

# OFFICE OF THE INFORMATION COMMISSIONER (QLD)

**Decision No. 96008**  
**Application S 85/94**

## **Participants:**

FRANCIS R BALDWIN  
**Applicant**

DEPARTMENT OF EDUCATION  
**Respondent**

OTHERS  
**Third Parties**

## **DECISION AND REASONS FOR DECISION**

FREEDOM OF INFORMATION - refusal of access - matter in issue comprising the names and other identifying particulars of persons who unsuccessfully applied for a senior executive service position with the respondent, plus the application, *curriculum vitae* and statement addressing the selection criteria submitted by each of the shortlisted candidates - whether information which would identify an unsuccessful candidate for appointment to an office in a government agency is information concerning that individual's personal affairs for the purposes of s.44(1) of the *Freedom of Information Act 1992 Qld* - application of the public interest balancing test incorporated in s.44(1) of the *Freedom of Information Act 1992 Qld*.

*Freedom of Information Act 1992 Qld* s.44(1), s.46(1)(a)  
*Freedom of Information Act 1982 Commonwealth* s.41(1)

*"B" and Brisbane North Regional Health Authority, Re* (1994) 1 QAR 279  
*Bleicher v Australian Capital Territory Health Authority* (1990) 20 ALD 625  
*Department of Social Security v Dyrenfurth* (1988) 80 ALR 533  
*Dyki and Federal Commissioner of Taxation, Re* (1990) 22 ALD 124  
*Fotheringham and Queensland Health, Re* (Information Commissioner Qld, Decision No. 95024, 19 October 1995, unreported)  
*Pope and Queensland Health, Re* (1994) 1 QAR 616  
*Stewart and Department of Transport, Re* (1993) 1 QAR 227  
*Williams and Registrar of the Federal Court of Australia, Re* (1985) 8 ALD 219

## DECISION

I decide to vary the decision under review (being the decision made on behalf of the respondent on 15 April 1994 by Mr Parsons) by finding that the matter set out below (which is described by reference to folio numbers used in the decision under review) is not exempt matter under the *Freedom of Information Act 1992 Qld*:

- (i) the final paragraph on folio 058;
- (ii) the paragraph which begins at the foot of folio 061 and finishes at the top of folio 060;
- (iii) the first full paragraph which appears on folio 061;
- (iv) the first paragraph on folio 062;
- (v) the second paragraph appearing under selection criterion two on folio 063;
- (vi) the final paragraph on folio 118;
- (vii) the first paragraph on folio 119;
- (viii) the first paragraph on folio 121;
- (ix) the first paragraph next to the heading "Corporate Services Program" on folio 148;
- (x) the second paragraph on folio 159;
- (xi) the first and final paragraphs on folio 160; and
- (xii) the applicant's name where it appears on folio 008.

Date of decision: 10 May 1996

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F N ALBIETZ  
**INFORMATION COMMISSIONER**

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## **REASONS FOR DECISION**

### **Background**

1. The applicant seeks review of the respondent's decision to refuse him access to information relating to the selection process which followed the advertising in September 1993 of a vacancy in the position of Director, Finance Directorate, Brisbane, SES 2 (vacancy reference: ED385/1993) within the Department of Education (referred to in these reasons for decision as the position of Director - Finance). The matter in issue is claimed by the respondent to be exempt matter under s.44(1) (matter concerning personal affairs) and s.46(1)(a) (matter communicated in confidence) of the *Freedom of Information Act 1992* Qld (the FOI Act).
2. By letter dated 10 February 1994, Mr Baldwin applied to the respondent for access under the FOI Act to the following documents relating to the selection process for the position of Director - Finance:
  - the names of all applicants for the position;
  - the names, position and experience of the selection panel;
  - details of the methodology of the shortlisting process;
  - the names of the shortlisting panel;
  - any comparative analysis or scores of the applicants in the shortlisting process;
  - any notes, narratives, conclusions, discussion or the like kept by the shortlisting panel in respect of the process;
  - the names and applications of the short listed candidates; and
  - the names of the interviewed candidates.

