

**OFFICE OF THE INFORMATION COMMISSIONER (QLD)****Decision No. 99003****Application S 2/95****Participants:**

RONALD JOHN PRICE

**Applicant**

NOMINAL DEFENDANT

**Respondent****DECISION AND REASONS FOR DECISION**

FREEDOM OF INFORMATION - whether documents are subject to the application of the *Freedom of Information Act 1992 Qld* - meaning of "document of the agency" - whether documents on the file of a firm of solicitors retained to act for the respondent agency are "documents of the agency" - whether documents on the file of a firm of loss assessors retained to act for the respondent agency are "documents of the agency".

FREEDOM OF INFORMATION - refusal of access - matter comprising confidential communications between the respondent and its solicitors, and between the solicitors and Counsel and town agents, for the sole purpose of seeking or giving legal advice or for the sole purpose of use in legal proceedings - communications between the solicitors, or the respondent, and third parties for the sole purpose of legal proceedings or for obtaining information for use in legal proceedings - whether subject to legal professional privilege - whether privilege waived - whether communications made in furtherance of an illegal or improper purpose - application of s.43(1) of the *Freedom of Information Act 1992 Qld*.

FREEDOM OF INFORMATION - refusal of access - whether certain information in issue concerns the personal affairs of a person other than the applicant - whether disclosure would, on balance, be in the public interest - application of s.44(1) of the *Freedom of Information Act 1992 Qld*.

FREEDOM OF INFORMATION - refusal of access - whether certain information qualifies for exemption from disclosure under s.46(1)(a) of the *Freedom of Information Act 1992 Qld* - whether information communicated in circumstances giving rise to an equitable obligation of confidence.

*Freedom of Information Act 1992* Qld s.7, s.43(1), s.44(1), s.44(2), s.46(1)(a)  
*Motor Accident Insurance Act 1994* Qld s.48(1), s.48(2)  
*Motor Vehicles Insurance Act 1936* Qld s.4F(4)

*Attorney-General (NT) v Kearney* (1985) 158 CLR 500  
*Attorney-General (NT) v Maurice* (1986) 161 CLR 475  
*"B" and Brisbane North Regional Health Authority, Re* (1994) 1 QAR 279  
*Baker v Campbell* (1983) 153 CLR 52  
*Birrell and Victorian Economic Development Corporation, Re* (1989) 3 VAR 358  
*Butler v Board of Trade* [1970] 3 All ER 593  
*Commissioner, Australian Federal Police v Propend Finance Pty Ltd* (1997) 188 CLR 501  
*Grant v Downs* (1976) 135 CLR 674  
*Hewitt and Queensland Law Society Inc, Re* (Information Commissioner Qld, Decision No. 98005, 24 June 1998, unreported)  
*Holt and Reeves and Education Queensland and Anor, Re* (Information Commissioner Qld, Decision No. 98004, 20 April 1998, unreported)  
*Leicestershire County Council v Michael Faraday and Partners Ltd* [1941] 2 KB 205  
*McIlwraith McEacharn Operations Limited v C.E. Heath Underwriting & Insurance (Australia) Pty Limited (No.2)* [1995] 1 Qd R 363  
*Murphy and Queensland Treasury (No. 2), Re* (Information Commissioner Qld, Decision No. 98009, 24 July 1998, unreported)  
*Price and Director of Public Prosecutions, Re* (1997) 4 QAR 157  
*R v Bell: ex parte Lees* (1980) 146 CLR 141  
*R v Cox and Railton* (1884) 14 QBD 153  
*Smith and Administrative Services Department, Re* (1993) 1 QAR 22  
*Stewart and Department of Transport, Re* (1993) 1 QAR 227  
*Trade Practices Commission v Sterling* (1979) 36 FLR 244  
*Waterford v Commonwealth of Australia* (1987) 163 CLR 54  
*Wentworth v De Montfort & Ors* (1988) 15 NSWLR 348

## DECISION

I vary the decision under review (being the decision made on 22 December 1994 by Mr P Bartlem on behalf of the respondent) by finding that:

- (a) those documents listed, and marked with the letters "NDA", in the Schedules to my accompanying reasons for decision are not documents of the agency (i.e., the respondent) within the meaning of that term as defined in s.7 of the *Freedom of Information Act 1992 Qld*, and hence are not subject to the application of the *Freedom of Information Act 1992 Qld*;
- (b) those documents listed in Schedule A to my accompanying reasons for decision which are described in the Decision column with the words "outside scope" have been misfiled, and do not fall within the scope of the applicant's FOI access application dated 17 October 1994;
- (c) the balance of the documents listed in the Schedules to my accompanying reasons for decision are documents of the respondent agency for the purposes of the *Freedom of Information Act 1992 Qld*, and fall within the scope of the applicant's FOI access application dated 17 October 1994;
- (d) the last two paragraphs of p.107, and paragraphs 13-14 of pp.167-168, on the Nominal Defendant's file comprise exempt matter under s.44(1) of the *Freedom of Information Act 1992 Qld*;
- (e) paragraphs 9-11 of pp.167-168 on the Nominal Defendant's file comprise exempt matter under s.46(1)(a) of the *Freedom of Information Act 1992 Qld*; and
- (f) the balance of the matter remaining in issue is exempt matter under s.43(1) of the *Freedom of Information Act 1992 Qld*.

Date of decision: 30 June 1999

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 F N ALBIETZ  
INFORMATION COMMISSIONER

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# OFFICE OF THE INFORMATION COMMISSIONER (QLD)

**Decision No. 99003**  
**Application S 2/95**

**Participants:**

RONALD JOHN PRICE  
**Applicant**

NOMINAL DEFENDANT  
**Respondent**

## **REASONS FOR DECISION**

### **Background**

1. The applicant seeks review of the respondent's decision, under the *Freedom of Information Act 1992* Qld (the FOI Act), refusing him access to a large number of documents relating to his applications for an extension of time to notify the Nominal Defendant of a claim for damages for personal injury under the now superseded *Motor Vehicles Insurance Act 1936* Qld (the MVIA). This case raises issues as to whether documents on the files of a firm of solicitors, and a firm of loss assessors, retained to act on behalf of the Nominal Defendant, are "documents of the agency" for the purposes of the FOI Act. This case also requires examination of the merits of exemption claims made under s.43(1), s.44(1) and s.46(1) of the FOI Act.
2. On 24 January 1993, the applicant was involved in an altercation with two youths who were riding trail bikes near his property. The applicant alleges that he was injured when one of the trail bikes was driven over his foot. At the relevant time, s.4F(4) of the MVIA provided that any claim against the Nominal Defendant must be made within three months of the date on which the injury occurred, unless the Nominal Defendant (or the prescribed court) exercised its discretion pursuant to s.4F(4)(b) to extend time for making such a claim. The applicant's solicitors wrote to the Nominal Defendant on 12 July 1993, nearly six months after the incident, asking the Nominal Defendant to extend the time for giving notice of the applicant's claim. After some investigation, the Nominal Defendant advised the applicant's solicitors that it was not prepared to exercise its discretion to extend time, in favour of the applicant.
3. On 11 October 1993, an application was filed in the Magistrates Court seeking an order to extend the time for lodgment by the applicant of a claim against the Nominal Defendant under the MVIA. The Nominal Defendant was a party to those proceedings. On 20 May 1994, the Magistrates Court dismissed the application. The Nominal Defendant then pursued

the applicant for its costs of the proceedings, resulting in a judgment for costs against the applicant on 16 January 1995.

4. By letter dated 17 October 1994, the applicant wrote to the Nominal Defendant, referring to a file "BLB:RMF (No. 27066(f)) - Ronald John Price" and stating:

*I demand under the Freedom of Information the right to view and copy ALL documents relating to the above file. ...*

*... Also to include tapes of conversations + video tapes.*

5. By letter dated 5 December 1994, Ms F Smith informed the applicant of her decision to refuse him access to all matter falling within the terms of his FOI access application, on the basis that it was exempt matter under s.43(1) of the FOI Act. By letter dated 12 December 1994, the applicant applied for internal review of that decision. The internal review was undertaken by Mr P Bartlem who, on 22 December 1994, affirmed Ms Smith's initial decision. By letter dated 3 January 1995, the applicant applied to me for review, under Part 5 of the FOI Act, of Mr Bartlem's decision.

### **External review process**

6. The documents in issue from the Nominal Defendant's file were obtained and examined. They comprise correspondence between the Nominal Defendant and its solicitors; records of telephone communications between the Nominal Defendant and its solicitors, and with the solicitors for one of the trail bike riders; file notes of internal communications between officers of the Nominal Defendant; correspondence between the Nominal Defendant and its loss assessors; copies of witness statements, records of interview, diagrams and photographs.
7. A draft schedule of the documents in issue on the Nominal Defendant's file was forwarded to the applicant on 22 February 1995. By letter dated 1 March 1995, I informed the Nominal Defendant of my preliminary views in respect of its claims for exemption under s.43(1) of the FOI Act, and inquired about a videotape requested by the applicant in his access application, but not included among the documents provided to me. The Nominal Defendant provided a submission in response dated 23 March 1995.
8. I wrote to the applicant on 25 May 1995, conveying my preliminary views in respect of the documents in issue on the Nominal Defendant's file. As well as contesting the exemption claims made under s.43(1) of the FOI Act, the applicant's lengthy submissions in reply, forwarded under cover of a letter dated 28 August 1995, also claimed that the files of the Nominal Defendant's solicitors, and its loss assessors, fell within the scope of his FOI access application.
9. Protracted correspondence ensued between this Office and the Nominal Defendant, in which the Nominal Defendant resisted my attempts to have it provide, for my examination, the files of its solicitors and loss assessors, in order to assess whether they contained documents which were documents of the agency (i.e., of the Nominal Defendant) for the purposes of the FOI Act. Ultimately, however, the Nominal Defendant agreed to provide those files to me, and also indicated that it would accept my decision on the status of the documents in those files as "documents of the agency" or otherwise.

