

OFFICE OF THE INFORMATION COMMISSIONER (QLD)

Decision No. 03/2000

Application S 44/99

Participants:

SANTO SANTORO MLA
Applicant

DEPARTMENT OF MAIN ROADS
Respondent

BRISBANE CITY COUNCIL
Third Party

DECISION AND REASONS FOR DECISION

FREEDOM OF INFORMATION - refusal of access - matter in issue comprising documents relating to the City-Valley Bypass project - whether disclosure could reasonably be expected to cause damage to relations between the State and another government - meaning of the phrase "another government" in the context of s.38 of the *Freedom of Information Act 1992* Qld - whether disclosure would, on balance, be in the public interest.

Acts Interpretation Act 1954 Qld s.14B, s.32A
Freedom of Information Act 1992 Qld s.4, s.5, s.7, s.8, s.21, s.36(1), s.38(a), s.38(b), s.78
Freedom of Information Act 1982 Cth s.33A(1)(a)
Freedom of Information Act 1982 Vic s.29
Freedom of Information Act 1989 NSW Sch 1 cl. 5
Freedom of Information Act 1989 ACT s.34
Freedom of Information Act 1991 Tas s.26
Freedom of Information Act 1991 SA Sch 1 cl. 3
Freedom of Information Act 1992 WA Sch 1 cl. 2
Patents Act 1990 Cth s.163

Arnold v The State of Queensland and The Australian National Parks and Wildlife Service (1987) 13 ALD 195
"B" and Brisbane North Regional Health Authority, Re (1994) 1 QAR 279
Criminal Justice Commission and Director of Public Prosecutions, Re (1996) 3 QAR 299
Stack & Ors v Brisbane City Council & Ors (1995) 131 ALR 333

DECISION

I decide to vary the decision under review (being the decision made on behalf of the respondent by Mr W J Rodiger on 28 January 1999), by finding that the matter remaining in issue (which is described in paragraph 7 of my accompanying reasons for decision) does not qualify for exemption under s.38 of the *Freedom of Information Act 1992* Qld.

Date of decision: 24 October 2000

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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, under the *Freedom of Information Act 1992 Qld* (the FOI Act), to documents relating to the City-Valley Bypass project (which involves the building of major road infrastructure at the periphery of the Brisbane - Fortitude Valley business districts, to relieve traffic congestion).
2. On 5 November 1998, the applicant lodged with the FOI Co-ordinator for the Departments of Transport and Main Roads, an FOI access application in the following terms:

RE: FOI REQUEST - CITY VALLEY BYPASS

I wish to gain access to every document that is held by the Department of Transport and the Department of Main Roads in relation to the above mentioned project.

I particularly stress that I wish to have access to all documents, including communications between all Ministers for Transport and all Ministers for Main Roads and the Brisbane City Council.

I am also particularly interested in all briefing notes and background information that has been made available to the previous and the current Minister.

3. By letter dated 8 January 1999, Mr G J Healey, on behalf of the respondent, informed the applicant that he had located 210 documents which fell within the terms of the applicant's FOI access application. Mr Healey decided to give the applicant full access to 10 documents, but decided that the remaining 200 documents were exempt from disclosure to the applicant under s.36(1)(c), s.36(1)(f), s.36(1)(g), s.38(a) and/or s.38(b) of the FOI Act. By letter dated 25 January 1999, the applicant sought internal review of Mr Healey's decision. The internal review was conducted by Mr W J Rodiger. By letter to the applicant dated 28 January 1999, Mr Rodiger stated that he had decided to affirm Mr Healey's decision. By letter dated 23 February 1999, the applicant applied to me for review, under Part 5 of the FOI Act, of Mr Rodiger's decision.
4. During the course of the review, I have been informed that all documents in issue are documents of the Department of Main Roads, rather than Queensland Transport, and hence the Department of Main Roads (the Department) is the correct respondent agency.