3. By decision dated 18 March 1994, Mr E Spring, the respondent's FOI Co-ordinator, granted the applicant access to a number of documents in full, and to a further 62 documents subject to the deletion of matter considered to be exempt under s.44(1) of the FOI Act.
4. The applicant subsequently applied for internal review of Mr Spring's decision, and the review was undertaken on behalf of the respondent by Mr Parsons, Manager - Administrative Law and Legislative Operations. The applicant was informed of Mr Parsons' decision, made on 15 April 1994, in which Mr Parsons affirmed Mr Spring's initial decision that the matter in issue was exempt under s.44(1) of the FOI Act and, in addition, decided that the matter was also exempt under s.46(1)(a) of the FOI Act.
5. Mr Baldwin subsequently applied to me for external review, under Part 5 of the FOI Act, of Mr Parsons' decision.

### **Documents in issue**

6. The documents in issue relate to the selection process which followed the advertising of a vacancy for the position of Director - Finance, for which the closing date was 11 October 1993. The written applications received by the respondent (which generally consisted of an applicant's *curriculum vitae* and a statement addressing the applicant's claims for appointment in terms of the published selection criteria for the position) were assessed against the selection criteria for the position, as a result of which three candidates were short-listed for interview. Following the interviews, however, no appointment was made to the position. The selection process was suspended, and fresh applications were called for the position in February 1994. Mr Baldwin applied for the position of Director - Finance in October 1993, but was not shortlisted for interview.
7. The documents in issue fall into two broad categories:
  - (a) the application documents of the three candidates shortlisted for interview, comprising -
    - folios 122 and 161: these documents are *pro forma* application forms completed by two of the candidates and have been released to Mr Baldwin subject to the deletion of all material which would enable the identity of the individual candidates to be ascertained; and
    - folios 50-69, 113-121 and 135-160: these documents comprise each candidate's *curriculum vitae* and statement addressing the selection criteria, from which all matter was deleted prior to their release to Mr Baldwin, with the exception of the headings in the documents (for example, repetition of each of the selection criteria as a heading above the candidate's comments addressing his or her claims against the selection criteria); and
  - (b) documents relating to the selection process, comprising -
    - folios 005 and 006-007: each of these documents is a list of the applicants for the position; only Mr Baldwin's name and details were disclosed to him from these lists;

- folio 008: this folio is the "Shortlist Collection Form", from which was deleted the list of applicants (including Mr Baldwin's name, though this appears to have been an oversight) prior to its release to Mr Baldwin;
- folio 011: this folio is a schedule of interview times for the shortlisted candidates, from which the names of the candidates were deleted prior to the release of the document to Mr Baldwin;
- folio 012: this folio comprises the grid of scores given by the selection panel to the interviewed candidates, from which those details which would identify the interviewed candidates were deleted; and
- folios 013 and 014: these documents comprise the initial assessments, for shortlisting purposes, of all applicants for the advertised position, from which all names (except Mr Baldwin's name) were deleted prior to their release to Mr Baldwin.

### **External review process**

8. The documents in issue were obtained and examined. I wrote to the three interviewed candidates to establish whether they objected to the disclosure to Mr Baldwin of the material in issue which concerned them, and whether they wished to become participants in the external review. All three of the candidates informed me that they objected to the disclosure of the material which concerned them, and two of the candidates applied for, and were granted, status as participants in the review.
9. On 15 August 1995, I wrote to Mr Baldwin explaining the relevant issues for determination in this review, communicating my preliminary views on them, and inviting him to lodge evidence and submissions in support of his case.
10. On 2 October 1995, Mr Baldwin provided me with a written submission arguing for disclosure of the matter in issue. The applicant's submission was sent to the other participants in the external review. Each participant was given the opportunity to make a submission in response. By letter dated 23 October 1995, the respondent advised me that it did not wish to make a submission, and relied on the reasons given in the decisions of Mr Spring and Mr Parsons. The third party participants declined the opportunity to make submissions to me.

