007.

93. The search request sheets and the retrieval request forms record:

- details of the files searched (in some instances)
- name and details of the person undertaking the searches
- the time taken to search
- (in relation to the Land Transport and Safety unit) - a detailed response.<sup>13</sup>

94. The search request sheets and the retrieval request forms indicate that a minimum of 11 QT staff (including senior staff) spent a minimum of 31 hours searching for documents and responding to the request.

95. In response to specific inquiries from the Office regarding the files and locations searched in the Services Division, South-East Queensland – North Compliance and the Departmental Liaison Unit and how the searches were conducted, QT indicates that:

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<sup>13</sup> I note that the Manager (FOI & Privacy), QT, has indicated to the Office that this is the area of QT which held the majority of the documents in response to the FOI Application.

*Within the Services Division searches were undertaken within the searches area (services management) and the Compliance area of SEQ North. The searches area of Services Division is the custodian of all registration and licensing documents collated by Queensland Transport. All registration and licencing documentation collected via a Queensland Transport customer service centre is filed and stored with an external records management company. Access to all of these records is via the searches area. They have access to the Queensland Transport TRAILS system which is used to manage registration/licencing transactions. In this instance the area undertook searches of the TRAILS system and requested retrieval of responsive records.*

*The Compliance area of SEQ North undertook searches of all records held in their office. As the vehicle was not inspected by them they reported they did not locate any records*

...

*The searches conducted by the Departmental Liaison unit were undertaken in the Doctrack system and hard copy filing systems. The Doctrack system is used to record all incoming and outgoing correspondence for the Director-General and Minister. The DLU acts as the coordination point for correspondence. Matters relating to Mr Stiller when received were forwarded to the LT&S divisions for attention and preparation of necessary responses.*

96. The Manager, FOI & Privacy, QT has also indicated to the Office that the Land Transport and Safety Unit has a specific file in relation to the applicant. The record retrieval request from the Land Transport and Safety Unit indicates that this complete file was provided to the QT Freedom of Information Unit. The contents of this file have been provided to the applicant.
97. In a telephone discussion on 16 January 2009, the then Manager, FOI & Privacy, QT indicated that he would expect any letters provided to QT by the applicant to be filed in the file held in relation to the applicant.
98. Having considered the matters discussed at paragraphs 85 to 97 I am satisfied that:
  - in view of the broad terms of the FOI Application QT sought additional information from the applicant to assist them in locating the documents sought by the applicant
  - QT considered the FOI Application, identified the appropriate areas of QT to search and has adequately explained why these areas were chosen
  - QT identified more than 486 documents in response to the FOI application which were released to the applicant in full
  - QT has provided appropriate evidence and explanation of who conducted the searches, how the searches were conducted and the time spent searching for documents
  - the search request sheets and the retrieval request forms show that QT personnel spent a considerable amount of time searching for documents responding to the FOI Application
  - QT has taken all reasonable steps to locate the letter dated 24 September 2007 and the photograph sought under item 24 but has been unable to locate these documents
  - QT has taken all reasonable steps to locate all documents responding to the FOI Application including any documents generated by the letter dated 24 September 2007
  - access to documents generated by the letter dated 24 September 2007 can be refused under section 28A(1) of the FOI Act

- access to the letter dated 24 September 2007 and the photograph sought under item 24 can be refused under section 28A(2) of the FOI Act.

#### **Items 4, 6 and 21 – seeking answers to questions**

99. The applicant seeks access to the:

- hard copy of the law, rule or regulation that requires a person to be a current member of a car club to obtain Special Interest Vehicle concessional registration on the basis that there was a 15 month delay in the applicant obtaining access to relevant information which led to his being denied concessional Special Interest Vehicle registration and QT has not satisfactorily addressed this issue
- names and positions of the QT Customer Service Centre staff who served him at Redcliffe QT Customer Service Centre on 25 July 2006 and 25 July 2006 and at Strathpine on 9 August 2006 as this information is vital to his receiving justice
- an explanation regarding QT's decision-making process in relation to the modification approval.

100. In the course of an individual's dealings with a government agency questions may arise for the individual as to why the agency did or did not take a particular course of action. In such circumstances the individual may quite legitimately seek answers to their questions and/or an explanation of the course of action adopted. Notwithstanding this, the FOI Act is principally concerned with access to and amendment of documents. The FOI Act confers a right of access to documents (subject to the provisions of the Act). However, it does not confer a right to obtain answers to questions from Government agencies nor to require agencies to extract answers from any documents held.<sup>14</sup>

101. This does not mean that an agency is prohibited by the FOI Act from answering questions. On this point I note that the:

- Land Transport and Safety Unit Memorandum identifies the relevant statutory provisions and briefly explains QT's policy in relation to this issue
- Briefing note to the Director-General from which the applicant extracts many of the statements in his requests for additional documents explains in some detail the statutory requirements in relation to vehicle modification, the actions taken by QT in responding to the applicant's inquiries and concerns and QT's concerns regarding safety compliance issues in relation to the applicant's vehicle
- the documents released to the applicant in response to the FOI Application include extensive correspondence from QT personnel to the applicant providing information about the vehicle modification requirements and processes.