External review process

5. Copies of the documents found by the Department to be exempt were obtained and examined. In accordance with s.78 of the FOI Act, I consulted the Brisbane City Council (the BCC) in order to inform it of my review, and to ascertain whether or not it objected to disclosure of those parts of the matter in issue which concerned it. The BCC advised that it objected to disclosure of certain documents, and it applied for, and was granted, status as a participant in this review.
6. The early stages of the review involved examination of whether the bulk of the documents in issue qualified for exemption under s.36(1) of the FOI Act. Notwithstanding the obvious public interest in public scrutiny and discussion of the details of a major public infrastructure project, which will have significant lifestyle implications for the people of Brisbane (particularly for those residents who will be directly affected by its construction), and which will involve expenditure of substantial sums of public money, the Department pressed its claims for exemption under s.36(1) of the FOI Act. The applicant ultimately abandoned his pursuit of access to some 185 documents which appeared to qualify for exemption under the exceptionally broad reach of s.36(1) of the FOI Act. The Department also withdrew its claim for exemption in respect of 2 documents, and I authorised the Department to give the applicant access to those documents.
7. As a result of those concessions, the matter remaining in issue in this review is now confined to the folios referred to below:
 - folios 20-21, comprising a letter dated 7 August 1998 from the Lord Mayor of Brisbane to the Premier of Queensland, also copied to the Minister for Transport and Main Roads (I note that folios 20-21 are identical to folios 76-77, 122-123, 153-154 and 180-181, save that folios 76-77 and 122-123 are noted as being received in the office of the Minister for Transport and Main Roads, rather than the Department of the Premier and Cabinet, and that folios 76-77 and 122-123 also include a handwritten notation);
 - folio 113, comprising the second page of a letter dated 24 August 1998 from Skermann & Company to Mr W Upton of the BCC;
 - folio 152, comprising a letter dated 8 October 1998 from the Lord Mayor of Brisbane to the Minister for Transport and Main Roads (also copied to the Premier of Queensland); and

- folio 179, comprising the second page of an undated letter from the Minister for Transport and Main Roads to the Premier of Queensland.
8. The Department claims that the matter in issue is exempt under s.38(a) of the FOI Act. The BCC also claims that the matter in issue (with the exception of folio 179, in respect of which no claim for exemption is made by the BCC) is exempt under s.38(a) of the FOI Act.
 9. On 21 May 1999, I wrote to the Department and the BCC to convey my preliminary view that the matter in issue does not qualify for exemption from disclosure under s.38(a) of the FOI Act. In the event that they did not accept my preliminary view, I invited the Department and the BCC to lodge written submissions and/or evidence in support of their respective claims for exemption.
 10. By letter dated 8 June 1999, the Department advised that it did not accept my preliminary view. On 21 July 1999, a written submission was lodged in support of the Department's case that the matter in issue qualifies for exemption under s.38(a) of the FOI Act.
 11. By letter dated 11 June 1999, the BCC advised that it did not accept my preliminary view and, by letter dated 13 July 1999, lodged a written submission in support of the BCC's case that the matter in issue which concerns the BCC qualifies for exemption under s.38(a) of the FOI Act.
 12. The applicant was invited to respond to the submissions lodged by the Department and the BCC. He responded briefly, by letter dated 15 October 1999, stating that he had no new arguments or evidence to put forward in support of his case for disclosure of the matter in issue.
 13. In addition to the contents of the matter in issue, I have taken into account the following material in making my decision in this review:
 - the Department's initial decision dated 8 January 1999, and internal review decision dated 28 January 1999;
 - the applicant's application for external review dated 23 February 1999;
 - written submissions on behalf of the BCC dated 13 July 1999; and
 - written submissions on behalf of the Department dated 21 July 1999.

Application of s.38(a) of the FOI Act to the matter in issue

14. Section 38 of the FOI Act provides:

38. Matter is exempt matter if its disclosure could reasonably be expected to—

(a) cause damage to relations between the State and another government;
or

(b) divulge information of a confidential nature that was communicated in confidence by or on behalf of another government;

unless its disclosure would, on balance, be in the public interest.

15. The thrust of the submissions of both the Department and the BCC is that disclosure of the matter in issue, which relates to arrangements for funding the construction of the City-Valley Bypass, could reasonably be expected to cause damage to relations between the State government and the BCC, and hence that the matter in issue qualifies for exemption under s.38(a) of the FOI Act. I note that no specific claim for exemption under s.38(b) has been advanced. In any event, my findings below in respect of the proper construction of the words "another government" in s.38, and in respect of the application of the public interest balancing test incorporated in s.38, would also be applicable to an exemption claim under s.38(b) of the FOI Act.