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

11. Section 44(1) of the FOI Act provides:

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

12. In my reasons for decision in *Re Stewart and Department of Transport* (1993) 1 QAR 227, I identified the various provisions of the FOI Act which employ the term "personal affairs" and discussed in detail the meaning of the phrase "personal affairs of a person", and relevant variations thereof, in the FOI Act (see pp.256-267, paragraphs 79-114, of *Re Stewart*). In particular, I said that information concerns the "personal affairs of a person" if it relates to

the private aspects of a person's life, and that, while there may be a substantial grey area within the ambit of the phrase "personal affairs", that phrase has a well accepted core meaning which includes:

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

13. I also said in *Re Stewart*, at p.258 (paragraph 81):

*For information to be exempt under s.44(1) of the FOI Act, it must be information which identifies an individual or is such that it can readily be associated with a particular individual. Thus deletion of names and other identifying particulars or references can frequently render a document no longer invasive of personal privacy, and remove the basis for claiming exemption under s.44(1). This is an expedient (permitted by s.32 of the Queensland FOI Act) which has often been endorsed or applied in reported cases... .*

14. In *Re Stewart* at pp.261-264 (paragraphs 91-102), I said that employment-related matters fell within the grey area rather than within the core meaning of the phrase "personal affairs of a person". However, three cases decided by judges of the Federal Court of Australia have established that, ordinarily, information which concerns a person's work performance or capacity is not information which concerns that person's personal affairs, subject to the qualification that an assessment of work performance or capacity, or suitability for appointment or promotion, might contain some information which concerns a person's personal affairs, such as information falling within the core meaning described in paragraph 12 above: see *Re Williams and Registrar of the Federal Court of Australia* (1985) 8 ALD 219, *Department of Social Security v Dyrenfurth* (1988) 80 ALR 533, and *Bleicher v Australian Capital Territory Health Authority* (1990) 20 ALD 625; in particular the extracts from those cases set out in *Re Stewart* at p.239 (paragraph 28) and pp.240-243 (paragraphs 33-36).

15. The documents in issue essentially comprise assessments, or self-assessments, of the work performance, capacity and suitability for appointment (to the position of Director - Finance) of the applicants for the position, plus a *curriculum vitae* in respect of each of the shortlisted candidates. In respect of a *curriculum vitae*, I said in *Re Pope and Queensland Health* (1994) 1 QAR 616 at p.43 (paragraph 120):

*A curriculum vitae is essentially an individual's record of his or her work history and career achievements, and generally comprises information relating to the person's employment affairs. It may, however, contain some details relating to the person's personal affairs (eg home address, marital status and details of family relationships, and etc).*

16. Thus, on their face, the documents in issue would not appear to answer the description of information which concerns the personal affairs of the applicants for the position of Director - Finance. However, in *Re Stewart*, I also noted two cases which dealt with unsuccessful applications for employment (at p.262-263, paragraph 97):

97. *The fact that an employee has unsuccessfully applied for another position (especially if it be with another employer, but even in respect of an application for a different position with the same employer) was held to be a matter relating to that employee's personal affairs within s.41(1) of the Commonwealth FOI Act in Re Dyki and FCT (1990) 22 ALD 124, endorsing the reasons given by Senior Member McMahon in Re Williams (who delivered a separate set of reasons for decision, concurring with Beaumont J).*

17. Section 41(1) of the *Freedom of Information Act 1982 Cth* (the Commonwealth FOI Act), at the time of the decisions in *Re Dyki* and *Re Williams*, provided:

*A document is an exempt document if its disclosure under the Act would involve unreasonable disclosure of information relating to the personal affairs of any person (including a deceased person).*

18. The relevant passage from the decision of Senior Member McMahon of the Commonwealth Administrative Appeals Tribunal (the Commonwealth AAT) in *Re Williams* (at p.224) is as follows:

*...In the context of an application for employment, promotion, transfer or the like, I consider the anonymity of unsuccessful candidates their personal affairs.*

*Documents 1-15 are the actual applications prepared and signed by the aspirants for the position. Documents 16-27 are commentaries by the committee on those applications. There is no evidence that any of the authors of documents 1-15 have given their consent to the entry of these documents, as it were, in to the public domain.*

*The documents associated with documents 1 and 3 indicate that each of those authors withdrew their application.*

