OFFICE OF THE INFORMATION COMMISSIONER (QLD)

Decision No. 05/2001
Application S 93/00

Participants:

PAUL WHITTAKER
Applicant

QUEENSLAND AUDIT OFFICE
Respondent

DECISION AND REASONS FOR DECISION

FREEDOM OF INFORMATION - refusal of access - documents relating to an audit into outstanding debtor balances of the Legislative Assembly - names of, and amounts owing by, Members of Parliament - whether disclosure prohibited by s.92 of the *Financial Administration and Audit Act 1977* Qld - whether disclosure required by compelling reason in the public interest - application of s.39(2) of the *Freedom of Information Act 1992* Qld.

Freedom of Information Act 1992 Qld s.16(1), s.39(2), s.48(1), Schedule 1
Freedom of Information Act 1982 Vic s.50(4)
Freedom of Information (Review of Secrecy Provision Exemption) Amendment Act 1994 Qld
Financial Administration and Audit Act 1977 Qld s.85, s.86, s.87, s.92(1), s.92(2)

Eccleston and Department of Family Services and Aboriginal and Islander Affairs, Re (1993) 1 QAR 60
"KT" and Brisbane North Regional Health Authority, Re (1998) 4 QAR 287
Port of Brisbane Corporation v ANZ Securities Limited (Sup. Ct of Qld, No. 58880 of 1998, Dutney J, 12 April 2000, unrep)
Secretary to Department of Premier and Cabinet v Hulls [1999] VSCA 117; (1999) 15 VAR 360

DECISION

I affirm the decision under review (being the decision made on behalf of the Queensland Audit Office by Mr L J Scanlan dated 10 March 2000) in so far as it decided that the matter remaining in issue in this review is exempt matter under s.39(2) of the *Freedom of Information Act 1992* Qld.

Date of decision: 15 June 2001

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F N ALBIETZ
INFORMATION COMMISSIONER

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REASONS FOR DECISION

Background

1. The applicant (who is a journalist with the *Courier-Mail*) seeks review of the respondent's decision refusing him access, under the *Freedom of Information Act 1992* Qld (the FOI Act), to documents relating to an audit by the Queensland Audit Office (the QAO) into outstanding debtor balances of the Legislative Assembly. The QAO contends that the matter remaining in issue is exempt matter under s.39(2) of the FOI Act.

2. In his Audit Report No. 3 for 1999-2000, the Auditor-General reported that, at 30 June 1999, the Legislative Assembly had total debtor balances of $151,591, with long outstanding debtor balances (over 90 days) of $15,327, some $13,878 of which was owed by Members of Parliament. The Auditor-General indicated that the outstanding debts were incurred mainly for the use of parliamentary catering facilities. The Auditor-General has since followed-up the issues raised in that audit. In his Audit Report No. 1 for 2000-2001, he indicated that, as at the date of his report, all debtor balances that had been outstanding for over 90 days as at 30 June 2000, had been settled.

3. Following publication of Audit Report No. 3 for 1999-2000, the applicant wrote to the respondent on 13 December 1999 seeking access, under the FOI Act, to:

> *… all correspondence between the Auditor-General or his officers, and Members of the Legislative Assembly, over unpaid parliamentary dining and other expenses referred to in the Auditor-General's Report No. 3 1999-2000.*
>
> …

… this request also seeks any documents:

- *evidencing the total amounts owed by each MLA or other party constituting the $151,591 figure*
- *the list of names of the MLAs referred to as owing $13,878, including details of how much they owed, an individual breakdown of what the debts were for, and when their bills were settled*
- *the list of names of the other parties who owed $1,449, how much they owed and when their debts were settled.*

4. By letter dated 24 January 2000, Mr D Jones of the QAO informed the applicant that he had identified 40 pages of documents falling within the terms of the applicant's FOI access application. Mr Jones decided to refuse access to the documents, relying upon the ground of exemption in s.39(2) of the FOI Act.

5. By an undated letter received at the QAO on 28 February 2000, the applicant sought internal review of Mr Jones' decision. The QAO's internal review decision, dated 10 March 2000, was made by the Auditor-General, Mr L J Scanlan, who affirmed the initial decision. By application dated 2 May 2000, the applicant applied to me for review, under Part 5 of the FOI Act, of the Auditor-General's decision.

External review process

6. I requested the QAO to supply copies, for my examination, of the documents to which it had refused the applicant access. The QAO forwarded copies of those documents, plus a further 11 pages (comprising draft reports and working papers) responsive to the terms of the relevant FOI access application, that had been located by the QAO's FOI Co-ordinator.