Meaning of "another government" in s.38 of the FOI Act

16. The apparent object of s.38(a) is to afford a ground for withholding access to information where there is a reasonable basis for expecting disclosure of the information to cause damage to relations between the government of the State of Queensland and "another government". Section 38(b) also uses the words "another government" with reference to protecting confidential information communicated in confidence "by or on behalf of another government". In letters to the Department and the BCC dated 21 May 1999, I conveyed my preliminary view that the words "another government" in s.38 of the FOI Act are intended to refer to another state or territory government, or the Commonwealth government, or an overseas government, but not to a local council.
17. In support of its case that the words "another government" in s.38(a) of the FOI Act are intended to include a local council, the BCC, in its submissions dated 13 July 1999, argued as follows:

... section 7 of the Act defines "government" as "including an agency or a Minister" and section 8(1) of the Act defines the meaning of "agency" as "a department, local government or public authority". Therefore the term "government" for the purposes of the FOI Act must logically relate to Local Governments.

The Council can see no warrant in the FOI Act, which supports "government" as meaning one thing for the purposes of sections 7 and 8 of the Act and something else for the purposes of section 38. Clear words would be required from the legislature to support such dual meaning.

Furthermore, the Brisbane City Council operates, inter alia, under 2 specific pieces of legislation - The City of Brisbane Act 1924 (as amended) and the Local Government Act 1993 (as amended). These pieces of legislation clearly recognise the Brisbane City Council and all Local Governments in Queensland as "governments".

The City of Brisbane Act (CoBA), assented to on 30 October 1924, commences with the statement "An Act for the Good Government of the City of Brisbane". Division 9, section 36 of the CoBA contains a detailed description of the powers and jurisdiction of the Council and "charges the Council with the government of the City" and gives it "control of the working and business of such government".

The Local Government Act (LGA), assented to on 7 December 1993, commences with the statement "An Act to provide for local government in Queensland, and for related purposes". The objects of the LGA include ":-

- (a) providing a legal framework for an effective, efficient and accountable system of local government in Queensland; and
- (b) recognising a jurisdiction of local government sufficient to allow a local government to take autonomous responsibility for the good rule and government of its area with a minimum intervention by the State; and
- (c) providing for community participation in the local government system; and
- (d) defining the role of participants in the local government system; and
- (e) establishing an independent process for ongoing review of certain important local government issues."

The predominant factor coming from this legislation is that the Brisbane City Council and all other local authorities in Queensland are governments in their own right and therefore for the purposes of section 38 of the FOI Act the term "another government" must include a Local Government.

In addition, there are distinct and unmistakable parallels between the election process for members of the Legislative Assembly and Local Government Councillors. Each member is elected to their respective electorate or ward by the registered voters for that area to represent their constituents for the term of the "government". Following each election (whether it be State or Local) a "government" is formed by the elected representatives and that "government" (whether it be State or Local) is sworn in and charged with the good governance of the State or local authority for that term.

The important point in the election process, whether it is at Federal, State or local government level, is that the end result of the election is that a "government" is formed. No distinction should be drawn between a Federal Government or a State Government or a Local Government. Each is a "government" in its own right and therefore for the purposes of section 38 of the FOI Act the term "another government" must relate to all levels of "government" (whether Federal, State or Local) and the relations that exist between them all.

18. The submissions of the Department on this issue (dated 21 July 1999) were substantially identical to those of the BCC. I consider that their submissions on this point of statutory construction are mistaken.
19. I should first note that s.32A of the *Acts Interpretation Act 1954* Qld provides:

Definitions to be read in context

32A. Definitions in or applicable to an Act apply except so far as the context or subject matter otherwise indicates or requires.

20. This provision gives legislative endorsement to a principle of statutory interpretation long applied by the courts, to the effect that all definitions of the meaning of words or phrases used in legislation are to be read either expressly or impliedly as subject to the qualification 'unless the contrary intention appears': see D C Pearce and R S Geddes, Statutory Interpretation in Australia, 4th ed, 1996, at p.192, paragraph 6.42, and the cases there cited.
21. Having regard to the scheme of the FOI Act as a whole, and the particular context in which the words "another government" appear in s.38 of the FOI Act, I consider that the word "government" in s.38 cannot have been intended to be read according to the extended meaning given in the s.7 definition of "government", i.e., as having a meaning that includes an agency (which is defined in s.8 to mean a department, local government or public authority) and a Minister. The FOI Act is an Act of the Parliament of Queensland which imposes certain obligations on agencies and Ministers comprising the executive branch of government in Queensland, for the purpose of furthering the objects set out in s.4 and s.5 of the FOI Act. There is no doubt that the words "the State" in s.38(a) refer, *in globo*, to the government of the State of Queensland. To read the word "government" in s.38 according to the s.7 definition of "government", would produce a nonsensical reading, i.e., 'cause damage to relations between the government of the State of Queensland and another Department (or public authority or Minister) of the State of Queensland'.
22. The use of the word "another" to qualify the word "government" in s.38(a) and s.38(b) implies that those other governments to which the provisions refer have a character and status similar to that of the government of the State of Queensland, i.e., they are autonomous governments with plenary law-making powers for their territorial jurisdiction (although subject to any constraints arising from their position within a federal system of government). Local governments in Queensland, such as the BCC, owe their existence to enactments of the Queensland Parliament, and their law-making powers are limited to those granted by enactments of the Queensland Parliament. I note that in *Stack & Ors v Brisbane City Council & Ors* (1995) 131 ALR 333, a case in which the BCC successfully argued that it was an "authority of the State" in order to obtain the protection of s.163 of the *Patents Act 1990* Cth against an action for infringement of patent, Cooper J of the Federal Court of Australia made the following observations about the status of the BCC (at p.344):