*Document 16 is in a different category from all the other documents referred to in Mr Howard's affidavit. It is the document relating to the successful applicant, Mr Curtis. He has since been appointed to the position and the fact of his application must now be taken as public knowledge. This cannot be said of the remainder of the applications. For Mr Curtis, the entitlement to anonymity has passed. It is now known that he applied, that he must previously have intended to leave his former position, that he intended to pursue a career in circumstances different from his previous employment. The identity of others who might have had similar intentions is personal to them. ...*

*I would consider it highly likely that the authors of all the 26 documents concerned would not wish their contents to be disclosed. If their documents became public and their identity was consequently disclosed, their present employment could be destabilised. If there were any applicants outside the public service and it became known to their employer that they were considering moving to another position, this could have adverse effects on their present employment and their prospects for promotion. Even in the*

*case of applicants within the public service, an application of this nature, if widely known, could indicate some dissatisfaction or restlessness which could have an effect on the applicant's career. These considerations are of special force in the case of those two persons who withdrew their applications.*

*It would therefore be unreasonable to disclose this information. In considering the test of reasonableness one must not think only of disclosure of the documents to this particular applicant. The identity of the applicant is irrelevant. Reasonableness must be considered as if disclosure was to the world at large. ... One must ask oneself - is it reasonable to trumpet to X's friends, employers, rivals, associates, family, or enemies that X is applying for a new job? It certainly cannot be said that such disclosure would be in the public interest. How then can it be said to be reasonable when there is no countervailing consideration to the privacy to which one would normally expect to be entitled?*

19. In *Re Dyki and Federal Commissioner of Taxation* (1990) 22 ALD 124, Deputy President Gerber of the Commonwealth AAT considered an access request by an applicant who had unsuccessfully applied for a number of positions in the Australian Taxation Office. Amongst other things, Mr Dyki had sought copies of employment applications made by two of the successful applicants, and one of the unsuccessful applicants, for the advertised positions.

Mr Dyki had been refused access to the documents in reliance on a number of provisions of the Commonwealth FOI Act, including s.41(1). Deputy President Gerber decided that the employment applications submitted by the successful candidates, with the exception of a small amount of material, were not exempt under s.41(1) of the Commonwealth FOI Act (at pp.134-135):

*...The two successful candidates have since been appointed to the advertised positions and their new status has entered the public domain. I am satisfied that it is both in the public interest and reasonable that promotions must not only be just, but seen to be just. It follows that those applications, having achieved their aim, are opened up to public scrutiny and their authors' claim to promotion is henceforth in the public domain. It follows that the applicants' claim to privacy must be deemed to have been abandoned, if only because it is public knowledge that they applied for promotions and were successful. Thus, the job applications for the two successful candidates have lost whatever entitlement to anonymity they had (subject to deletion of matters adjudged to be purely personal). ...*

...

*With respect to the two successful candidates, I am satisfied that the information concerning personal affairs can be excised and the applications made available under s.22 of the Act... . The statement in support of application is purely and simply an individual's own assessment of work capacity and performance. ...this document does not concern the personal affairs of an aspirant for promotion.*



20. Deputy President Gerber also found, however, that the job application of the unsuccessful applicant for the positions was exempt under s.41(1) of the Commonwealth FOI Act (at pp. 134-5):

*I agree with the statement of Mr McMahon in Re Williams that in "the context of an application for employment, promotion, transfer or the like, I consider the anonymity of unsuccessful candidates their personal affairs". ...I am satisfied, adopting the reasoning of Mr McMahon, that, on balance, the disclosure of the contents of the job application of the unsuccessful candidate would constitute an unreasonable disclosure of personal affairs.*

*... In the case of the unsuccessful candidate, I have not been persuaded that, given the highly specialized nature of the work involved, the identity of such an applicant can be effectively concealed and I am satisfied that, in the absence of evidence of the [unsuccessful candidate's] consent to disclosure, the supply of this information is neither reasonable nor in the public interest. The fact that, in this case, the applicant has become aware of the unsuccessful applicant's identity does not derogate from the principle.*