102. I am satisfied that this aspect of the External Review Application is not a request for documents but instead seeks to have QT provide answers to the applicant's questions.

103. Under section 77(1)(a) of the FOI Act the Information Commissioner may decide not to further deal with a part of an application if it is misconceived.<sup>15</sup>

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<sup>14</sup> *Hearl and Mulgrave Shire Council* (1994) 1 QAR 557 at paragraph 30.

<sup>15</sup> **77 Commissioner may decide not to review**

(1) The commissioner may decide not to deal with, or not to further deal with, all or part of an application for review if—  
(a) the commissioner is satisfied the application, or the part of the application, is frivolous, vexatious, misconceived or lacking substance; or ...

104. I am satisfied that this aspect of the External Review Application is misconceived and under section 77(1)(a) of the FOI Act I decline to deal with it further.

**Items 10, 11, 13, 19, 22 – requests for supporting documentation**

105. Items 10, 11, 13, 19 and 22 are specifically framed as requests for documents to support or justify statements extracted from documents already released to the applicant under the FOI Act.
106. As discussed at paragraph 100 above, the FOI Act confers a right of access to documents (subject to the provisions of the Act). However, it does not confer a general right to obtain information such as answers to questions or explanations from Government agencies. This means that on receipt of the FOI Application QT was required to identify all documents responding to the FOI Application<sup>16</sup> and make a decision regarding access to those documents. QT was not required to comment on those documents or identify any and/or all documents that might support statements made in the documents to which access is sought. To do so could, in many instances, be onerous and it is not the intention of the FOI Act that such an approach be adopted in processing FOI applications.
107. I am satisfied that this aspect of the External Review Application is misconceived and under section 77(1)(a) of the FOI Act, decline to deal with it further.

**Items 5, 7, 9 and 14**

108. Under item 5 the applicant seeks access to documents showing the reasons for refusing to grant the applicant's registration application. The applicant submits essentially that the cancellation of the motor vehicle modification approval was such a substantial issue that if QT were not required to produce satisfactory documentation justifying the decision this would amount to a grave miscarriage of justice.
109. Under item 7 the applicant refers to a meeting and a reference in a QT document to allegations made by the applicant about the conduct of QT officers and submits that *'it is inconceivable that discussions about the core of the dispute did not create more documentation than what I've received so far.'*
110. Under item 9 the applicant seeks access to missing comments, action, advice etc generated by two Affidavits in response to the applicant's affidavit. The applicant submits that *'as my two Affidavits were directly opposed to one of QT's principle claims, they must have generated significant documentation.'*
111. Under item 14 the applicant refers to the statement *'[the AP] was then contacted by Mr Clinton Harry, A/Senior Engineer, to establish if the modifications had been fully assessed and approved in accordance the DOP'* and indicates that he seeks documentation showing instructions to Mr Harry to contact [the AP] with the time and date of these instructions. The applicant also refers to the following statements, asking that QT provide documentation justifying these statements:
- *'[the AP] subsequently liaised with Mr Stiller to reassess the vehicle'*
  - *'Mr Stiller also sought to have the vehicle (as modified) registered under the Special Interest Vehicle (SIV) concession on 27 July 2006'*

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<sup>16</sup> That is, documents that are within the scope of the FOI Application.

112. In relation to each of the items described at paragraphs 108 to 111 above, the applicant seeks access to documents which he believes should exist essentially because of the applicant's assessment of the seriousness of the substantive issues which underpin the FOI request. Whilst I acknowledge the personal significance of this issue to the applicant, it does not follow that significant or any documentation would necessarily have been generated in relation to each of the statements or issues identified by the applicant.
113. It is apparent from the applicant's submissions that QT and Ministerial personnel met with him to discuss the issues in contention and that actions were taken by QT in relation to the applicant's concerns. However, it does not follow that simply because action was taken by QT that documentation was necessarily generated about the actions or issues involved. In a letter dated 1 September 2006 to the applicant, a Senior Departmental Liaison Officer refers to the meeting on 22 August 2006 and the understanding reached and states:

*You have sought written confirmation of the steps that were advised to you at the meeting.*

The author then goes on to confirm the matters discussed at the meeting and confirms that the next step in the process discussed requires action from the applicant. I am satisfied that this correspondence, in itself, suggests that the only documentation produced was the letter to the applicant as written confirmation was specifically requested by the applicant. There is nothing in the process described to suggest that QT officers would have produced any additional documents.