... regard must be had to the degree of control over the BCC potentially and actually exercised by the minister and the Governor in Council. All local laws must be approved by the minister. The minister and Governor in Council have ultimate control over town planning matters and State laws prevail over local laws to the extent of any inconsistency. Further, borrowings are subject to approval by the Governor in Council and the State government is not subject to rates and charges which are levied on rateable land. It is also clear that the BCC does not assume its authority from the electors in the BCC elections, but rather from the legislative scheme outlined above.

The context in which the BCC exists must also be noted. All the functions and powers exercised and exercisable by the BCC are matters within the constitutional power of the State government. The BCC is not a "third tier of government" provided for in the Federal Constitution. Rather, the BCC is a statutory body, established and ultimately controlled by State legislation. Its functions and powers are State governmental functions and powers, exercised in the interests of the community, which the State has delegated to it in legislation.

Having regard to these matters, it can be seen that the BCC is involved in and is part of the State governmental function such that its activities are "impressed with the stamp of government". It has been given by the State the power to direct and/or control the affairs of the people within its territorial boundaries on behalf of the State. The executive of State government, through its ministers and the Governor in Council, retains a prominent role and a practical involvement.

23. Each Australian jurisdiction which has enacted FOI legislation has enacted an exemption provision comparable to s.38 of the Queensland FOI Act, but each of them uses language that makes it quite clear that the exemption provision is concerned with damage to relations between the government of the relevant jurisdiction and the Commonwealth government, or the government of another State or territory, or (in some instances) a government of a foreign state, but not a local government entity within that jurisdiction: see, for example, *Freedom of Information Act 1982 Vic*, s.29; *Freedom of Information Act 1989 NSW*, Sch 1 cl. 5; *Freedom of Information Act 1991 Tas*, s.26; *Freedom of Information Act 1991 SA*, Sch 1 cl. 3; *Freedom of Information Act 1992 WA*, Sch 1 cl. 2. I do not consider that the Queensland Parliament intended to enact a wider ground of exemption, by extending its reach to relations between the government of the State of Queensland and local councils.
24. Resort to extrinsic materials, as contemplated by s.14B of the *Acts Interpretation Act 1954 Qld*, affords support for my view. The enactment of the FOI Act followed consideration by the Legislative Assembly, and one of its select committees, of the Report on Freedom of Information (December 1990, Serial No. 90/R6) by the Electoral and Administrative Review Commission. That Report contained a recommended draft Freedom of Information Bill, clause 30 of which was materially identical to s.38 of the FOI Act. The draft Bill also contained a definition of "Government" in clause 7 that was identical to the definition of "government" in s.7 of the FOI Act. The Report stated (at pp.52-53, paragraph 7.46): ... *to show that clause 30(a) applies to make matter exempt it must first be established that its disclosure would damage relations between the Government of Queensland and the Commonwealth or any other State or Territory.*
25. The use of the words "relations between the State and another government" in s.38(a) of the FOI Act indicates to me that the legislature intended to protect relations between the government of the State of Queensland and other autonomous governments of similar status, not relations between the two levels of government within Queensland. I consider that the correct interpretation of the phrase "another government" in the context of s.38 of the FOI Act is that it refers to the Commonwealth government, the governments of other Australian States and territories, and the governments of foreign states.
26. Accordingly, I find that the matter in issue cannot qualify for exemption under s.38(a), because apprehended damage to relations between the State of Queensland and the Brisbane City Council is not within the sphere of application of s.38(a), properly construed.
27. Even on the assumption (contrary to my finding) that the words "another government" in s.38 extend to the BCC, I am not satisfied that the matter in issue would qualify for exemption under s.38(a) in any event, and I will explain my findings in that regard.