21. Although it depends to some extent on the application of the 'unreasonable disclosure' test in s.41(1) of the Commonwealth FOI Act (a test which is not present in s.44(1) of the Queensland FOI Act), I am persuaded by the reasoning in *Re Dyki*, and the passages quoted from Mr McMahon's reasons in *Re Williams*, that the making of an unsuccessful application for employment is a personal affair of the unsuccessful applicant. In deciding to apply, and making application, for appointment to a position of employment (even one in the same organization in which a person is presently employed), I consider that a person acts in a purely personal capacity. Moreover, for reasons recognized by Mr McMahon in *Re Williams*, the fact that a person has made an application for employment will ordinarily be information, the further dissemination of which, any applicant would wish to have tightly controlled pending the outcome of the selection process, and the unsuccessful applicants would wish to have tightly controlled thereafter (*cf.* my observations in *Re Stewart* at p.256, paragraph 76). Thus, privacy considerations, which are at the heart of the s.44(1) exemption, are present in this context. An implicit understanding, and frequently an explicit undertaking, that the prospective employer will ensure that there is no unnecessary disclosure of the identities of applicants for employment, normally attends these selection processes. (I should state the proviso, however, that it is open to the prospective employer to lay the ground rules for the process. I understand, for instance, that some universities in Queensland adopt more open practices, eg whereby the identities of all applicants for appointment to academic staff, or the identities of all shortlisted candidates for senior academic appointments, are made public within the relevant faculty. In such circumstances, an applicant for employment may not reasonably be able to regard the making of an employment application as a personal or private affair).
22. Subject to that proviso, I consider that the fact that a person has applied for a position of employment is information which concerns that person's personal affairs, within the meaning of s.44(1). If the application is successful, however, the person's employment in the new position will become, in effect, a matter in the public domain (and in the case of an appointment to a government agency, a matter of public record) and the fact that the person applied for the position could no longer be regarded as information about a private aspect of the person's life.

23. For an unsuccessful applicant, on the other hand, the fact of the making of the application for employment would remain information which concerns the personal affairs of the unsuccessful applicant, and hence would be *prima facie* exempt under s.44(1) of the Act, subject to the application of the public interest balancing test incorporated within s.44(1). In my opinion, the name of the unsuccessful applicant, and any other information in his or her application documents (or in agency documents assessing the merits of his or her application) the disclosure of which could identify the unsuccessful applicant, will ordinarily be *prima facie* exempt under s.44(1) of the FOI Act.
24. This was essentially the basis on which the respondent approached the decision under review, and I disagree with the results of its approach only in some minor details (see paragraphs 36-37 below). In his written submission, Mr Baldwin did not contest the characterization of the matter in issue as information which concerns the personal affairs of the unsuccessful applicants; rather, he concentrated on arguing that disclosure of the matter in issue would, on balance, be in the public interest.

### **Public interest balancing test**

25. In his internal review decision, Mr Parsons addressed the issue of the public interest in ensuring that proper processes were used in the selection process. In particular, Mr Parsons stated:

*A public interest in favour of disclosure may rest generally in accountability and fairness of the selection process. However, this particular selection process did not result in the appointment of a successful candidate and the position was subsequently re-advertised. Any person wishing to be considered for the position was free to apply. In this context disclosing the information you are seeking would not shed light on the process which resulted in the appointment of a successful candidate.*

26. Mr Baldwin responded to this in his application for external review dated 4 May 1994, stating that he was not so much interested in the result of the appointment process, as in the shortlisting process, and whether it stands up to scrutiny:

*It is my view that it is in the public interest to know that applicants viable for the position were not erroneously or unfairly excluded in the shortlisting process. The public purse has to meet the cost of re-advertisement and the public suffers any loss if a viable application is overlooked.*

*...the public has the right to know and be assured that this system and process does not allow capable and viable people to be excluded erroneously.*

27. In his application for external review, and in his written submission dated 2 October 1995, Mr Baldwin has raised several considerations which I readily agree are public interest considerations which favour disclosure of the matter in issue. These are -

- the accountability of government for adherence, in public sector employment practices, to the principle of selection for appointment/promotion on the basis of merit;
- that accountability extends to shortlisting processes since it is axiomatic that in demonstrating that the most meritorious applicant has been

selected, it must be shown that the most meritorious applicant has not been excluded from consideration; and

- that for Senior Executive Service positions, with major public responsibilities and powers, the public interest in accountability is high.