7. The matter in issue includes drafts of the report which appeared in Audit Report No. 3 for 1999-2000, along with information obtained directly from the Legislative Assembly, such as copies of the debtors' ledger and letters sent to outstanding debtors regarding amounts owing. It also includes internal memoranda (some of which identify the debtors and the amounts owing), and letters from the Auditor-General to other parties regarding the conduct of the audit.

8. In letters to the QAO and to the applicant, each dated 15 December 2000, I advised that, in my preliminary view, some of matter in issue did not qualify for exemption under s.39(2) of the FOI Act because it was not "protected information" as defined in s.92 of the *Financial Administration and Audit Act 1977* Qld (the FAA Act), but that the bulk of the matter in issue constituted "protected information". I referred to my decision in *Re "KT" and Brisbane North Regional Health Authority* (1998) 4 QAR 287, and expressed the preliminary view that disclosure of the matter in issue in this review did not appear to be "required by a compelling reason in the public interest".

9. The QAO accepted my preliminary view that some of the matter in issue did not qualify for exemption. The QAO has agreed to disclose that matter to the applicant, and it is no longer in issue in this review. There followed an exchange of written submissions between the participants. In a submission dated 21 March 2001, the applicant's solicitors conceded that the matter remaining in issue appeared to fall within the ambit of s.92 of the FAA Act, but maintained that disclosure is required by compelling reasons in the public interest.

10. In making my decision, I have taken into account the following:

- the contents of the matter in issue;
- the initial decision on behalf of the QAO dated 24 January 2000;
- the application for internal review received at the QAO on 28 February 2000;
- the internal review decision dated 10 March 2000;
- the application for external review dated 2 May 2000;
- the QAO's submissions dated 8 June 2000, 19 January 2001, 22 and 27 March 2001; and
- the applicant's submissions dated 17 January 2001 and 21 March 2001.

Application of s.39(2) of the FOI Act

11. Section 39(2) of the FOI Act provides:

> *Matter is also exempt matter if its disclosure is prohibited by the* Financial Administration and Audit Act 1977, *section 92, unless disclosure is required by a compelling reason in the public interest.*

"Protected information" under s.92 of the FAA Act

12. Section 92(2) of the FAA Act relevantly provides that an authorised auditor must not divulge or communicate "protected information" (which is defined in s.92(1) as meaning information obtained under the FAA Act) unless this is done under or for the purposes of the FAA Act, or in the performance of the duties of a person to whom s.92 of the FAA Act applies.

13. In his external review application, the applicant argued that the disclosure of parts of the matter in issue was not prohibited by s.92 of the FAA Act, as it was not information that was "obtained" by an auditor under the FAA Act. The applicant stated:

> *To the extent that it* [the matter in issue] *is correspondence by his* [the Auditor-General's] *office to members of parliament, it is not information obtained under the Act except to the extent that it sets out details of the amounts owing by a particular member. Similarly, to the extent that it includes correspondence from a member, it is only "information" to the extent that it comprises information which the member was legally obliged to provide under the Act: it does not extend to information volunteered by the member.*

14. As detailed in the QAO's written submission dated 8 June 2000, there has been some recent judicial guidance on this point. It was provided by Dutney J of the Supreme Court of Queensland in *Port of Brisbane Corporation v ANZ Securities Limited* (Sup. Ct of Qld, No. 58880 of 1998, Dutney J, 12 April 2000, unrep), in which His Honour was required to decide whether production of documents pursuant to a notice of non-party disclosure (i.e., a court process for compelling disclosure of information to a court for possible use in litigation) addressed to the Auditor-General, would contravene s.92 of the FAA Act. His Honour made the following observations in construing the scope of the prohibition on disclosure of information imposed by s.92 of the FAA Act:

> *In my view, section 92 of the* [FAA] *Act prohibits the disclosure, pursuant to a notice of non-party disclosure of information obtained by use of the coercive powers contained in sections 85, 86 and 87 of the* [FAA] *Act.*

> *Each of those sections entitles the Auditor-General to obtain information for the purposes of an audit or investigation with penalties attaching to persons who fail to provide that information or otherwise fail to cooperate.*
>
> *The purpose of section 92 seems to be to protect the confidentiality of information which is compulsorily acquired in this way and it does not seem to me necessary to extend its operation to the wider situation where information is provided voluntarily by people, particularly with reference to the current application by people other than the entity being audited. Limited in this way s.92 prohibits disclosure of information acquired "under" the Act rather than information obtained in the course of fulfilment of a statutory purpose.*
>
> *My view in this respect is supported by the explanatory notes to section 92 which refer to the purpose of the section being to respect the confidentiality of information obtained in the course of audits and not to divulge such information except where there is a duty to disclose.*