Whether disclosure could reasonably be expected to cause damage to relations between the State and the BCC

28. In *Re "B" and Brisbane North Regional Health Authority* (1994) 1 QAR 279 at pp.339-341 (paragraphs 154-160), I analysed the meaning of the phrase "*could reasonably be expected to*", by reference to relevant Federal Court decisions interpreting the identical phrase as used in exemption provisions of the *Freedom of Information Act 1982* Cth. In particular, I said in *Re "B"* (at pp.340-341, paragraph 160):

The words call for the decision-maker ... to discriminate between unreasonable expectations and reasonable expectations, between what is merely possible (e.g., merely speculative/conjectural "expectations") and expectations which are reasonably based, i.e. expectations for the occurrence of which real and substantial grounds exist.

The ordinary meaning of the word "expect" which is appropriate to its context in the phrase "could reasonably be expected to" accords with these dictionary meanings: "to regard as probable or likely" (Collins English Dictionary, Third Aust. Ed); "regard as likely to happen; anticipate the occurrence ... of" (Macquarie Concise Dictionary, 3rd Rev. ed 1998); "Regard as ... likely to happen; ... Believe that it will prove to be the case that ..." (The New Shorter Oxford English Dictionary, 1993).

29. In its submissions dated 13 July 1999, the BCC argued as follows:

... your preliminary view appears to be based on the premise that disclosure of the information is not likely to damage relations between the State and the Council, nor will disclosure mean that Council will refrain in the future from discussing funding considerations with the State.

Certainly, the disclosure of these documents may not cause a major rift between State and Council relations. However, section 38 does not require major damage to occur for this section to come into operation, it only requires "damage" to be caused.

The documents subject to this review, represented a free and frank exchange of views between the State and Brisbane City Council on the funding issues relevant to the Inner City Bypass. If the parties to that correspondence had been aware that the documents could be compelled to be released by law, then the information contained in the documents may have been less specific in relation to the actual details of the funding.

This would necessarily mean that the parties would not have been able to carry out the full and frank discussions necessary to achieve the most positive outcome for the community.

Any loss of the ability of the State and Local Governments to hold such full and frank discussions must of necessity restrict their ability to communicate with each other and therefore cause some significant damage to those relations. ...

30. In his decision dated 8 January 1999, the only damage to relations between the State government and the BCC which Mr Healey identified as liable to follow from disclosure of the matter in issue, was that "the parties would be less likely in future to openly discuss and document discussions of this type". In its submissions dated 21 July 1999, the Department argued as follows:

... had the parties involved in the documents been aware that their discussions or comments would be released, the subject documents would have contained only generic information, with the specifics not documented. This would not necessarily mean the governments would not have full and frank discussions, however the content of those discussions would not be fully documented. The disclosure of these documents may not cause a major rift between the State and Brisbane City Council. However, s.38 does not require major damage to occur for this section to come into operation, it only requires "damage" to be caused.

The ability of governments to hold such discussions is a necessary part of the process of government, to restrict their ability to communicate would cause significant damage to those relations and hinder the process of good government. The damage caused does not need to be so severe as to stop the entire communication process.

31. Dealing with s.33A(1)(a) of the *Freedom of Information Act 1982* Cth (an exemption provision comparable to s.38(a) of the Queensland FOI Act), Wilcox J of the Federal Court of Australia observed, in *Arnold v The State of Queensland and The Australian National Parks and Wildlife Service* (1987) 13 ALD 195 at p.208:

There must be something in the documents themselves or in the circumstances under which they came into existence potentially to damage relations.

32. I have examined the contents of the matter in issue, which consists of correspondence and notes of discussions *et cetera*, regarding methods of funding, and the respective contributions of the State government and the BCC towards funding, the cost of the City-Valley Bypass project. The Department and the BCC were correct to concede that the matter in issue is not of such a sensitive nature that its disclosure could cause a "major rift" between the State and the BCC. In my view, they could have dispensed with the adjective "major". Having examined the matter in issue, I am unable to accept as credible the assertions by the Department and the BCC that disclosure of the matter in issue could reasonably be expected to inhibit full and frank discussions and negotiations about funding, and appropriate financial contributions by the State government and the BCC, for major public infrastructure projects, and to inhibit adequate documentation of such discussions and negotiations, and to thereby cause damage to relations between the State and the BCC. Funding pressures on local government virtually guarantee that local councils must fully discuss, and vigorously negotiate, funding arrangements for major public infrastructure projects, and they must document the negotiations and their outcomes in sufficient detail for their own administrative and audit purposes.
33. I am not satisfied that disclosure of the matter in issue could reasonably be expected to cause damage to relations between the State and the BCC.