114. In view of the documentation already released to the applicant and the extensive searches undertaken by QT (as discussed at paragraphs 84 to 98 above), I am satisfied that:
- there are reasonable grounds for QT to be satisfied that no additional documents responding to items 5, 7, 9 or 14 exist
  - QT has taken all reasonable steps to locate the documents sought
  - access to documents responding to items 5, 7, 9 and 14 can be refused under section 28A(1) of the FOI Act.

#### **Item 8 – contact from the Queensland Ombudsman**

115. Under item 8 the applicant seeks access to documents regarding the Queensland Ombudsman's contact with QT in relation to his concerns. The applicant submits that '*QT must have records of Qld Ombudsman's Office contact with QT.*'
116. In response to inquiries from the Office, the Manager, FOI and Privacy, QT made further inquiries with relevant QT personnel in relation to this issue. QT submits that although QT personnel understood that the applicant had been in contact with the Queensland Ombudsman's Office, the Queensland Ombudsman had not contacted QT.
117. I am satisfied that:
- on external review QT made appropriate inquiries in relation to this issue and on the basis of those inquiries there are reasonable grounds for QT to be satisfied that no documents responding to this aspect of the FOI Application exist

- in any event, there are reasonable grounds for QT to be satisfied that the documents sought do not exist on the basis of the searches conducted by the agency as QT took all reasonable steps to locate the documents sought
- access to documents responding to item 8 can be refused under section 28A(1) of the FOI Act.

### **Items 12 and 16 – applicant’s allegations against QT employee**

118. Under items 12 and 16 the applicant seeks access to an internal audit report and/or documents regarding QT’s response to an allegation made by the applicant in relation to a QT staff member.
119. The applicant submits that his allegations against a QT employee are significant and even in the interests of fair play for a QT employee or to protect QT’s position, must have been documented.
120. The Briefing Note indicates that the applicant’s allegations arose out of a meeting he attended with an Acting Senior Departmental Liaison Officer an Acting Business Manager, Land Transport and Safety Unit and an Acting Senior Engineer, Land Transport and Safety Unit. The Briefing Note states that:

*During the meeting Mr Stiller was informed verbally of the process for modifications approvals for all of the modifications performed on his vehicle. Those attending the meeting reported that it was positive and that the issues were clearly explained and accepted by Mr Stiller. As agreed in the meeting the outcomes of the meeting were sent to Mr Stiller shortly after the meeting.*

121. By letter dated 19 June 2008 I asked QT to confirm whether an audit report regarding the applicant’s allegations of bullying was created and if it was to provide an explanation as to where it would be expected to be filed and what specific steps were taken to locate it.
122. By facsimile dated 29 July 2008 QT indicated that although the matter was referred to QT’s Internal Audit unit for evaluation, the matter did not require referral to the Crime and Misconduct Commission and that QT’s Internal Audit had no further involvement. QT also provided the Office with a copy of an email dated 12 October 2006 in which a Director (Departmental Liaison), QT relevantly states:

*The Director-General has received a written complaint from Mr Stiller about the registration of his modified 8 seater 1929 vintage motor vehicle ...*

*Given the content of the letter, I have referred it to Rod Robinson in his role as A/Director (Internal Audit). Rod has advised that the nature of the complaint does not require a referral to the Crime and Misconduct Commission.*

*Can LT & S please prepare a comprehensive response to Mr Stiller for the signature of ED (LT&S). Can the response please include that Mr Stiller, if unhappy with the administrative actions of QT refer the matter to the Ombudsman (including contact details).*

123. The email above suggests that following the assessment by QT’s Internal Audit unit, no further action was taken in respect of this matter.
124. The Briefing Note states:



- *Mr Stiller's allegations about the conduct of the QT staff at this meeting were referred to Internal Audit to examine and to provide advice as to whether the substance of the complaint against QT officers constituted suspected official misconduct. Due to the lack of detail and the generalised nature of his complaint it was considered this did not meet the requirements for referral to the Crime and Misconduct Commission as suspected official misconduct.*
- *Therefore I took action to have the matters examined in detail.*

125. The second bullet point suggests the possible existence of further documentation, however it is inconsistent with the conclusions reached in the preceding bullet point. Accordingly, I made inquiries on 23 January 2009 with the author of the Briefing Note who indicated that to the best of his recollection no further action was taken and it was most likely that there was a typographical error in the second bullet point which should have read '[t]herefore I took no action ... .'

126. In view of the above I am satisfied that:

- QT's Internal Audit unit did not prepare a report in relation to the applicant's allegations
- in view of the conclusion reached by the Internal Audit unit, QT took no further action in relation to this matter
- in view of the inquiries made and searches undertaken there are reasonable grounds for QT to be satisfied that the documents requested in items 12 and 16 do not exist
- access to documents responding to items 12 and 16 can be refused under section 28A(1) of the FOI Act.