15. Accepting Dutney J's interpretation, it follows that s.39(2) of the FOI Act applies only to information obtained by the QAO by the use of its powers under sections 85, 86 and 87 of the FAA Act. It should be observed, however, that s.85 of the FAA Act, in particular, is extremely broad, conferring a right of full and free access to all documents and property of the entity being audited. Nevertheless, the scope of the information prohibited from disclosure by s.92 of the FAA Act would not include documents created by the QAO, except to the extent that they contain "protected information".

16. On that basis, I expressed the preliminary view that some of the matter in issue did not answer the description of "protected information", e.g., drafts of the Auditor-General's report (which are mostly identical to the publicly available report), letters from the Auditor-General to the Speaker of the Legislative Assembly (and departments), and internal memoranda regarding the conduct of the audit. The QAO accepted my view that those documents do not qualify for exemption from disclosure under s.39(2) of the FOI Act (except to the extent that they contain information which is "protected information" because it was obtained under the FAA Act), and has agreed to give the applicant access, accordingly: see paragraph 9 above.

17. However, I find that the matter remaining in issue, comprising copies of documents obtained directly from the Legislative Assembly (including a copy of the debtors' ledger, and copies of letters sent from the Speaker to the individual debtors) and matter in other documents that records information obtained from the Legislative Assembly, does fall within the definition of "protected information" for the purposes of s.92 of the FAA Act. Prior to the commencement of the audit of the Legislative Assembly for the financial year ended 30 June 1999, Mr J E Harten, Acting Assistant Auditor-General, wrote to the Clerk of the Parliament on 21 May 1999 informing him of arrangements for the conduct of the audit, and specifically drawing attention to the legislative powers (set out in an attached brochure) of authorised auditors, including -

- the right of access to documents and property (FAA Act, s.85)
- the right to obtain information from staff of the entity being audited (FAA Act, s.86); and
- the right to verbally examine staff of the audited entity (FAA Act, s.87).

18. I am satisfied that the information obtained from the Legislative Assembly in the course of the audit (including the names of debtors) was obtained by use of the powers conferred by s.85 of the FAA Act on authorised auditors employed by the Auditor-General.

19. The Auditor-General could have disclosed additional information, including names of debtors, in reporting on the audit. That is an exception under s.92(2) which could apply to any information obtained by the Auditor-General, if disclosure was considered necessary for reporting on an audit. However, matter which might have been, but was not, disclosed in an audit report is not thereby excluded from the prohibition on disclosure imposed by s.92(2) of the FAA Act.

20. I find that the matter remaining in issue comprises information the disclosure of which is prohibited by s.92 of the FAA Act, and which therefore satisfies the test for *prima facie* exemption under s.39(2) of the FOI Act.

Interpretation of the phrase "required by a compelling reason in the public interest"

21. The FOI Act does not contain a definition of the term 'compelling' as used in the phrase 'required by a compelling reason in the public interest' which appears in both s.39(2) and s.48(1) of the FOI Act. (Section 48(1) affords *prima facie* exemption to information the disclosure of which is prohibited by one of the statutory secrecy provisions specified in Schedule 1 of the FOI Act.)

22. Subsection (2) was added to s.39 of the FOI Act by the *Freedom of Information (Review of Secrecy Provision Exemption) Amendment Act 1994* Qld, which followed the report by the Queensland Law Reform Commission (QLRC) on its review of secrecy provision exemptions in the FOI Act (Report No. 46). The QLRC recommended that s.39(2) be inserted. However, the suggested draft provision in the QLRC Report (at page 109) employed the usual form of public interest balancing test that appears in most of the exemption provisions in the FOI Act, i.e., "unless its disclosure would, on balance, be in the public interest". The material variation in the provision ultimately enacted indicates that Parliament considered it necessary for a different 'countervailing public interest' test to apply where disclosure of "protected information", as defined in s.92 of the FAA Act, is contemplated.