Public interest balancing test

34. In his internal review decision dated 28 January 1999, Mr Rodiger identified the following public interest considerations in favour of disclosure and non-disclosure of the matter in issue:

Public Interest Considerations in Favour of Disclosure

- *Applicants under FOI have a right to access documents held by Queensland Government.*
- *An open and accountable government is enhanced by the provision of access to documents held by Government agencies.*

Public Interest Considerations in Favour of Non-Disclosure

- *Disclosure may prejudice the future supply and content of information in the same manner as has occurred in this and many similar instances.*
- *The public would not be served by the release of the information in question as it only depicts certain parts of the process, mainly the funding area of the project. The interest of a small number may be served by the release of the information, however the greater public interest would be best served by allowing all levels of government to work out the best possible funding deal for the people of Brisbane and Queensland.*

35. Mr Rodiger did not, however, provide any specific examples or details of how the "future supply and content of information" had been prejudiced in this or in "many similar instances". Nor were any specific examples or details relevant to this consideration provided by the Department in its submission dated 21 July 1999.
36. In its submission dated 13 July 1999, the BCC argued that, in considering the public interest balancing test in s.38(a) of the FOI Act, there is a significant distinction to be drawn between disclosure of finalised funding arrangements, and disclosure of negotiations that led up to the finalisation of those arrangements. The BCC submitted that the public interest in ensuring that the State government and the BCC are able to enjoy full and frank exchanges in the formulation of finalised funding arrangements, outweighs the public interest in enabling interested persons to obtain details of the considerations and negotiations that led up to the finalised arrangements.
37. There may be situations where premature disclosure of information relating to ongoing negotiations involving government entities would be prejudicial to the public interest. This is not such a case. My observations at paragraphs 36-37 of *Re Criminal Justice Commission and Director of Public Prosecutions* (1996) 3 QAR 299 are apposite in the present case.
38. In his application for external review, the applicant identified the following public interest considerations in favour of disclosure of the matter in issue:

...

The Reviewer has not dealt with the proposition that the history of the relationship [between the two levels of government in Queensland] has endured, despite its frequent contentious periods. Some might even argue that public knowledge, discussion and debate of the contentious issues arising between levels of Government (or Government entities at the same

levels) actually enhances the democratic process far more than any policy of hiding such divergences of views from the public. The reviewer fails to examine the wider implications of such issues.

...

The consideration that only the interest of a small number of people would be served by public knowledge of funding arrangements is incorrect. Many millions of dollars is involved and every cent has been contributed by Queensland taxpayers or Brisbane ratepayers. This significant constituency has every right to know how efficiently their money is being utilised for this project. The view that their best interests would be better served if they are kept in the dark concerning the real costs and the funding arrangements of this (or any other multi-million dollar) project is not (in my view) a valid reason for the exemption of material sought under FOI.

...

39. It is heartening to be able to record these remarks (coming from a former Minister of the Crown), with which I respectfully agree. The City-Valley Bypass project is a major public infrastructure project. Considerable amounts of public monies will be expended on the project, and there is a strong public interest favouring public scrutiny and discussion of funding arrangements and details, including issues such as whether the respective contributions of the State government on behalf of all Queensland taxpayers, and of the BCC on behalf of its ratepayers, are realistic and equitable, having regard to the segments of the public likely to benefit from the project.
40. Even had I been persuaded that disclosure of the matter in issue could reasonably be expected to cause some damage to relations between the State and the BCC, I consider that the public interest considerations favouring disclosure are strong enough to have warranted a finding that disclosure of the matter in issue would, on balance, be in the public interest.

Conclusion

41. For the reasons set out above, I decide to vary the decision under review (being the decision made on behalf of the respondent by Mr W J Rodiger on 28 January 1999), by finding that the matter in issue (as described in paragraph 7 above) does not qualify for exemption under s.38 of the FOI Act, and that the applicant therefore has a right to be given access to it, in accordance with s.21 of the FOI Act.

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F N ALBIETZ

INFORMATION COMMISSIONER