10. The applicant pressed my staff for a schedule of documents on the solicitors' and loss assessors' files. Although the FOI Act does not oblige me or my staff to provide parties with schedules of documents, a member of my staff prepared a schedule of documents for each of the solicitors' and loss assessors' files, and provided those schedules to the applicant. The applicant also requested, on many occasions, that I provide him with a "statement of reasons" as to how I arrive at my preliminary views and the authority that exists for me to form and communicate a preliminary view. (I refer to my decision in *Re Price and Director of Public Prosecutions* (1997) 4 QAR 157, at paragraphs 16-21, where I dealt with that question.)
11. By letter to the Nominal Defendant dated 28 September 1998, I conveyed my preliminary views as to the documents on the solicitors' and loss assessors' files that appeared to be "documents of the agency" and subject to the FOI Act, and which did not appear to qualify for exemption under s.43(1) of the FOI Act. On the basis of the views expressed in that letter, and a subsequent meeting between an officer of the Nominal Defendant and a member of my staff, the Nominal Defendant agreed to the disclosure of a large number of documents. I authorised disclosure to the applicant of those documents, which are no longer in issue in this review. During this review, the Nominal Defendant also agreed to disclose some documents to the applicant upon being informed that copies of the same documents had been disclosed to him during the course of another of the applicant's current external review applications, involving another agency.
12. There were, however, two documents on the Nominal Defendant's file containing matter that, in my preliminary view, did not qualify for exemption under s.43(1), but appeared to qualify for exemption under s.44(1) and s.46(1) of the FOI Act. I wrote to the applicant and invited his submissions and/or evidence in relation to that issue. After two extensions of time, the applicant lodged a lengthy submission on 26 March 1999 which addressed the application of s.44(1) and s.46(1) of the FOI Act to the matter mentioned above, and contended that there was *prima facie* evidence that legal professional privilege could not apply to the other matter remaining in issue because of the 'improper purpose exception'. He also provided me with numerous documents which he claimed were evidence of such improper purpose. The submission and attachments reach a height of over 20 cm. The applicant has also demanded that, in making my decision, I take into account all material he has lodged in the course of his many applications for review (over 40 to date) under Part 5 of the FOI Act, involving several different respondent agencies.

### **Matter in issue**

13. The number of documents in issue has, through the co-operation of the Nominal Defendant, been significantly reduced. Many of the documents in issue are duplicated across the three files of the Nominal Defendant, its solicitors and its loss assessors. There may, for example, be an original letter on the Nominal Defendant's file from the solicitors and a file copy of that letter on the solicitors' file. However, it appears to be important to the applicant to compare the originals and copies of a document, and he continues to press for access to matter on the solicitors' or loss assessors' files, even though he may have been given access to the corresponding document on the Nominal Defendant's file.
14. Some documents on the solicitors' file (which was supplied to me well into the course of my review) were created after the date of the applicant's FOI access application (17 October 1994) and therefore fall outside the scope of the access application and of this external review: see *Re Birrell and Victorian Economic Development Corporation* (1989) 3 VAR 358

at p.378. (Those documents are not listed in Schedule A attached to this decision.) I also note that two pages appearing on the solicitors' file - S356 and S357 - have clearly been misfiled; they relate to a completely separate matter and have nothing to do with the applicant. I find that those documents fall outside the terms of the applicant's FOI access application (they are clearly not documents which relate to the Nominal Defendant's file "BLB:RMF (No. 27066(f)) - Ronald John Price") and I will not consider them further. Four other documents listed in Schedule A to these reasons for decision are copies of documents created in the course of work done by the Nominal Defendant's solicitors for the purposes of this review. Again, those documents have been misfiled, and in any event they post-date the applicant's FOI access application. I find that they fall outside the scope of the applicant's FOI access application, and I will not consider them further.

15. A schedule is attached for each of the three files, describing each document in issue:

- Solicitors' file - Schedule A;
- Loss assessors' file - Schedule B;
- Nominal Defendant's file - Schedule C.

16. The issues for resolution in this external review are:

- (1) Whether the documents remaining in issue on the solicitors' file (and the file of the solicitors' town agent), and the loss assessors' file are "documents of the agency" as that term is defined in s.7 of the FOI Act.

The submissions to which I have had particular reference in making my decision on this issue are:

- Applicant's submissions received on 2 February 1996;
- Nominal Defendant's submissions dated 21 September 1995 and those under cover of a letter dated 20 March 1996.

- (2) Whether the documents which are "documents of the agency" are exempt matter under s.43(1) of the FOI Act.

I have had particular reference to the following submissions, in making my decision:

- Applicant's submissions dated 28 August 1995, and those received on 26 March 1999;
- Nominal Defendant's submissions dated 23 February 1995.

- (3) Whether the matter deleted from p.107 and pp.167-168 is exempt matter under s.44(1) or s.46(1) of the FOI Act.

In relation to that issue, I have had particular reference to the applicant's comments in a letter to me dated 14 March 1999, and in submissions received on 26 March 1999.



**Documents of the agency**

17. Section 7 of the FOI Act relevantly provides:

*In this Act—*

...

*"document of an agency" or "document of the agency" means a document in the possession or under the control of an agency, or the agency concerned, whether created or received in the agency, and includes—*

- (a) *a document to which the agency is entitled to access; and*
- (b) *a document in the possession or under the control of an officer of the agency in the officer's official capacity.*

18. The ruling test imposed by the definition of "document of an agency" is comprised in the words "in the possession or under the control of an agency". The remaining words of the definition illustrate, rather than extend, the ruling test. In *Re Holt and Reeves and Education Queensland and Anor* (Information Commissioner Qld, Decision No. 98004, 20 April 1998, unreported), I decided that the word "possession" in the above definition is properly to be construed as meaning physical possession rather than legal possession. A document in the physical possession of an agency (or of an officer of an agency in the officer's official capacity), whether created or received in the agency, is a "document of the agency" for the purposes of the FOI Act. A document not in the physical possession of an agency will nevertheless be a "document of the agency" for the purposes of the FOI Act, if it is under the control of the agency (or under the control of an officer of the agency in the officer's official capacity). Included in the concept of documents which are under the control of an agency are documents to which the agency is entitled to access. This concept is apt to cover a document in respect of which an agency has legal ownership, and hence a right to obtain possession, even though the document is not in the physical possession of the agency. The words "under the control" convey the concept of a present legal entitlement to control the use or physical possession of a document, as exists in the case of documents held on behalf of a principal by the principal's agent, or documents held by a bailee on behalf of the owner of the documents. In the context of the obligations placed on an agency, by the FOI Act, in respect of "documents of the agency" (including the manner in which an agency is obliged to deal with a document of the agency in response to an application under the FOI Act), I consider that, for a document to be one which is under the control of an agency (or one in respect of which an agency is entitled to access), the agency must have a present legal entitlement to take physical possession of the document (at least for so long as necessary to discharge all of the agency's obligations under the FOI Act in respect of the document).
19. The Nominal Defendant submitted that a video tape on its file was on loan to it from a neighbour of the applicant, and was intended to be returned to that person. A member of my staff has spoken to the loss assessor who carried out the relevant investigations, to ascertain the circumstances in which the Nominal Defendant came into possession of the video tape. The loss assessor stated that, during the course of his investigations, he spoke to the neighbour but did not take a statement from him. The neighbour invited the loss assessor to view a video tape, of which the loss assessor made a copy. He then returned the original video tape to the neighbour. The copy made by the loss assessor was provided to the

Nominal Defendant as an attachment to the loss assessors' second report. The copied video tape is clearly in the physical possession of the agency. It is a document of the agency (see *Re Holt and Reeves*) and falls within the scope of the applicant's FOI access application.

20. The applicant has argued that certain documents in the possession of the Queensland Police Service (the QPS), and in the possession of the solicitor for one of the trail bike riders, are "documents of the agency". That contention is clearly incorrect. Any such documents are not under the control of the Nominal Defendant, and the Nominal Defendant has no legal entitlement to possession of them. I find that they are not "documents of the agency" (i.e., of the Nominal Defendant) and are not within the scope of the applicant's FOI access application to the Nominal Defendant dated 17 October 1994.

### **Solicitors' file**

21. After the applicant commenced proceedings in the Magistrates Court on 11 October 1993 (seeking an order to extend the time for lodgment of a claim against the Nominal Defendant under the MVIA), the Nominal Defendant retained a firm of solicitors to act on its behalf in respect of the Magistrates Court application, and the applicant's claim generally.
22. The solicitors have long since closed their file and been paid for their professional services. By the time it had paid its solicitors for their professional services, the Nominal Defendant would have obtained from the solicitors any documents it needed for its own record-keeping purposes. The Nominal Defendant would not ordinarily have any requirement for its own administrative purposes to access documents from the solicitors' file. It may therefore seem a surprising, and perhaps unintended or merely coincidental result, that some documents on the solicitors' file may fall within the terms of the definition of "document of an agency" in s.7 of the FOI Act. However, in accordance with the reasoning of the New South Wales Court of Appeal in *Wentworth v De Montfort & Ors* (1988) 15 NSWLR 348, it appears that some documents on the solicitors' file are documents in respect of which the Nominal Defendant has a legal right to possession. That legal right stems from implied terms in the contract of retainer between solicitor and client. Any document on the file held by the Nominal Defendant's solicitors, in respect of which the Nominal Defendant has a legal right to possession, must answer the description of a document under the control of the Nominal Defendant, or a document to which the Nominal Defendant is entitled to access, and, on that basis, is a "document of an agency", i.e., the Nominal Defendant, and subject to the application of the FOI Act.
23. In *Wentworth*, after reviewing relevant English authorities, Hope JA (with whom Samuels JA and Mahoney JA agreed) said (at p.353):

*It thus appears that if a solicitor is acting only as agent for a client who is his principal in the doing of some act, the ordinary rules of agency apply to him, and documents brought into existence or received by him when so acting belong to the client. However in other cases, different principles apply, those principles being referable to the relationship between a professional person and his client.*

24. Hope JA went on to explain and illustrate the application of those "different principles" to some twelve different categories of the documents in issue in that case. Both the applicant and the Nominal Defendant have relied upon *Wentworth* in their respective submissions, although the applicant has considerably overstated (in his own favour) the correct meaning

and effect of that judgment. I will not reproduce the applicant's lengthy submissions on this issue. In general terms, the applicant has argued that:

- (a) *Wentworth* provides a basis for giving him access to most of the documents on the solicitors' file;
- (b) the inclusion of the words "entitled to access" in s.7 extends the scope of the FOI Act beyond documents found to be "owned" by the client in *Wentworth*, certainly to include any document in the solicitors' file of which the client would be entitled to a copy; and
- (c) he should be granted access to any documents not otherwise included, because they were created for an illegal or improper purpose.