23. In his Second Reading Speech (recorded in *Hansard* on 22 June 1994) on the *Freedom of Information (Review of Secrecy Provision Exemption) Amendment Act 1994* Qld, the Hon. D M Wells, then Minister for Justice and Attorney-General, stated:

> *I wish to advert to the fact that the test in relation to the new section 48 inserted by this Bill is higher than that required in relation to the public interest aspect of most other grounds for exemption in the Act. This Bill will provide that for such disclosure there is required to be a compelling reason in the public interest. The reason for this is that it has been determined that the courts be given a clear standard in this regard, because Parliament has already expressed its views in relation to these particular secrecy clauses contained in other statutes. The same principle will also apply to the test contained in section 39 of the Act relating to the confidentiality provision in the* Financial Administration and Audit Act. (my underlining)

24. I have not previously given a decision which involved the application of s.39(2) of the FOI Act, but I have briefly considered the phrase "required by a compelling reason in the public interest" in a decision which involved the application of s.48(1) of the FOI Act. In *Re "KT"*, at paragraph 66, I said:

> *In my view, the imposition of a more demanding test for disclosure in the public interest, i.e., the test of a "compelling reason in the public interest" must have been intended by Parliament to indicate that it regards the public interest consideration favouring non-disclosure, which is inherent in the satisfaction of the test for* prima facie *exemption under s. 48(1), as one deserving of very great weight, such that it is to be overborne only by a compelling reason requiring disclosure in the public interest. I have already found that the public interest considerations put forward by the applicant as favouring disclosure of the matter in issue are not of sufficient weight to satisfy the less demanding formulation of a public interest balancing test incorporated into s. 44(1) of the FOI Act.* (my underlining)

25. In its submission dated 8 June 2000, the QAO referred to my comments in *Re "KT"* and to the following definition from the Concise Macquarie Dictionary:

> *compel v.t., --pelled, -- pelling*
> *1. to force or drive, esp. to a course of action. 2. To secure or bring about by force. 3. To force to submit; subdue. 4. To overpower. 5. To drive together; unite by force; herd—*

26. In a submission dated 17 January 2001, the applicant's solicitors referred me to decisions by delegates of the Ontario Information and Privacy Commissioner to support the following interpretation of the meaning of the term "compelling reason in the public interest":

> *A compelling reason in the public interest need not be one of "very great weight" but simply one which, in all the circumstances, rouses strong interest or attention or raises issues of importance to the public or to matters of government.*

27. While interpretations previously placed on comparable terms used in other legislation, especially similar legislation from other jurisdictions, may be of assistance to decision-makers, one must ultimately look to the context in which the term is used in the particular legislation to be applied, and to its legislative history, in order to discern the meaning which Parliament intended the term to have.

28. It is clear that Parliament intended to depart from the usual public interest balancing test that appears in most of the exemption provisions in the FOI Act. That usual test calls for a judgment as to whether, on balance, one or more identifiable public interest considerations favouring disclosure of the matter in issue, outweigh the public (or private) interest in non-disclosure which is inherent in satisfaction of the test for *prima facie* exemption, considered together with any other identifiable public interest considerations which favour non-disclosure of the matter in issue. The former need only slightly outweigh the latter to warrant a finding that disclosure would, on balance, be in the public interest.

29. However, s.39(2) and s.48(1) of the FOI Act do not use the words "on balance". They deal with information of a kind in respect of which the legislature has already made a judgment that disclosure should be prohibited, according to the tenor of the relevant statutory secrecy provisions they encompass (i.e., s.92 of the FAA Act in the case of s.39(2) of the FOI Act; and the statutory secrecy provisions listed in Schedule 1 of the FOI Act in the case of s.48(1) of the FOI Act). While all other statutory secrecy provisions in Queensland legislation are overridden for the purposes of the information access scheme contained in the FOI Act (see s.16(1) of the FOI Act), the statutory secrecy provisions encompassed by s.39(2) and s.48(1) of the FOI Act have been accorded special treatment in the scheme of the FOI Act. The prohibition on disclosure of information which applies under those provisions (according to their tenor) is to prevail, unless disclosure is required by a compelling reason in the public interest. The use of the word "required" conveys a sense of the imperative, of something that is demanded or necessitated (*cf.* the meaning accorded to the word "requires" in the context of the public interest override provision - s.50(4) - of the *Freedom of Information Act 1982* Vic, by the Victorian Court of Appeal in *Secretary to Department of Premier and Cabinet v Hulls* [1999] VSCA 117 at paragraphs 31 and 34, (1999) 15 VAR 360 at p.373).

30. Thus, in the present case, the matter in issue that is prohibited from disclosure by the terms of s.92 of the FAA Act will be exempt matter under s.39(2) of the FOI Act, unless there are one or more identifiable public interest considerations favouring disclosure which are so compelling (in the sense of forceful or overpowering) as to require (in the sense of demand or necessitate) disclosure in the public interest.