#### **Item 15 – letter to [the AP]**

127. Under item 15 the applicant refers to the following statement:

*'This advice and consideration of his actions in relation to Mr Stiller's vehicle will be confirmed in writing to [the AP] ...'*

128. In relation to this item the Land Transport and Safety Unit Memorandum records the following:

*DMS system interrogated regarding any correspondence to [the AP] regarding Mr Stiller's vehicle and any correspondence regarding his responsibilities as an Approved Person. Accreditation Unit also checked [the AP]'s folder for any correspondence of this type. No record of letter being written. Advice from staff is that issue was satisfactorily resolved by personal representations with [the AP].*

*Nothing has been found that relates to the discussions surrounding Mr Stiller's vehicle or during the period in which Mr Stiller had been in contact with [the AP].*

129. Although it appears likely that at a point in time there was an intention to send a letter as described in paragraph 127 above, I am satisfied that the matter was subsequently resolved through oral discussions rather than by way of correspondence.

130. Accordingly:

- there are reasonable grounds for QT to be satisfied that the documents requested under item 15 do not exist

- access to documents responding to item 15 can be refused under section 28A(1) of the FOI Act.

### **Item 17 – documents of an agency**

131. The applicant seeks access to documents regarding his correspondence with the Queensland Combined Council of Historic Vehicles Club (**QCCHVC**).
132. The right of access to documents under the FOI Act is confined to documents of an agency and official documents of a Minister.<sup>17</sup> The term ‘document of an agency’ is defined in the FOI Act and essentially refers to documents in the possession or under the control of the agency or which the agency is entitled to access.<sup>18</sup>
133. The applicant states that:

*QT show by their internal note, that they consider the supervision of QCCHVC to be part of their responsibilities, so if they think that it is reasonable to direct customers to QCCHVC for information, then it should be reasonable for a customer to expect QT to adopt a measure of responsibility for that organisation*

and submits that QT and Special Interest Vehicle owners are entitled to know how the QCCHVC respond to inquiries regarding Special Interest Vehicle registration.

134. The QCCHVC is a separate entity to QT. Correspondence between the applicant and the QCCHVC are not documents of QT nor do I have any information available to me to indicate that they are documents that QT would be entitled to access.
135. I am satisfied that:
- the documents sought under item 17 are not QT documents
  - there are reasonable grounds for QT to be satisfied that the documents requested under item 17 are not documents in the possession and/or control of QT
  - access to documents responding to item 17 can be refused under section 28A(1) of the FOI Act.

### **Items 18 and 23 – documents relating to requirement for a bribe**

136. Under item 18 the applicant seeks access to the Director-General’s response regarding his questions regarding a possible bribe. The applicant submits:

*this is a core question as my life’s experience has consistently shown me that honest people don’t usually require to be sent ten letters over fourteen weeks before they say “we don’t require a bribe.” There must be a considerable quantity of QT documentation between my first asking the question and QT finally advising me that they didn’t require a bribe. As so far I’ve received none of it.*

137. Under item 23 the applicant seeks access to full documentation of notes, advice, recommendations etc resulting from his previous enquiries to the Minister for Transport’s Office as to whether QT required a bribe.

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<sup>17</sup> Section 21 of the FOI Act.

<sup>18</sup> Section 7 of the FOI Act.

138. These items do not concern an allegation of bribery, rather, they concern the applicant's inquiries with QT personnel as to whether a bribe was required.
139. I do not accept the applicant's contention that his inquiry must have generated a considerable amount of documentation.
140. In view of the searches undertaken:
- there are reasonable grounds for QT to be satisfied that the documents requested under items 18 and 23 do not exist
  - access to documents responding to items 18 and 23 can be refused under section 28A(1) of the FOI Act.

## **DECISION**

141. I vary the decision under review by finding that:
- the MBN qualifies for exemption under section 50(c)(i) of the FOI Act
  - any documents responding to items 1 and 20 are outside of the scope of the FOI Application
  - the applicant's letters dated 1 October 2007, 8 October 2007 and 15 October 2007 and any documentation generated by these documents are post-application documents which are outside of the scope of the FOI Application
  - access to documents generated by the letter dated 24 September 2007 and documents responding to items 2, 5, 7, 8, 9, 12, 14, 15, 16, 17, 18 and 23 can be refused under section 28A(1) of the FOI Act
  - access to the letter dated 24 September 2007 and the photograph responding to item 24 can be refused under section 28A(2) of the FOI Act.
  - items 4, 6, 10, 11, 13, 19, 21 and 22 are misconceived and under section 77(1)(a) of the FOI Act will not be further dealt with.
142. I have made this decision as a delegate of the Information Commissioner, under section 90 of the *Freedom of Information Act 1992* (Qld).

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**S Jefferies**  
**Acting Assistant Commissioner**

**Date: 11 February 2009**