25. Argument (c) is clearly mistaken. It confuses the "document of an agency" question with the applicant's arguments against the Nominal Defendant's claims for exemption under s.43(1). The question of illegal or improper purpose has no bearing on the question of whether a document is a "document of an agency" for the purposes of the FOI Act. It is not necessary to consider exemption claims in respect of documents which are not subject to the application of the FOI Act because they do not fall within the definition of "document of an agency".
26. As to arguments (a) and (b), I accept that "ownership", as discussed in *Wentworth*, is not used in s.7. However, as I explained at paragraph 18 above, a document to which an agency is entitled to access must be one in respect of which the agency has a present legal right or entitlement to possession. The only legal right or entitlement of the Nominal Defendant to take possession of documents held on its solicitors' file, of which I am aware, arises from ownership.
27. In respect of argument (b), I do not consider that a client's entitlement to obtain a copy of a particular document on a solicitor's file (as opposed to the document itself), provided the solicitor is paid for provision of the copy (as was held to be the legal position in respect of some categories of documents discussed in *Wentworth*), makes that particular document on the solicitor's file one that is under the control of the client, or one to which the client is "entitled to access" as that term must be understood in the context of the FOI Act. I accept that it was the legislature's intention that an agency should take steps to bring into its physical possession, for the purpose of dealing with a valid FOI access application, any requested document in respect of which the agency has a present legal entitlement to possession. However, I do not accept that it was the legislature's intention that an agency should have to take some additional step in order to put itself into a position where it has a legal entitlement to take possession of a document, in order to respond to an FOI access application for that document. For example, many agencies possess coercive statutory powers to compel the production of documents for certain administrative or regulatory purposes. I do not accept, however, that an agency would be required to take the formal step of exercising its coercive powers to obtain access to a document, merely because that document had been requested in an FOI access application received by the agency. (The position would be different, however, in the case of a document already in the physical possession of an agency, as the result of an exercise of the agency's coercive powers, at the time an FOI access application for the document was received: see *Re Holt and Reeves* at paragraphs 21-24.) Similarly, in my view, an agency is not required to take the step of

paying for, in order to obtain, a copy of a document on its solicitor's file (in respect of which it does not otherwise have a present legal entitlement to possession), merely because the document is requested in an FOI access application (just as it would not be required to purchase a copy of a popular novel, merely because access to the novel was requested in an FOI access application).

28. I will now consider the various categories of documents on the solicitors' file, in light of the principles explained in *Wentworth*.

#### Documents involving Counsel

29. A number of pages identified in Schedule A to my reasons for decision comprise original briefs to counsel and copies thereof; and correspondence, and records of telephone attendances, between the Nominal Defendant's solicitors and counsel.
30. In *Wentworth*, the Court said at (p.360):

*Generally speaking documents involving counsel would be documents created or received for the benefit of the client, even though they may also be for the benefit of the solicitor, and the client should be entitled to the originals or copies of them. Thus counsel's brief must belong to the client. If in the middle of litigation the client changed its solicitor, the new solicitor would be entitled to a copy of the brief and upon its return the original brief to counsel. Notes of conferences held by solicitors with counsel, either in counsel's chambers or by telephone, would likewise generally belong to the client, as would correspondence between counsel and solicitor.*

31. I find that the original briefs to counsel, including attachments and tables of contents, and any copies thereof; copies of letters to and from counsel (apart from original memoranda of fees and receipts for their payment, which are dealt with below at paragraphs 49-52); facsimile transmissions to counsel; and file notes of telephone conversations with counsel, are "documents of the agency", i.e., the Nominal Defendant, for the purposes of the FOI Act.

#### Correspondence between the Nominal Defendant and its solicitors

32. It is clear from Hope JA's judgment in *Wentworth* (at p.350) that, in the judgment under appeal, Hodgson J of the New South Wales Supreme Court had held that originals, and solicitors' file copies, of correspondence between Ms Wentworth and her solicitors, held on the solicitors' file, were the property of the solicitors. In the form of the declaration sought by Ms Wentworth in the appeal proceedings (see p.351 of Hope JA's judgment), Ms Wentworth conceded the correctness of that particular finding (and two others) by Hodgson J, and nothing in the reasoning of the Court of Appeal judgment casts doubt on its correctness.
33. I find that file copies of letters from the Nominal Defendant's solicitors to the Nominal Defendant (the originals of which appear on the Nominal Defendant's file in any event), are not "documents of the agency" for the purposes of the FOI Act. The Nominal Defendant was charged for the creation of the original letters, and file copies were kept on the solicitors' file primarily for the solicitors' benefit.

34. I also find that all original letters and facsimile transmissions to the solicitors, from the Nominal Defendant, belong to the solicitors, and are not "documents of the agency" for the purposes of the FOI Act. The Nominal Defendant was not charged for their creation (only their perusal) and I consider that property in those documents was intended to pass to the solicitors, file copies being retained by the Nominal Defendant (as evidenced in its own file).

Records of telephone attendances on the Nominal Defendant

35. Again, it is clear from Hope JA's judgment in *Wentworth* (at p.350) that, in the judgment under appeal, Hodgson J held that the solicitors' file notes of telephone and personal attendances on their client were the property of the solicitors. Ms Wentworth conceded the correctness of that finding by Hodgson J, and nothing in the reasoning in the Court of Appeal judgment casts doubt on its correctness. I find that the pages on the file of the Nominal Defendant's solicitors, comprising file notes of telephone communications with officers of the Nominal Defendant, are not "documents of the agency" for the purposes of the FOI Act.

Correspondence with, and records of telephone attendances on, third parties

36. Hope JA discussed this category of documents in *Wentworth* at pp.358-359, concluding that: "*it is not possible to give a single answer to the question whether a document falling within this category is the property of Ms Wentworth or of the solicitors unless its nature and relevant facts are known.*" Hope JA gave examples of documents that would be the property of the solicitor and documents that would be the property of the client, and commented that there would be cases in which questions of degree are involved, the resolution of which may turn on whether the predominant purpose of the communication was for the benefit of the solicitor or of the client.
37. During the course of this review, the Nominal Defendant has accepted my preliminary view that documents on its solicitors' file consisting of correspondence with, and records of telephone attendances on, the applicant's solicitors and the court registry are "documents of the agency", and further that they do not attract legal professional privilege and exemption under s.43(1) of the FOI Act. Accordingly, those pages on the solicitors' file have been disclosed to the applicant. I turn now to pages on the solicitors' file comprising correspondence with, and records of telephone attendances on, other third parties.

- Loss Assessors, QPS, and the Department of Transport

38. In *Wentworth* at p.358, Hope JA said:

*Again a solicitor may interview a witness and take a statement from him. I would have thought that such a statement was taken for the benefit of the client as well as by the solicitor for his own purposes and undoubtedly the client would be charged for the taking of the statement. If a new solicitor took over a client's business, the former solicitor having been paid his fees, I would have thought that the former solicitor would be bound to hand over the statement to the new solicitor, although he could keep a copy for which he had not charged.*

39. Communications with the loss assessors, the QPS, and the Department of Transport were undertaken for the purpose of gathering evidence and material relevant to pending or anticipated court proceedings against the Nominal Defendant. They were made

predominantly for the benefit of the Nominal Defendant. I find that the pages on the solicitors' file comprising correspondence with, and records of telephone attendances on, the loss assessors, the QPS, and the Department of Transport are "documents of the agency" for the purposes of the FOI Act.

- Monsours Legal Costs

40. Communications by the solicitors with Monsours Legal Costs were undertaken for the purposes of the preparation of a bill of the Nominal Defendant's costs, to be recovered from the applicant pursuant to the order of the Magistrates Court that the applicant pay the costs of the Nominal Defendant in respect of the application for extension of time to lodge a claim under the MVIA. These communications were undertaken on the instruction of the Nominal Defendant, and predominantly for the benefit of the Nominal Defendant. I find that correspondence, and file notes of telephone conversations, between the Nominal Defendant's solicitors and Monsours Legal Costs are "documents of the agency" for the purposes of the FOI Act.
41. During this external review, the Nominal Defendant accepted my preliminary view that Monsours' account for preparing the assessment of costs, and documents evidencing the payment of that account, comprise "documents of the agency". Those documents have been disclosed to the applicant and are no longer in issue in this review.
  - Correspondence with, and records of telephone attendances on, town agents
42. The Nominal Defendant's solicitors instructed Walker Pender, their Ipswich town agents, to appear at the Magistrates Court and instruct counsel. The applicant has belatedly argued that the pages on the town agent's file are also "documents of the agency".
43. The correspondence, and records of telephone attendances, between the Nominal Defendant's solicitors and Walker Pender relate to court attendances (providing instructions, confirming who will appear to instruct counsel, and reporting back to the solicitors as to the outcome). In *Wentworth* at p.360, Hope JA said that records of attendances at court may be made for the benefit of both client (so that the client knows, and has a record of, what has happened at court and that record would be valuable to a new solicitor if the retainer was determined) and the solicitor (because it is a record for his or her own purposes and establishes a basis for future action on behalf of the client). The court stated that, in such cases, the client is entitled to the original record and the solicitor is entitled to retain a copy.
44. I find that the pages on the file of the Nominal Defendant's solicitors which comprise correspondence, and records of telephone communications, with Walker Pender concerning the conduct of the court proceedings are "documents of the agency" for the purposes of the FOI Act.
45. However, I find that the documents on Walker Pender's file concerning the court proceedings are not documents in respect of which the Nominal Defendant has a legal entitlement to possession, and accordingly are not "documents of the agency" for the purposes of the FOI Act. The Nominal Defendant's legal rights of ownership of documents on its solicitors' file stem from the contract of retainer with those solicitors, which does not extend to agents engaged by the solicitors to perform work on behalf of the solicitors.

Internal records and memoranda of the Nominal Defendant's solicitors as to work done or work to be done

46. The solicitors' file contains diary notes of intra-office communications, a request for a generated bill of costs, and records of facsimile transmissions in which the time at which a facsimile is sent and the number is recorded. In *Wentworth*, Hope JA said (at p.359) that "*these records ... fall within the category of documents which are created by solicitors for their own benefit and not for the benefit of their client, and there is no principle upon which Ms Wentworth could base her claim to ownership*".
47. There are also numerous photocopies of reported and unreported judgments which have been obtained for the purposes of research and/or making submissions in court; copies of counsel's original submissions; and a draft of a letter. I consider that all of these documents should be treated consistently with the example given by Hope JA (in *Wentworth*, at p.359) of "working notes" made by a barrister of arguments proposed to be made in court, which are created for the barrister's own professional purposes and which are not the property of the client.
48. I consider that the same reasoning applies to drafts or file copies of court documents, and unsigned, unsealed court documents. Those documents are akin to "work in progress" and would not belong to the client until complete. I find that none of the pages described under this sub-heading are "documents of the agency" for the purposes of the FOI Act.

Accounts and receipts

49. There are a number of pages which comprise originals and copies of accounts from Walker Pender to the solicitors. I consider that accounts from town agents fall within the eleventh category discussed in *Wentworth* at p.361 (financial records that do not fall within the definition of a cash book, ledger or journal). The court said that, apart from exceptional cases, such as receipts for money paid for the client to third parties, a solicitor's financial records concerning the client's affairs with respect to litigation are the solicitor's property. I note also that the *Solicitors Handbook* (Queensland) states (at paragraph 2.13):
- 1. Except where otherwise agreed a practitioner who instructs another practitioner, ... , to assist in a matter is responsible for the payment of the other practitioner's fee.*
50. In relation to communications between solicitor and counsel concerning counsel's fees, Hope JA said in *Wentworth* (at p.359):

*Counsel look primarily to solicitors for the payment of their fees and solicitors have a professional responsibility for their payment. Clients of course have an interest, and a very real interest, in counsel's fees, but I should think that a record of a conversation by a solicitor with senior counsel concerning the non-payment of his fees, would be a record belonging to the solicitor.*

I find that the copies of counsel's memoranda of fees, and of Walker Pender's accounts, appearing on the solicitors' file are not "documents of the agency" for the purposes of the FOI Act.