Submissions of the participants as to applicable public interest considerations

31. The grounds put forward by the applicant in his applications to the QAO and to this office, are adequately represented by the following extract from his application for internal review:

> *The "public interest" concerned is that of enabling the public to know which of its members of parliament are honest, do not abuse the privileges which they obtain by being members of parliament and promptly pay their debts to the government. In other words, it is the public interest in knowing and being satisfied with the integrity of its elected representatives.*
>
> *The public interest in disclosure is compelling because:*
>
> *(a) it serves the purpose of informing the public about the activities of its government and members of parliament;*
> *(b) it provides information to the public which enables it to make effective use of its means of expressing public opinion or to make political choices;*
> *(c) it assists in informing the public about the propriety and ethics of the activities of its elected representatives;*
> *(d) the report raises serious questions about extraordinary deviations by members of parliament from usual business or administrative practices, especially in relation to payment for goods or services rendered to them in their individual capacities – in particular, it indicated that a number of members of parliament use the parliamentary dining facilities but do not pay their bills for long periods, notwithstanding monthly reminders by the Speaker's office;*

(e) if the information is released, in conjunction with the information as to the members' practices after the report was made, it will enable the public to determine whether the individuals concerned have continued to fail to pay their debts promptly.

32. By submission dated 17 January 2001, the applicant's solicitors stated:

The analysis of the Canadian decisions indicates that the following factors are relevant to determining whether there is a compelling reason in the public interest in disclosure which outweighs the purpose of the exemptions from disclosure:

(a) whether the information will serve the purpose of informing the citizenry about the activities of their government, adding in some way to the information the public has to make effective use of the means of expressing public opinion or to make political choices;

(b) whether the information may serve the purpose of informing the public about the propriety of the activities of its elected representatives;

(c) whether there is strong interest or attention in a matter by the public and the information assists in there being informed public discussion;

(d) whether serious questions are raised about the actions of public officers or institutions.

33. In his submissions to the QAO, the applicant also argued that, as the names of former Members of Parliament investigated over allegations of unauthorised air travel were released by Mr Scanlan's predecessor, Mr A J Peel (the Peel Report 1978), the names of the debtors identified in the matter in issue should be disclosed in this case.

34. The QAO raised the following issues in support of the non-disclosure of the matter in issue:

- the detail of disclosure of information in his report is the prerogative of the Auditor-General, taking into account the particular issues involved and the circumstances of the case;
- the emphasis of the Auditor-General's report was on inadequate debtor recovery procedures at the Legislative Assembly, and those matters have been subsequently remedied, with the Speaker advising that the overdue amounts have been paid, and that his officers have implemented an approved review process;
- public accountability for this particular issue has been appropriately and adequately fulfilled;
- in the case in question there were no unauthorised uses of public monies and in the interests of natural justice (and as there were some shortcomings in administrative procedures for debt recovery identified), the Auditor-General decided not to release names and amounts owing, and that this matter cannot appreciably be compared with the circumstances surrounding the Peel Report.

Analysis and Findings

35. I discussed the notion of "public interest" in FOI legislation at some length in *Re Eccleston and Department of Family Services and Aboriginal and Islander Affairs* (1993) 1 QAR 60 (see paragraphs 35-75). One issue to which I drew attention was the distinction between disclosure of information that might be of interest to the public, and disclosure of information in the public interest (at paragraph 49):

> *The courts have occasionally made comments which shed some light on the meaning of "the public interest" when used as a legal term of art. In* Director of Public Prosecutions v Smith *[1991] 1 VR 63, a case involving the* Freedom of Information Act 1982 *(Vic) (the Victorian FOI Act), a Full Court of the Supreme Court of Victoria said (at pp. 73-75):*
>
> > In the present case, the learned judge recognised the existence of the public interest in the proper and due administration of criminal justice. It seems he considered that to give effect to the interest it was necessary for the exempt documents to be made available for public scrutiny.
> >
> > There are many areas of national and community activities which may be the subject of the public interest. The statute does not contain any definition of the public interest. Nevertheless, used in the context of this statute, it does not mean that which gratifies curiosity or merely provides information or amusement: *cf. R v the Inhabitants of the County of Bedfordshire* (1855) 24 L.J.Q.B. 81, at p.84, per Lord Campbell LJ. Similarly it is necessary to distinguish between "what is in the public interest and what is of interest to know": *Lion Laboratories Limited v Evans* [1985] QB 526, at p.553, per Griffiths LJ ...
> >
> > The public interest is a term embracing matters, among others, of standards of human conduct and of the functioning of government and government instrumentalities tacitly accepted and acknowledged to be for the good order of society and for the wellbeing of its members. The interest is therefore the interest of the public as distinct from the interest of an individual or individuals: *Sinclair v Mining Warden at Maryborough* (1975) 132 CLR 473, at p.480 per Barwick CJ. There are ... several and different features and facets of interest which form the public interest. On the other hand, in the daily affairs of the community events occur which attract public attention. Such events of interest to the public may or may not be ones which are for the benefit of the public; it follows that such form of interest *per se* is not a facet of the public interest."