28. Mr Baldwin also stated that he agreed that *"the confidentiality of the personal affairs must be protected, but the extent of that protection must only be in the context of contemporary values and practices"*. He then went on to refer to three factors claimed to diminish the weight that ought to be accorded to the protection of the personal affairs information in issue. I do not agree with Mr Baldwin on those three factors, and I will briefly say why.
29. Mr Baldwin asserted that there are limitless information banks containing much of the personal information of the type submitted in job applications to the State public service. I do not believe, however, that there are any information banks to which he (or the public in general) could have access to ascertain the identities of unsuccessful applicants for particular positions in government agencies, which is the kind of personal affairs information now in issue. It is not, in my view, relevant whether some aspects of an individual's personal or employment history may be accessed by other means, if his or her identity were known.
30. The applicant next asserted that the emphasis in modern selection processes on obtaining a reference from a current employer/supervisor means that arguments based on the need to keep a job application secret from a current employer are weak, and that employers generally get clear signals in plenty of time that an employee is looking to test the employment market. In my opinion, this largely depends on the procedures adopted for a selection process; for example, whether applicants are required to lodge with their applications a written reference from a current supervisor, or merely to nominate referees, who might only be resorted to by a selection panel in the event of a close decision on shortlisting, or on final selection of the successful applicant. Moreover, an approach by a job applicant to request a current supervisor to act as a referee would, in my opinion, commonly be attended by an implicit mutual understanding (and it would be open to the job applicant to seek an explicit mutual understanding) that the fact that the person proposed to apply for a particular job would not be further disseminated by the referee. There will certainly be instances when an employer will be aware that an employee is seeking alternative employment, but this cannot be said to be a general rule such that a candidate's concern for privacy is unfounded. In the present case, all three of the unsuccessful interviewed candidates have made it clear to me that they are concerned about maintaining their privacy.
31. The applicant also argues that the passage of time in the present case (the position having been first advertised in October 1993) diminishes the public interest in protecting the identities of the unsuccessful candidates. As I discussed in *Re Fotheringham and Queensland Health* (Information Commissioner Qld, Decision No. 95024, 19 October 1995, unreported) at paragraph 31, the privacy concerns of an individual (in that case of a deceased person) may lose their potency with the passage of time, but that is largely a question of degree. In the present case, three of the unsuccessful candidates have made it clear that they still consider the information to be sensitive and some of the candidates may still hold the positions they held in 1993. I do not think that in this case the passage of time has diminished to any significant degree the weight of the public interest in protecting the identities of the unsuccessful candidates.

32. Moreover, I note from p.4 of Mr Parsons' reasons for decision that applicants for the position of Director - Finance were instructed to forward their applications marked "Private and Confidential", which I interpret as an explicit indication by the Department that it would honour the understanding which ordinarily attends such selection processes, i.e., that the Department would ensure that there was no unnecessary disclosure of the identities of the applicants for employment. (I should state that I do not regard that as involving a legally binding promise to treat every part of a job application in confidence. Any information which ought to be disclosed in the interests of accountability (for example, explaining to an applicant who was not shortlisted why the shortlisted candidates were considered more suitable in terms of the selection criteria) should, in my opinion, be available for disclosure, provided the anonymity of the unsuccessful candidates is not compromised without their consent or without other good cause).
33. Regard must also be had to the probability that some meritorious candidates for appointment, especially from outside the public sector or the particular government agency in which an advertised vacancy has occurred, may be inhibited from applying at all for appointment to a government office if they perceive that the fact of their making an application for appointment may be disclosed in circumstances other than their appointment to the office.
34. While I consider that the public interest in accountability for adherence to the merit principle in public sector selection processes is deserving of substantial weight, I am not satisfied, in the circumstances of this case, that it is sufficiently strong to outweigh the public interest in protecting the identities of unsuccessful applicants for employment.