51. I consider that the same result must follow in respect of receipts held on the solicitors' file for payment of those accounts. I note that, at p.356 of *Wentworth*, Hope JA said:

*... if on his client's instructions the solicitor pays money to a third party and obtains a receipt, the receipt is obviously of benefit for the client for it is evidence that the third party has been paid and it is also evidence for the solicitor that he has carried out his client's instructions and would be needed by him if any questions as to payments out of his trust account were raised. Again in this case I should have thought that the client was entitled to the original receipt, but that the solicitor was entitled to retain a copy.*

However, I do not consider that this statement applies to receipts evidencing payment of counsel's fees, or the accounts of a solicitor's town agent, because it is the solicitor, and not the client, who is primarily responsible for their payment. I find that pages comprising receipts from Walker Pender and from counsel, the accompanying "with compliments" slips addressed to the solicitors, and the "payment advice" slips, are not "documents of the agency" for the purposes of the FOI Act.

52. The solicitors' account ledger computer printout setting out disbursements incurred by the solicitors (S9 on Schedule A) does not fit directly within the second category in *Wentworth* of "Computer printouts", which focused upon trust account records. However, I consider that this printout was generated for the solicitors' own purposes of keeping track of what disbursements had been, or needed to be, made and is therefore not a "document of an agency" for the purposes of the FOI Act.

#### **Loss Assessors' file**

53. The applicant has asserted that every document on the loss assessors' file is a "document of the agency" on a similar basis to his arguments regarding the documents on the solicitors' file.
54. I have examined the loss assessors' file, which was created after the loss assessors were appointed by the Nominal Defendant (by letter dated 12 November 1993) to carry out investigations concerning the applicant's claim and application for extension of time. It comprises matter such as letters to witnesses, copies of witness statements or records of interview, photographs (and negatives) and sketches of the accident scene, originals of correspondence from the Nominal Defendants' solicitors and the Nominal Defendant, and file copies of letters to the solicitors and the Nominal Defendant.
55. The principles relevant to agency apply to the loss assessors' file. If documents are brought into existence while the agent is in the employment of the principal, they are the principal's documents: see the passage quoted in paragraph 23 above; also *Leicestershire County Council v Michael Faraday and Partners Ltd* [1941] 2 KB 205 at pp.215-216. However, some documents of a personal nature belonging to the agent are not documents to which the principal is entitled. In *McIlwraith McEacharn Operations Limited v C.E. Heath Underwriting & Insurance (Australia) Pty Limited (No.2)* [1995] 1 Qd R 363 at p.376, Lee J said:

*It is clear that an assessors' file is in existence and that it probably contains documents which are in the power of the [principal]. It is a matter for the [principal] to ascertain and discover relevant documents, excluding any*



*documents of a personal nature owned and prepared by the assessors for their own purposes. Documents which are the agent's property do not have to be discovered by the principal ... .*

56. I consider that all of the pages on the loss assessors' file, apart from the file covers (containing handwritten notes and rough calculations of expenses) and further handwritten notes on the file, belong to the Nominal Defendant as principal, and are "documents of the agency" for the purposes of the FOI Act.
57. However, the file covers and pages comprising the investigator's rough handwritten notes, referred to above, are, in the words of MacKinnon LJ in *Leicestershire County Council* at pp.215-216, "*documents which [the agent] has prepared for his own assistance in carrying out his expert work, not documents brought into existence by an agent on behalf of his principal, and therefore, they cannot be said to be property of the principal.*" Those pages are not "documents of the agency" for the purposes of the FOI Act.

### **Conclusion on "documents of the agency"**

58. Most of the pages on the loss assessors' file are "documents of the agency" for the purposes of the FOI Act, and fall within the scope of the relevant FOI access application. All of the documents remaining in issue on the Nominal Defendant's file, including the video tape, are "documents of the agency" and within the scope of the relevant FOI access application. The only pages remaining in issue on the solicitors' file which are "documents of the agency" and fall within the terms of the relevant FOI access application are:
- counsel's brief and copies thereof; correspondence with, and file notes of telephone attendances on, counsel;
  - correspondence with, and file notes of telephone attendances on, the loss assessors, the QPS and the Department of Transport;
  - correspondence with, and file notes of telephone attendances on, Monsours Legal Costs;
  - correspondence with, and file notes of telephone attendances on, Walker Pender (the solicitors' Ipswich town agents).

I will proceed to consider whether these documents are exempt from disclosure under the FOI Act.

### **Application of s.43(1) of the FOI Act**

59. Section 43(1) of the FOI Act provides:

*43(1) Matter is exempt matter if it would be privileged from production in a legal proceeding on the ground of legal professional privilege.*

60. The s.43(1) exemption turns on the application of those principles of Australian common law which determine whether a document, or matter in a document, is subject to legal professional privilege. The grounds on which a document can attract legal professional privilege are fairly well settled in Australian common law. In brief terms, legal professional privilege attaches to confidential communications between lawyer and client for the sole purpose of seeking or giving legal advice or professional legal assistance, and to confidential communications made for the sole purpose of use, or obtaining material for use, in pending or anticipated legal proceedings (see *Re Smith and Administrative Services Department* (1993) 1 QAR 22 at pp.51-52 (paragraph 82), which sets out a summary of the principles

established by the High Court authorities of *Grant v Downs* (1976) 135 CLR 674, *Baker v Campbell* (1983) 153 CLR 52, *Attorney-General (NT) v Kearney* (1985) 158 CLR 500, *Attorney-General (NT) v Maurice* (1986) 161 CLR 475, and *Waterford v Commonwealth of Australia* (1987) 163 CLR 54).

61. There are qualifications and exceptions to that broad statement of principle, which may, in a particular case, affect the question of whether a document attracts the privilege, or remains subject to the privilege; for example, the principles with respect to waiver of privilege (see *Re Hewitt and Queensland Law Society Inc* (Information Commissioner Qld, Decision No. 98005, 24 June 1998, unreported) at paragraphs 19-20 and 29), and the principle that communications otherwise answering the description above do not attract privilege if they are made in furtherance of an illegal or improper purpose (see *Commissioner, Australian Federal Police v Propend Finance Pty Ltd* (1997) 188 CLR 501 and *Re Murphy and Queensland Treasury (No. 2)* (Information Commissioner Qld, Decision No. 98009, 24 July 1998, unreported)).

### **Nominal Defendant's file**

62. The Nominal Defendant initially declined to accept my preliminary view that a number of documents on its file, being documents created prior to the commencement of legal proceedings in the Magistrates Court, were not created solely for the purpose of use in pending or anticipated litigation. However, it has since agreed to disclose those pages to the applicant, subject to the deletion of some matter claimed to be exempt under s.44(1) and s.46(1) of the FOI Act (see paragraphs 92-108 below).
63. The matter remaining in issue on the Nominal Defendant's file comprises correspondence, and records of telephone communications, with its solicitors and loss assessors, records of interview with witnesses, witness statements, reports from the loss assessors, diagrams and photographs of the accident area, and the copy of the video tape. All of the matter remaining in issue (including the copy of the video tape) was brought into existence after 11 October 1993, the date on which the applicant commenced proceedings in the Magistrates Court involving the Nominal Defendant.
64. The extension of time proceedings remained pending until the application for extension of time was dismissed by the Magistrates Court on 20 May 1994. Given the prospect that the Magistrate may have granted an order extending the time for the applicant to lodge a claim under the MVIA, I find that it was reasonable for the Nominal Defendant to anticipate proceedings to defend a claim for damages, and to continue preparations for its defence in such proceedings. (I note that certain privileged advice given by counsel, which appears on the face of one of the documents in issue, affords support for that finding.) I am satisfied, from my examination of the matter remaining in issue on the Nominal Defendant's file that was brought into existence between 11 October 1993 and 20 May 1994, that it consists of:
- (a) correspondence, and records of telephone communications, between the Nominal Defendant and its solicitors for the sole purpose of seeking or giving professional legal advice or assistance, or for the sole purpose of use, or obtaining material for use, in pending (the extension of time proceedings) or anticipated legal proceedings;
  - (b) correspondence, and records of telephone communications, between the Nominal Defendant and the loss assessors, and copies of the loss assessors' reports and evidence collected by the loss assessors (including the copy of the video tape), all of which were

brought into existence for the sole purpose of use, or obtaining material for use, in pending or anticipated legal proceedings.

65. As to (b) above, I note that in *Trade Practices Commission v Sterling* (1979) 36 FLR 244, Lockhart J found that legal professional privilege extends to:

*(f) Communications passing between the party and a third person (who is not the agent of the solicitor to receive the communication from a party) if they are made with reference to litigation either anticipated or commenced, and at the request or suggestion of the party's solicitor; or, even without any such request or suggestion, if they are made for the purpose of being put before the solicitor with the object of obtaining his advice or enabling him to prosecute or defend an action. ...*

66. The fact that the reports, statements and other evidence obtained by the loss assessors were not actually admitted into evidence at the hearing of the application for extension of time, nor were those interviewed ultimately required to give evidence, does not alter the fact that the sole purpose for those documents being brought into existence was for use in the extension of time hearing, or in the defence of the anticipated substantive claim against the Nominal Defendant, should the application for extension of time have been granted. Those pages therefore attract legal professional privilege, and they are exempt matter under s.43(1).

67. After 20 May 1994, there was a possibility that the applicant might appeal against the Magistrate's decision. However, the appeal period expired without the applicant having lodged an appeal. Communications then ensued between the Nominal Defendant and its solicitors concerning recovery of the Nominal Defendant's costs in accordance with the order made by the Magistrate on 20 May 1994 that the applicant pay the Nominal Defendant's costs, as agreed between the parties, or, failing agreement, as ordered by the court. Instructions were given for the preparation of a detailed bill of costs, and when agreement could not be reached with the applicant, the question of costs was listed again for argument before the Magistrates Court, with the court ultimately entering judgment, on 18 January 1995, in favour of the Nominal Defendant against the applicant in the sum of \$1,725.00. I am satisfied from my examination of the documents on the Nominal Defendant's file which were created after 20 May 1994, and which consist of correspondence, or records of telephone conversations, between the Nominal Defendant and its solicitors, that each was brought into existence for the sole purpose of seeking or giving professional legal advice or assistance in relation to pursuing costs against the applicant, or for the sole purpose of use in the pending or anticipated legal proceedings (i.e., a contested hearing before the Magistrates Court concerning the amount of costs which the Nominal Defendant should be entitled to recover from the applicant). Those documents attract legal professional privilege, and I find that they qualify for exemption under s.43(1) of the FOI Act.