36. The applicant has raised arguments which support disclosure of the matter in issue in the public interest. These relate to the public interest in openness and accountability, the integrity of elected representatives, and the proper use of public funds. However, I consider that the applicant has overstated the weight of those public interest considerations as they apply to the particular matter in issue.

37. In essence, what has occurred is that a number of persons, including some Members of Parliament, were allowed by the Legislative Assembly to incur debts, mainly for the use of parliamentary catering facilities. Some of those debts remained outstanding for considerable periods. However (as disclosed by the parts of folio 52 that are no longer in issue), a "finance charge" levied at a rate of 10% per month cumulative was imposed on debts unpaid after one month, meaning that Members of Parliament who did not pay their bills promptly were exposed to a significant financial penalty. Thus, this was not a situation where it could be said that individual Members of Parliament might be abusing a taxpayer-funded benefit by allowing interest-free debts to go unpaid for lengthy periods. Rather, the focus of the Auditor-General's concerns was on the inadequacy of the Legislative Assembly's debtor recovery procedures, and the need to implement effective collection measures consistent with sound public financial management practices. The Auditor-General has addressed concerns about the situation in a public report, and his latest report has indicated that the problems appear to have been remedied.

38. Disclosure of the matter in issue would give members of the public some insight into the way the Auditor-General conducts an audit. Disclosure would also give some limited insight into the past operations of the Legislative Assembly in terms of giving credit and recovering debts. However, the reports issued by the Auditor-General have already gone a significant way towards satisfying those public interest considerations.

39. The public interest consideration on which the applicant seeks to place most weight concerns disclosure of the identities of, and amounts owed by, those debtors who were Members of Parliament. Considered without regard to the status of the particular credit provider that the matter in issue concerns, the fact that a Member of Parliament may owe a certain amount of money, and even that that debt has been outstanding for some time, does not, in my view, raise a public interest consideration favouring disclosure of information about that debt. Any individual may, from time to time, fall behind on payments on a debt owed, for example, on a personal credit card or a personal loan. This is not unlawful or improper in itself, and the fact that it might happen to an elected representative or a public servant would not, in my view, ordinarily constitute a public interest consideration favouring disclosure of such information.

40. However, in the circumstances under consideration, credit has been extended by the Legislative Assembly, the operations of which are funded by the taxpayers of Queensland. The failure to pay due debts involved a cost to the public purse in terms of carrying, and acting to recover, those debts. I consider that there is a public interest in Members of Parliament being accountable for inaction in repayment of longstanding debts to the Legislative Assembly.

41. However, I am unable to accept that, as applied to the particular matter in issue in this case, this public interest consideration constitutes a compelling reason in the public interest which requires disclosure of the matter in issue. Disclosure of the matter in issue is not so important as to warrant that characterisation. The Auditor-General has investigated the matter and recommended improvements to systems and procedures for recovering debts of the kind in question, and his most recent report indicates that the problems appear to have been resolved. I am not satisfied that disclosure of the matter in issue is "required by a compelling reason in the public interest", and I find that the matter in issue is exempt matter under s.39(2) of the FOI Act.

42. I should also note that the applicant has argued that if the whole of the matter remaining in issue cannot be disclosed, either the names of the Members of Parliament who were debtors, or the balance of the matter in issue (with names deleted), should be disclosed. However, even with either set of proposed deletions, I still would not be satisfied that disclosure of the balance of the matter remaining in issue is "required by a compelling reason in the public interest".

Conclusion

43. For the reasons set out above, I affirm the decision under review (being the decision made on behalf of the QAO by Mr L J Scanlan dated 10 March 2000) in so far as it decided that the matter remaining in issue in this review is exempt matter under s.39(2) of the FOI Act.

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F N ALBIETZ
INFORMATION COMMISSIONER