#### **Findings on the application of s.44(1)**

35. I therefore find that the respondent is entitled to delete from the documents in issue, any matter which could enable the identities of the persons who applied in October 1993 for appointment to the position of Director - Finance to be ascertained (all of the applicants having either been unsuccessful, or having withdrawn). A brief summary of the sorts of matter to which I refer is as follows:
- the name of the unsuccessful candidate;
  - the residential address and telephone number of the unsuccessful candidate;
  - details of the candidate's academic record;
  - details of the candidate's employment history;
  - lists of the candidate's publications; and
  - public speaking engagements undertaken by the candidate.
36. There are several paragraphs in the documents in issue which are framed in such general terms that, in my opinion, the identity of the unsuccessful candidate could not be ascertained if the paragraphs were disclosed. While I do not think Mr Baldwin will find these paragraphs useful or informative, I do not think they qualify for exemption under s.44(1) of the FOI Act. Accordingly, I find that the following matter is not exempt matter under s.44(1) of the FOI Act:
- the final paragraph on folio 058;
  - the paragraph which begins at the foot of folio 061 and finishes at the top of folio 060;
  - the first full paragraph which appears on folio 061;

- the first paragraph on folio 062;
  - the second paragraph appearing under selection criterion two on folio 063;
  - the final paragraph on folio 118;
  - the first paragraph on folio 119;
  - the first paragraph on folio 121;
  - the first paragraph next to the heading “Corporate Services Program” on folio 148;
  - the second paragraph on folio 159; and
  - the first and final paragraphs on folio 160.
37. As noted above at paragraph 7, folio 008 was released to the applicant subject to the deletion of the names of the applicants for the position of Director - Finance from the short list collection form. Mr Baldwin's name was also deleted. I have been advised by the respondent that his name was deleted from the list in error. I find that the name of the applicant where it appears on folio 008 is not exempt from disclosure to the applicant under s.44(1) of the FOI Act.
38. With the exception of the matter described in the preceding two paragraphs, I find that the matter in issue is exempt matter under s.44(1) of the FOI Act.
39. I note that in the decision under review, the matter in issue was also claimed to be exempt under s.46(1)(a) of the FOI Act. I consider that the respondent was certainly under a moral obligation to ensure that there was no unnecessary disclosure of the identities of applicants for the position of Director - Finance (at least not without their consent). In view of my findings on s.44(1), it is unnecessary for me to consider whether the respondent was also subject to a binding legal obligation to treat the identities of the applicants for the position in confidence, so as to attract the application of s.46(1)(a) of the FOI Act. None of the matter described in paragraph 36 above would, if disclosed, breach such an obligation, if it existed. As I have noted in parentheses in paragraph 32 above, I do not interpret the conduct referred to in paragraph 32, in all the relevant circumstances, as placing the respondent under an obligation to treat in confidence all parts of the applications received for the position of Director - Finance. I do not think there is any basis for a finding that the matter described in paragraph 36 above (much of which is, in any event, trivial or useless information, *cf. Re "B" and Brisbane North Regional Health Authority* (1994) 1 QAR 279 at p.305, paragraphs 67-69) is exempt matter under s.46(1)(a) of the FOI Act.

### **Conclusion**

40. In essence, I have found that the decision under review was correct in holding that the matter in issue is exempt matter under s.44(1) of the FOI Act, except in respect of the matter described in paragraphs 36-37 above. I therefore decide to vary the decision under review by finding that the following matter is not exempt matter under the FOI Act -
- (i) the final paragraph on folio 058;
  - (ii) the paragraph which begins at the foot of folio 061 and finishes at the top of folio 060;
  - (iii) the first full paragraph which appears on folio 061;
  - (iv) the first paragraph on folio 062;
  - (v) the second paragraph appearing under selection criteria two on folio 063;
  - (vi) the final paragraph on folio 118;
  - (vii) the first paragraph on folio 119;
  - (viii) the first paragraph on folio 121;

- (ix) the first paragraph next to the heading “Corporate Services Program” on folio 148;
- (x) the second paragraph on folio 159;
- (xi) the first and final paragraphs on folio 160; and
- (xii) the applicant's name where it appears on folio 008.

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