68. In summary, I find that all of the documents remaining in issue which are contained on the Nominal Defendant's file (with the exception of the matter in issue on pages 107 and 167-168, dealt with at paragraphs 92-108 below) comprise exempt matter under s.43(1) of the FOI Act.

### **Solicitors' file**

69. As noted earlier, I will consider only those documents on the file of the Nominal Defendant's solicitors that I have found to be "documents of the agency" for the purposes of the FOI Act.

### Counsel's brief and communications with Counsel

70. It is quite clear that the original briefs to counsel (and attachments thereto), and the solicitors copies thereof, attract legal professional privilege. They comprise confidential communications or material made or recorded for the sole purpose of use in litigation or the obtaining of confidential legal advice: see *Propend Finance* per McHugh J at p.553. Some attachments to the brief are copies of original documents on the Nominal Defendant's file, which original documents would not themselves attract legal professional privilege. However, the principles established by the High Court's decision in *Propend Finance* make it clear that the copies of documents made and communicated for the sole purpose of use in litigation or for obtaining legal advice (i.e., through their inclusion in a brief to counsel) attract legal professional privilege. I find that all documents on the solicitors' file, of the kind described in this paragraph, comprise exempt matter under s.43(1) of the FOI Act.
71. Similarly, records of communications between the solicitors and counsel, made for the sole purpose of the pending or anticipated litigation, or for the sole purpose of seeking or giving legal advice, are subject to legal professional privilege. I find that all documents on the solicitors' file comprising correspondence, and records of conversations, between the solicitors and counsel are exempt matter under s.43(1) of the FOI Act.

### Communications between the solicitors and their town agents

72. In *Trade Practices Commission v Sterling* (at pp.245-266), Lockhart J said that legal professional privilege extends to:

*(a) Any communication between a party and his professional legal adviser if it is confidential and made to or by the professional adviser in his professional capacity and with a view to obtaining or giving legal advice or assistance; notwithstanding that the communication is made through agents of the party and the solicitor or the agent of either of them. ....*

...

*(c) Communications between the various legal advisers of the client, for example between the solicitor and his partner or his city agent with a view to the client obtaining legal advice or assistance. ...*

73. I am satisfied from my examination of the correspondence between the solicitors and their town agents, Walker Pender, and file notes of conversations with Walker Pender, that they constitute or record communications made for the sole purpose of the litigation, or for the sole purpose of the Nominal Defendant obtaining professional legal advice or assistance, and that they attract legal professional privilege. I find that those documents comprise exempt matter under s.43(1) of the FOI Act.

Communications with Monsour Legal Costs

74. I am satisfied from my examination of the correspondence, and records of telephone communications, between the Nominal Defendant's solicitors and Monsour Legal Costs (concerning the assessment of costs of the Magistrates Court proceedings) that each communication was made for the sole purpose of obtaining material to enable the solicitors to provide professional legal advice or assistance to the Nominal Defendant in respect of the recovery of costs (see category (d) in *Sterling* at p.246) or for the sole purpose of obtaining material for use in pending or anticipated legal proceedings (i.e., a contested hearing before the Magistrates Court concerning the amount of costs which the Nominal Defendant should be entitled to recover from the applicant). I find that those documents are subject to legal professional privilege and that they are exempt matter under s.43(1) of the FOI Act.

Communications with the loss assessors, QPS and Department of Transport

75. I am satisfied from my examination of these documents that they satisfy the 'sole purpose' test and fall within category (e) identified by Lockhart J in *Sterling*:

(e) *Communications and documents passing between the party's solicitor and a third party if they are made or prepared when litigation is anticipated or commenced, for the purposes of the litigation, with a view to obtaining advice as to it or evidence to be used in it or information which may result in the obtaining of such evidence ..*

76. I find that these documents are subject to legal professional privilege, and are exempt matter under s.43(1) of the FOI Act.

**Loss Assessors' file**

77. The matter remaining in issue on this file consists of correspondence between the loss assessors (acting in the capacity as agents for the Nominal Defendant) and witnesses, that was created for the sole purpose of seeking or providing evidence for use in pending or reasonably anticipated litigation (see paragraph 64 above), plus witness statements and records of interview (signed and unsigned), and diagrams of the scene, that were obtained for the sole purpose of use in pending or reasonably anticipated litigation. They attract legal professional privilege on the basis explained at paragraphs 65-66 above.
78. I find that the documents remaining in issue (i.e., that are "documents of the agency" for the purposes of the FOI Act) on the loss assessors' file are subject to legal professional privilege, and comprise exempt matter under s.43(1) of the FOI Act.

**The 'improper purpose exception'**

79. I considered the 'improper purpose exception' at some length in *Re Murphy (No. 2)*, at paragraphs 31-42, and the principles set out there are relevant to the evaluation of the applicant's contention that none of the documents in issue attract legal professional privilege because they were brought into existence in furtherance of an illegal or improper purpose. At paragraphs 35-37 of *Re Murphy (No. 2)*, I extracted relevant statements of principle from the judgments of the High Court of Australia in *Kearney* and *Propend Finance* concerning the evidentiary onus, on a person contesting the existence of legal professional privilege, to put forward *prima facie* evidence that the relevant communications were made in

furtherance of an illegal or improper purpose. At paragraph 38, I drew the following principles from those cases:

- To displace legal professional privilege, there must be *prima facie* evidence (sufficient to afford reasonable grounds for believing) that the relevant communication was made in preparation for, or furtherance of, some illegal or improper purpose.
- Only communications made in preparation for, or furtherance of, the illegal or improper purpose are denied protection, not those that are merely relevant to it (see *Butler v Board of Trade* [1970] 3 All ER 593 at pp.596-597). In other words, it is not sufficient to find *prima facie* evidence of an illegal or improper purpose. One must find *prima facie* evidence that the particular communication was made in preparation for, or furtherance of, an illegal or improper purpose.
- Knowledge, on the part of the legal adviser, that a particular communication was made in preparation for, or furtherance of, an illegal or improper purpose is not a necessary element (see *R v Cox and Railton* (1884) 14 QBD 153 at p.165; *R v Bell: ex parte Lees* (1980) 146 CLR 141 at p.145); however, such knowledge or intention on the part of the client, or the client's agent, is a necessary element.

80. The applicant's submissions of 28 August 1995 state:

40. *It is submitted that there is a public interest in ascertaining whether the [Nominal Defendant] gave instructions to the solicitors to improperly conduct a case on wrong premises as to fact and wrong premises as to law, including false assertion as to onus of proof in relation to road and the registration of an unregistered bike, in respect of which there is every reason to believe that the [Nominal Defendant] and the persons it appointed to do its work knew the answer to from documents in their own possession which showed that the vehicle was unregistered.*

...

*... the proceedings of the [Nominal Defendant] have as their base the false evidence of the driver of the unregistered vehicle, the false evidence and complicity of Const McDonald, the false assertions as to assistance and cooperation, when the opposite was true - all of which were calculated to fraudulently deprive the applicant of a fair hearing on the facts, and to deprive me of the right to claim for any insurance in respect of the accident... . Further, the collusion role between the driver of the unregistered vehicle, his solicitor and the police. ... compounded by false assertions on the instructions of the [Nominal Defendant] that Left Hand Branch Road Mt Sylvia was not a road, all of equal false assertion contrary to the evidence ... .*

81. The applicant has particularly sought to rely upon a lengthy submission and a large bundle of documents, including affidavits filed by him in the High Court of Australia, in order to show *prima facie* evidence that the documents in issue were brought into existence in preparation for, or furtherance of, an illegal or improper purpose. The submissions delivered to me on 26 March 1999 are repetitious and attempt to weave a net of conspiracy (between many public officials, members of the legal profession, the police and the courts) against the applicant. They are based merely on the applicant's assertion, unsupported by

any credible, independent, corroborative evidence. Nothing in the documents in issue in this case, or other cases presently before me involving the applicant, tends to support the existence of a *prima facie* case that the documents in issue in this case were brought into existence in furtherance of an illegal or improper purpose.

82. In essence, the applicant argues that the Nominal Defendant, its solicitors and its counsel worked together to deliberately mount a legally flawed argument at the hearing of the extension of time application before the Magistrate (whom the applicant also considers should not have been allowed to hear the matter, but somehow contrived to organise to sit at Ipswich on that particular hearing). The applicant asserts that the submission by counsel for the Nominal Defendant, to the effect that the trail bike involved in the incident on 24 January 1993 was not required to be registered, was "unlawful", and that an affidavit filed by a solicitor employed by the firm retained by the Nominal Defendant (which affidavit the applicant asserts was fraudulent, and improperly procured at the behest of a more senior solicitor in the firm), should not have been accepted by the Magistrate. In addition, the applicant has concerns regarding the timing of the forwarding by the QPS to the Department of Transport of a breach report in relation to the trail bike rider. The police officer who made out the breach report has been involved in a number of matters, including court proceedings, relating to the applicant, and the applicant considers that that officer's actions regarding the report were evidence of wishing to assist the trail bike rider and to harm the applicant's case against the Nominal Defendant.
83. In his submissions, the applicant has argued that it was wrong of the Nominal Defendant and the court to rely upon the MVIA when it was superseded by the *Motor Accident Insurance Act 1994* Qld (MAIA) containing provisions which require disclosure to the claimant of certain information, such as investigative reports, medical reports and rehabilitation reports, even though protected by legal professional privilege (see s.48(2)). (I note however, that s.48(1) continues to protect from disclosure all other information which would attract legal professional privilege.) The applicant is working under a misapprehension as to the correct legal position in relying upon these provisions of the MAIA, which came into effect on 1 September 1994, well after the Magistrates Court had dismissed his application for an extension of time to lodge a claim with the Nominal Defendant.
84. What must be shown to invoke this exception to legal professional privilege is *prima facie* evidence of a course of action by the Nominal Defendant or its agents adopted with knowledge of wrongdoing. I do not consider that any of the material provided to this office by the applicant, or any other material before me (e.g., the documents in issue), affords *prima facie* evidence of any such wrongdoing by the Nominal Defendant in its dealings with the applicant, nor *prima facie* evidence that any of the matter in issue was brought into existence in preparation for, or furtherance of, an illegal or improper purpose.
85. Nothing in the material before me affords evidence of any impropriety by the Nominal Defendant, its solicitors or counsel in the conduct of the proceedings involving the applicant, nor in the Nominal Defendant engaging the services of the loss assessors to collect evidence that its solicitors and counsel considered necessary for the defence of the applicant's claim. Although the applicant makes much of the provision to the Nominal Defendant by the QPS of the breach report concerning the trail bike rider (as evidencing an improper collusion between the Nominal Defendant and the QPS), there is no material before me which indicates that the Nominal Defendant procured the breach report for any

reason other than to assist in its assessment of the applicant's claim prior to determining whether to accept the applicant's request for an extension of time to lodge a claim under the MVIA.

86. It is apparent that the applicant feels that he was unfairly dealt with in the extension of time proceedings. He argues that many "unlawful" submissions were made and illegal evidence admitted. However, none of the material before me suggests anything more than the usual adversarial conduct and legal argument during legal proceedings. The applicant was represented during the hearing by solicitors, who were capable of challenging any apparently improper submissions or of objecting to the admissibility of evidence. The applicant chose not to appeal against the Magistrate's decision, yet he could have done so if he or his solicitors considered that a legal error had occurred. Neither he nor his solicitors asked the Magistrate hearing the matter to disqualify herself, although the applicant (for reasons of which I am unaware) apparently suspected that the Magistrate might be biased against him.
87. The applicant also claims that the statement by the trail bike rider was not created by the loss assessors, nor for the purposes of the court proceedings. However, my examination of the statement and the surrounding circumstances indicates that the statement was prepared by the loss assessors for that purpose. The applicant has also indicated that there were improper billing procedures engaged in by the solicitors. However, the matter of costs was the subject of court decision, and while judgment was given against the applicant, the court reduced the Nominal Defendant's bill of costs quite considerably (particularly regarding charges for work done by the loss assessors).
88. Despite the applicant's lengthy assertions of impropriety by the Nominal Defendant, and its solicitors and counsel, he has not placed before me any credible *prima facie* evidence to suggest that the documents in issue were created in preparation for, or furtherance of, an improper or illegal purpose. I find that the documents remaining in issue are not ineligible for legal professional privilege on the basis asserted by the applicant.

### **Waiver**

89. The applicant argued that any legal professional privilege that might have existed in the matter remaining in issue was waived by the Nominal Defendant when it produced the loss assessors' account to the court during the costs proceedings. The applicant submitted:

*The disclosure of the work done all relating to underlying information was deliberately waived by being the production in court of an account by the [Nominal Defendant] presented for the payment by the applicant. It is submitted that this operates as a complete waiver of the underlying information referred to in all document form in favour of the applicant. The waived document demonstrates that [the loss assessors] were the agents of the [Nominal Defendant], and not independent persons, and that this waiver extends to the material derived from their arrangement of appointment of Graham Buckley and for his agency on behalf of the [Nominal Defendant], and for the obtaining from Gatton Police of all the file details.*

90. During this external review, the applicant provided this Office with the loss assessors' account, which sets out in some detail the contact made by the loss assessor with witnesses for the purpose of taking statements. On that basis, the Nominal Defendant agreed to



disclose the names of those witnesses on the various schedules of documents in issue (those names had previously been withheld from the applicant) and a small amount of matter that was originally in issue. There are, however, no references in the loss assessors' account to the substance of any of the evidence provided by the witnesses, or to the details of communications with the Nominal Defendant and its solicitors. I am satisfied that disclosure of the loss assessors' account has not involved waiver of legal professional privilege in respect of any part of the matter remaining in issue.

### **Conclusion on s.43(1)**

91. The matter remaining in issue on the Nominal Defendant's file (apart from the matter in issue on pp.107 and 167-168 which is dealt with below at paragraphs 92-108) is exempt matter under s.43(1) of the FOI Act. The documents in issue on the solicitors' file and the loss assessors' files which I have found to be "documents of the agency" for the purposes of the FOI Act are also exempt matter under s.43(1) of the FOI Act.

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

92. The Nominal Defendant initially claimed that pages 107 and 167-168 on the Nominal Defendant's file were fully exempt under s.43(1) of the FOI Act. However, during the course of my review, the Nominal Defendant has agreed to disclose those pages to the applicant, except for:

- the last two paragraphs on p.107, and paragraphs 13 and 14 on pp.167-168, on the ground that those segments comprise exempt matter under s.44(1); and
- paragraphs 9-11 of pp.167-168, which it claims are exempt matter under s.46(1) of the FOI Act.

93. Section 44(1) and (2) provide:

*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.*

*(2) Matter is not exempt under subsection (1) merely because it relates to information concerning the personal affairs of the person by whom, or on whose behalf, an application for access to a document containing the matter is being made.*

94. In applying s.44(1) of the FOI Act, one must first consider whether disclosure of the matter in issue would disclose information that is properly to be characterised as information concerning the personal affairs of a person. If that requirement is satisfied, a *prima facie* public interest favouring non-disclosure is established, and the matter in issue will be exempt, unless there exist public interest considerations favouring disclosure which outweigh all identifiable public interest considerations favouring non-disclosure, so as to warrant a finding that disclosure of the matter in issue would, on balance, be in the public interest.
95. 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) as it appears in the FOI Act (see pp.256-257, paragraphs 79-114, of

*Re Stewart*). In particular, I said that information concerns the "personal affairs of a person" if it concerns 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 and emotional ties with other people; and
- domestic responsibilities or financial obligations.

Whether or not matter contained in a document comprises information concerning an individual's personal affairs is essentially a question of fact, to be determined according to the proper characterisation of the information in question.

96. The last two paragraphs on p.107, and paragraphs 13 and 14 on pp.167-168, comprise information concerning private aspects of the life of a person other than the applicant, including that person's living arrangements and possible financial obligations. It is information of a kind which falls within the core meaning of "personal affairs" described above, and is *prima facie* exempt matter under s.44(1) of the FOI Act, subject to the application of the public interest balancing test incorporated in s.44(1).

97. The applicant argued, in a letter dated 14 March 1999, that the above matter was information supplied in relation to him and therefore also concerns the applicant's personal affairs. I am satisfied that the matter in issue consists predominantly of information that relates solely to matters of a private nature concerning the other person, although there are some segments of information which concern the personal affairs of the applicant, but which are inextricably interwoven with information concerning the personal affairs of the other person. The correct legal position with respect to the latter segments was explained in *Re "B" and Brisbane North Regional Health Authority* (1994) 1 QAR 279 at pp.343-345 (paragraphs 172-178), with the following summary being directly applicable to the segments of information now under consideration:

*Where, however, the segment of matter in issue is comprised of information concerning the personal affairs of the applicant which is inextricably interwoven with information concerning the personal affairs of another person, then:*

- (a) *severance in accordance with s.32 is not practicable;*
- (b) *the s.44(2) exception does not apply; and*
- (c) *the matter in issue is prima facie exempt from disclosure to the applicant according to the terms of s.44(1), subject to the application of the countervailing public interest test contained within s.44(1).*

98. I cannot discern any substantial public interest considerations which favour disclosure to the applicant of the information concerning the personal affairs of the other person. The applicant has repeatedly stated that he has applications before the High Court and that he needs all of the matter in issue to place before the court in his own defence, and that this matter would particularly assist in that defence. He has also referred to the public interest in uncovering improper conduct of the Nominal Defendant, its legal advisers and the courts,

which he believes access to all of the matter in issue would further, and that access to that matter would allow him to ascertain whether he has been unlawfully and unfairly dealt with by the Nominal Defendant.

99. From my examination of the information now under consideration, I am satisfied that it could not assist the applicant in furthering any of those purposes. The matter for which exemption is claimed under s.44(1) is completely irrelevant to any of those claims by the applicant. I find that the last two paragraphs on p.107, and paragraphs 13 and 14 on pp.167-168, of the Nominal Defendant's file comprise exempt matter under s.44(1) of the FOI Act.

**Application of s.46(1)(a) of the FOI Act**

100. Pages 167-168 comprise a file note of a telephone attendance on a witness, for the purposes of the Nominal Defendant assessing the applicant's claim. The Nominal Defendant has claimed that paragraphs 9-11 of pp.167-168 are exempt matter under s.46(1)(b) of the FOI Act. However, I am satisfied that those paragraphs qualify for exemption under s.46(1)(a), making it unnecessary to consider s.46(1)(b) of the FOI Act.

101. Section 46(1)(a) provides:

**46.(1)** *Matter is exempt if—*

(a) *its disclosure would found an action for breach of confidence; ... .*

102. I discussed the requirements to establish exemption under s.46(1)(a) in *Re "B"*. The test for exemption is to be evaluated by reference to a hypothetical legal action in which there is a clearly identifiable plaintiff, possessed of appropriate standing to bring a suit to enforce an obligation of confidence said to be owed to that plaintiff, in respect of information in the possession or control of the agency faced with an application, under s.25 of the FOI Act, for access to the information in issue. I am satisfied that there is an identifiable plaintiff (the relevant witness) who would have standing to bring an action for breach of confidence.

103. In *Re "B"*, I indicated that there are five cumulative criteria that must be satisfied in order to establish a case for protection in equity of allegedly confidential information:

- (a) it must be possible to specifically identify the information in issue, in order to establish that it is secret, rather than generally available information (see *Re "B"* at pp.303-304, paragraphs 60-63);
- (b) the information in issue must possess "the necessary quality of confidence"; i.e., the information must not be trivial or useless information, and it must possess a degree of secrecy sufficient for it to be the subject of an obligation of conscience, arising from the circumstances in or through which the information was communicated or obtained (see *Re "B"* at pp.304-310, paragraphs 64-75);
- (c) the information in issue must have been communicated in such circumstances as to fix the recipient with an equitable obligation of conscience not to use the confidential information in a way that is not authorised by the confider of it (see *Re "B"* at pp.311-322, paragraphs 76-102);

- (d) it must be established that disclosure to the applicant for access under the FOI Act would constitute a misuse, or unauthorised use, of the confidential information in issue (see *Re "B"* at pp.322-324, paragraphs 103-106); and
  - (e) it must be established that detriment is likely to be occasioned to the original confider of the confidential information in issue if that information were to be disclosed (see *Re "B"* at pp.325-330, paragraphs 107-118).
104. In terms of the first requirement for exemption under s.46(1)(a), I am satisfied that the matter in issue can be specifically identified.
105. I consider that the information has the necessary quality of confidence so as to satisfy the second criterion set out above. It is information which, in this context, is not known to the applicant and is not trivial or useless information. The applicant, in his letter dated 13 March 1999, has argued that he knows of allegations that the witness has made against him and other matters concerning the family. However, I am satisfied that the applicant is not aware of this particular information.
106. In relation to the third criterion of *Re "B"*, I am satisfied from a consideration of all of the surrounding circumstances revealed by the material before me, including the nature and sensitivity of the information in question, that the information in paragraphs 9-11 of pp.167-168 was communicated in such circumstances as to give rise to an equitable obligation of confidence, binding the Nominal Defendant not to disclose the information in a way that was not authorised by the provider of the information.
107. I am also satisfied that disclosure to the applicant would be an unauthorised disclosure of the information in the abovementioned paragraphs, within the meaning of the fourth criterion of *Re "B"*. As for the fifth criterion, I am satisfied that one or more of the types of detriment described in *Re "B"* at pp.326-327 (paragraph 111) would be occasioned to the provider of the information, if the information were to be disclosed.
108. I find that paragraphs 9-11 on pp.167-168 of the Nominal Defendant's file comprise exempt matter under s.46(1)(a) of the FOI Act.

### **Conclusion**

109. I vary the decision under review (being the decision made on behalf of the Nominal Defendant on 22 December 1994 by Mr Bartlem) by finding that:
- (a) those documents listed, and marked with the letters "NDA", in the Schedules to my accompanying reasons for decision are not documents of the agency (i.e., the respondent) within the meaning of that term as defined in s.7 of the FOI Act, and hence are not subject to the application of the FOI Act;
  - (b) those documents listed in Schedule A to my accompanying reasons for decision which are described in the Decision column with the words "outside scope" have been misfiled, and do not fall within the scope of the applicant's FOI access application dated 17 October 1994;

- (c) the balance of the documents listed in the Schedules to my accompanying reasons for decision are documents of the respondent agency for the purposes of the FOI Act, and fall within the scope of the applicant's FOI access application dated 17 October 1994;
- (d) the last two paragraphs of p.107, and paragraphs 13-14 of pp.167-168, on the Nominal Defendant's file comprise exempt matter under s.44(1) of the FOI Act;
- (e) paragraphs 9-11 of pp.167-168 on the Nominal Defendant's file comprise exempt matter under s.46(1)(a) of the FOI Act; and
- (f) the balance of the matter remaining in issue is exempt matter under s.43(1) of the FOI Act.

F N ALBIETZ  
**INFORMATION COMMISSIONER**

**RE PRICE AND NOMINAL DEFENDANT  
APPLICATION FOR REVIEW S 2/95  
SCHEDULE A  
LIST OF DOCUMENTS IN ISSUE ON  
NOMINAL DEFENDANT'S SOLICITORS' FILE**

NDA = Not a "document of an agency", for the purposes of the FOI Act.

| Page     | Description   | Decision      |
|----------|---|---------------|
| S5-8     | Unsealed, unsigned copy of bill of costs in taxable form  | NDA           |
| S9       | Solicitor's account records   | NDA           |
| S10      | Original account of Walker Pender to O'Shea Corser & Wadley - agent's fees  | NDA           |
| S11      | Account rendered - Walker Pender to O'Shea Corser & Wadley  | NDA           |
| S12      | Original account Walker Pender to O'Shea Corser & Wadley dated 28 March 1994  | NDA           |
| S13      | Original memorandum of fees dated 21 March 1994   | NDA           |
| S14      | Original memorandum of fees dated 23 February 1994  | NDA           |
| S17-18   | Internal Nominal Defendant memorandum from Claims Officer to Manager  | s.43(1)       |
| S19-28   | Copy signed record of interview with Jason Booth, dated 17 February 1994  | s.43(1)       |
| S29      | Unsigned statement of Daniel David Morgan   | s.43(1)       |
| S30-31   | Letter Plummer & Pullinger to Nominal Defendant dated 10 March 1994 (third report)  | s.43(1)       |
| S32-38   | File copy Index to Brief  | s.43(1)       |
| S39      | File copy table of contents for brief   | s.43(1)       |
| S40      | File copy instructions to Counsel in brief dated 11 February 1994   | s.43(1)       |
| S41      | File copy cover page of brief   | s.43(1)       |
| S42-44   | Copy judgment of the Chief Justice in <i>Re Kenneth William Mackay and the Motor Vehicles Insurance Acts 1936 to 1973</i>     | NDA           |
| S45-47   | Copy pages S42-44   | NDA           |
| S48-50   | Copy pages S42-44   | NDA           |
| S51-53   | Copy affidavit of George Wolyncevic dated 17 February 1994 with annexure "A" (Part of brief)                                  | s.43(1)       |
| S54-56   | Copy of above affidavit with pencil markings on folio 56 (Part of brief)  | s.43(1)       |
| S57      | Photocopy of sealed application for extension of time dated 11 October 1993 (part of brief)                                   | s.43(1)       |
| S58-69   | Copy submission of Nominal Defendant (created during this external review)  | outside scope |
| S71      | Unsigned, unsealed copy of judgment dated 16 January 1995   | NDA           |
| S74-76   | Copy of judgment of the Chief Justice in <i>Re Mackay</i> (see S42-S50 above)   | NDA           |
| S77-78   | Copy decision of <i>Lynch v Middleton</i> [1979] Qd.R 31  | NDA           |
| S79-90   | Copy decision <i>Symonds v The Nominal Defendant (Queensland)</i> [ 1992] 1 Qd.R 444  | NDA           |
| S91-94   | Copy of written submissions on behalf of the Nominal Defendant prepared by Mr K Wilson, Barrister-at-Law                      | NDA           |
| S95      | Letter Mr Keith Wilson, Barrister-at-Law, to O'Shea Corser & Wadley dated 21 March 1994                                       | s.43(1)       |
| S96-116  | Affidavit of Ronald Price with handwritten notes (affirmed and declared 17 March 1994) with Annexures "A" to "H" (enc to S95) | s.43(1)       |
| S121     | Copy amended index to brief   | s.43(1)       |
| 122      | Letter O'Shea Corser & Wadley to Mr K Wilson, Barrister at Law dated 14 March 1994  | s.43(1)       |
| S123-132 | Original signed record of interview of Jason Booth dated 17 February 1994   | s.43(1)       |
| S133     | Unsigned statement of Daniel Morgan   | s.43(1)       |
| S134-135 | Original letter Plummer & Pullinger to Nominal Defendant dated 10 March 1994 (third report)                                   | s.43(1)       |
| S136-137 | Copy facsimile cover page from Qld Transport to K Torlach and District Map of gazetted  | s.43(1)       |

| Page            | Description   | Decision |
|-----------------|---|----------|
|                 | roads near Mt Sylvia with highlighting  |          |
| S138            | Copy amended index to brief   | s.43(1)  |
| 139             | Original letter O'Shea Corser & Wadley to K M Wilson, Barrister-at-Law dated 18 February 1994   | s.43(1)  |
| S143-144        | Unsigned statement of Daniel David Morgan   | s.43(1)  |
| S145            | Original letter G J Buckley & Associates to the Nominal Defendant dated 25 October 1993   | s.43(1)  |
| S146            | Copy file note of telephone conversation between Cervetto & Company and Nominal Defendant   | s.43(1)  |
| S147            | Copy of report of Dr Stephen Crawford dated 20 September 1993   | s.43(1)  |
| S148            | Copy facsimile transmission sheet Cervetto & Co to Nominal Defendant dated 5 October 1993   | s.43(1)  |
| S149-151        | Original letter Cervetto & Co. to the Nominal Defendant dated 16 September 1993   | s.43(1)  |
| S152            | Copy letter from Nominal Defendant to G J Buckley & Associates dated 14 September 1993  | s.43(1)  |
| S153            | Copy letter Nominal Defendant to Cervetto & Co. dated 14 September 1993   | s.43(1)  |
| S154-155        | Original internal memorandum Nominal Defendant from Claims Officer to Manager dated 2 September 1993 with handwritten notes   | s.43(1)  |
| S156-160        | Copy letter Department of Veterans' Affairs to Mr Price enclosing Repatriation Board reasons for determination dated 21 January 1983 with highlighting on some folios | s.43(1)  |
| S161            | Original letter Cervetto & Co to Nominal Defendant dated 30 August 1993   | s.43(1)  |
| S162            | Original letter Queensland Transport to Nominal Defendant dated 2 September 1993  | s.43(1)  |
| S163            | Original letter G J Buckley & Associates to Nominal Defendant dated 13 August 1993  | s.43(1)  |
| S164            | Original letter Cervetto & Co to Nominal Defendant dated 3 August 1993  | s.43(1)  |
| S165            | Copy letter Nominal Defendant to Mr Daniel Morgan dated 2 August 1993   | s.43(1)  |
| S166            | Copy letter Nominal Defendant to Gatton Police dated 30 July 1993   | s.43(1)  |
| S167            | Copy letter Nominal Defendant to Cervetto & Co. dated 29 July 1993  | s.43(1)  |
| S168-171        | Copy statement of Ronald Price dated 29 January 1993, being Annexure "A" to Statutory Declaration of G Wolyncevic declared 28 July 1993 (see folios 172-174 below)    | s.43(1)  |
| S172-174        | Original statutory declaration of George Wolyncevic dated 28 July 1993  | s.43(1)  |
| S175            | Original letter Cervetto & Co. to the Nominal Defendant dated 28 July 1993  | s.43(1)  |
| S176            | Copy of copy letter Cervetto & Co to Gatton Police Station dated 28 July 1993   | s.43(1)  |
| S177            | Original file note telephone conversation between Nominal Defendant and Cervetto & Co. dated 27 July 1993   | s.43(1)  |
| S178            | Copy letter Cervetto & Co. to Buckley & Co. dated 21 July 1993 being Annexure "D" to statutory declaration of R J Price declared 22 July 1993                         | s.43(1)  |
| S179            | Copy of copy letter Cervetto & Co. to G J Buckley & Co dated 19 July 1993 being Annexure "C" to statutory declaration of R J Price declared 22 July 1993              | s.43(1)  |
| S180            | Copy letter G J Buckley & Associates to Cervetto & Co dated 16 July 1993 being Annexure "B" to statutory declaration of R J Price declared 22 July 1993               | s.43(1)  |
| S181            | Copy of copy letter Cervetto & Co. to Mr Daniel Morgan dated 13 July 1993, being Annexure "A" to statutory declaration of R J Price declared 22 July 1993             | s.43(1)  |
| S182-184        | Original signed statutory declaration of Ronald Price declared 22 July 1993   | s.43(1)  |
| S185            | Original authorisation to Workers' Compensation Board and Department of Social Security to supply documents to Nominal Defendant, signed by Mr Price                  | s.43(1)  |
| S186            | Nominal Defendant claim form dated 22 July 1993   | s.43(1)  |
| S187            | Original letter Cervetto & Co. to the Nominal Defendant dated 23 July 1993  | s.43(1)  |
| S188-189 (part) | File note of attendance on another person by Nominal Defendant dated 22 July 1993   | s.43(1)  |
| S190            | Copy letter Queensland Transport to Cervetto & Co. dated 22 July 1993   | s.43(1)  |
| S191            | Queensland Transport Traffic Accident Report application dated 27 July 1993   | s.43(1)  |
| S192            | Copy letter Nominal Defendant to Cervetto & Co. dated 20 July 1993 with highlighting  | s.43(1)  |
| S193            | Part of computer printout Queensland Treasury NDC Claims detail dated 15 July 1993  | s.43(1)  |
| S194            | Part of computer printout Queensland Treasury NDC Claims Detail dated 15 July 1993  | s.43(1)  |
| S195            | Copy of copy letter Cervetto & Co. to Department of Transport dated 13 July 1993  | s.43(1)  |
| S196-197        | Original letter Cervetto & Co. to Nominal Defendant dated 12 July 1993 with highlighting  | s.43(1)  |
| S198            | Original letter Nominal Defendant to Gatton Police Station dated 30 July 1993   | s.43(1)  |
| S199-200        | Copy signed police statement of D D Morgan dated 25 January 1993  | s.43(1)  |
| S201            | Copy Report of Breach of Regulations dated 14 August 1993   | s.43(1)  |
| S202            | Copy letter Cervetto & Co. to Gatton Police Station dated 28 July 1993  | s.43(1)  |

| Page     | Description   | Decision |
|----------|---|----------|
| S203     | Letter Queensland Police Service to Nominal Defendant dated 24 September 1993   | s.43(1)  |
| S204     | Photographs numbered 1-8  | s.43(1)  |
| S205     | Original marked diagram of Scene  | s.43(1)  |
| S206-207 | Unsigned statement of Wayne Maxwell Vonhoff   | s.43(1)  |
| S208-209 | Original signed statement of Pamela Joan Eastaugh dated 15 December 1993  | s.43(1)  |
| S210-219 | Original signed transcript of interview with Graeme Wolseley Eastaugh dated 15 December 1993  | s.43(1)  |
| S220-230 | Unsigned record of interview with Daniel Morgan   | s.43(1)  |
| S231-240 | Unsigned record of interview with Jason Matthew Booth   | s.43(1)  |
| S241-242 | Unsigned record of interview with David Glen Peterson   | s.43(1)  |
| S243-244 | Copy signed statement by Jason Matthew Booth dated 25 January 1993  | s.43(1)  |
| S245-246 | Copy signed statement of Pamela Eastaugh dated 25 January 1993  | s.43(1)  |
| S247-248 | Copy signed police statement of G W Eastaugh  | s.43(1)  |
| S249-254 | Original letter Plummer & Pullinger to Nominal Defendant dated 4 February 1994 with cover (second report)   | s.43(1)  |
| S255     | Copy letter O'Shea Corser & Wadley to Cervetto & Co. dated 8 February 1994  | s.43(1)  |
| S256     | Copy letter Cervetto & Co. to O'Shea Corser & Wadley dated 7 February 1994  | s.43(1)  |
| S257     | Copy of copy letter O'Shea Corser & Wadley to the Nominal Defendant dated 10 December 1993  | s.43(1)  |
| S258     | Copy of copy letter O'Shea Corser & Wadley to Cervetto & Co. dated 26 November 1993   | s.43(1)  |
| S259     | Copy of copy letter O'Shea Corser & Wadley to the Nominal Defendant dated 19 November 1993  | s.43(1)  |
| S260     | Copy of copy letter O'Shea Corser & Wadley to Cervetto & Co. dated 19 November 1993.  | s.43(1)  |
| S261     | Copy letter Nominal Defendant to O'Shea Corser & Wadley dated 9 November 1993 with handwritten notes  | s.43(1)  |
| S262     | Memorandum for file dated 19 October 1993 regarding conversation between Nominal Defendant and O'Shea Corser & Wadley   | s.43(1)  |
| S263-266 | Copy of copy letter O'Shea Corser & Wadley to Nominal Defendant dated 14 October 1993   | s.43(1)  |
| S267     | Copy original letter Nominal Defendant to O'Shea Corser & Wadley dated 13 October 1993  | s.43(1)  |
| S268     | Copy record of proceedings dated 12 July 1993 - being annexure marked "X" to affidavit of R J Price affirmed and declared 13 November 1993                              | s.43(1)  |
| S269     | Bench complaint sheet being annexure "W" to affidavit of R J Price affirmed and declared 13 November 1993   | s.43(1)  |
| S270     | Complaint - sworn and summons dated 15 April 1993 being annexure "V" to affidavit of R J Price  | s.43(1)  |
| S271     | Copy original letter Nominal Defendant to Cervetto & Co. dated 20 October 1993 being Annexure "U" to affidavit of R J Price affirmed and declared 13 November 1993      | s.43(1)  |
| S272     | Copy report of Dr Stephen Crawford dated 20 September 1993 being Annexure "T" to affidavit of R J Price affirmed and declared 13 November 1993                          | s.43(1)  |
| S273-275 | Copy of copy letter Cervetto & Co. to the Nominal Defendant dated 16 September 1993 being Annexure "S" to affidavit of R J Price affirmed and declared 13 November 1993 | s.43(1)  |
| S276     | Copy original letter Nominal Defendant to Cervetto & Co. dated 14 September 1993 being Annexure "R" to affidavit of R J Price affirmed and declared 13 November 1993    | s.43(1)  |
| S277-281 | Copy letter Department of Veterans' Affairs and Repatriation Board decision being Annexure "Q" to affidavit of R J Price affirmed and declared 13 November 1993         | s.43(1)  |
| S282     | Copy of copy letter Cervetto & Co. to the Nominal Defendant dated 30 August 1993 being Annexure "P" to affidavit of R J Price affirmed and declared 13 November 1993    | s.43(1)  |
| S283     | Copy of copy letter Cervetto & Co. to the Nominal Defendant dated 3 August 1993 being Annexure "O" to the affidavit of R J Price affirmed and declared 13 November 1993 | s.43(1)  |
| S284     | Copy original letter Nominal Defendant to Cervetto & Co. dated 29 July 1993 being Annexure "N" to affidavit of R J Price affirmed and declared 13 November 1993         | s.43(1)  |
| S285-287 | Copy statutory declaration of George Wolyncevic being Annexure "M" to the affidavit of R J Price affirmed and declared 13 November 1993                                 | s.43(1)  |
| S288     | Copy of copy letter Cervetto & Co. to the Nominal Defendant dated 28 July 1993 being Annexure "L" to the affidavit of R J Price affirmed and declared 13 November 1993  | s.43(1)  |
| S289     | Copy of copy letter Cervetto & Co. to Gatton Police Station dated 28 July 1993 being Annexure "K" to affidavit of R J Price affirmed and declared 13 November 1993      | s.43(1)  |
| S290     | Copy original letter Queensland Transport to Cervetto & Co. dated 22 July 1993 being  | s.43(1)  |



| Page        | Description  | Decision      |
|-------------|--|---------------|
|             | Annexure "J" to affidavit of R J Price affirmed and declared 13 November 1993  |               |
| S291        | Copy Nominal Defendant claim form dated 22 July 1993 being Annexure "I" to the affidavit of R J Price affirmed and declared 13 November 1993   | s.43(1)       |
| S292        | Copy authority to Workers' Compensation Board and Department of Social Security signed by Ron Price dated 22 July 1993 - may be part of Annexure "I" to affidavit of R J Price affirmed and declared on 13 November 1993 | s.43(1)       |
| S293        | Copy of copy letter Cervetto & Co. to the Nominal Defendant dated 23 July 1993 being Annexure "H" to affidavit of R J Price affirmed and declared 13 November 1993   | s.43(1)       |
| S294        | Copy original letter the Nominal Defendant to Cervetto & Co. dated 20 July 1993 being Annexure "G" to the affidavit of R J Price affirmed and declared 13 November 1993  | s.43(1)       |
| S295        | Copy of copy letter Cervetto & Co. to Department of Transport dated 13 July 1993 being Annexure "F" to affidavit of R J Price affirmed and declared 13 November 1993   | s.43(1)       |
| S296-297    | Copy of copy letter Cervetto & Co. to the Nominal Defendant dated 12 July 1993 being Annexure "E" to affidavit of R J Price affirmed and declared 13 November 1993   | s.43(1)       |
| S298        | Copy of copy letter Cervetto & Co. to G J Buckley & Associates dated 21 July 1993 being Annexure "D" to affidavit of R J Price affirmed and declared 13 November 1993  | s.43(1)       |
| S299        | Copy of copy letter Cervetto & Co. to G J Buckley & Associates dated 19 July 1993 being Annexure "C" to affidavit of R J Price affirmed and declared 13 November 1993  | s.43(1)       |
| S300        | Copy letter G J Buckley & Associates to Cervetto & Co. dated 16 July 1993 being Annexure "B" to affidavit of R J Price affirmed and declared 13 November 1993  | s.43(1)       |
| S301        | Copy of copy letter Cervetto & Co. to Mr Daniel Morgan dated 13 July 1993 being Annexure "A" to affidavit of R J Price affirmed and declared 13 November 1993  | s.43(1)       |
| S302-307    | Sealed copy - affidavit of Ronald John Price affirmed and declared by Ron Price on 13 November 1993, with handwritten notes on folios 302, 306 and 307   | s.43(1)       |
| S308        | Sealed application dated 11 October 1993   | s.43(1)       |
| S309        | Table of contents page to brief  | s.43(1)       |
| S310        | Instructions to Counsel contained in brief dated 11 February 1994  | s.43(1)       |
| S311-312    | Cover page and title page of brief to Counsel  | s.43(1)       |
| S313-319    | Copy index to brief  | s.43(1)       |
| S320        | Original letter Nominal Defendant to O'Shea Corser & Wadley dated 13 October 1993  | NDA           |
| S321-324    | Copy letter O'Shea Corser & Wadley to Nominal Defendant (Queensland) dated 14 October 1993   | NDA           |
| S325        | Copy memorandum for file dated 19 October 1993 of O'Shea Corser & Wadley's attendance on Nominal Defendant   | NDA           |
| S326        | Diary note O'Shea Corser & Wadley attendance on Nominal Defendant dated 19 October 1993  | NDA           |
| S328        | Original letter - Nominal Defendant to O'Shea Corser & Wadley dated 9 November 1993 with handwritten notes   | NDA           |
| S329 (part) | File note dated 9 November 1993 of telephone conversation between O'Shea Corser & Wadley and Nominal Defendant   | NDA           |
| S335        | Copy letter O'Shea Corser & Wadley to the Nominal Defendant dated 19 November 1993   | NDA           |
| S339 (part) | Memorandum for file re conversation between O'Shea Corser & Wadley and Counsel dated 26 November 1993  | s.43(1)       |
| S344        | Copy letter O'Shea Corser & Wadley to Nominal Defendant dated 10 December 1993   | NDA           |
| S348        | "With compliments" slip Nominal Defendant to O'Shea Corser & Wadley  | NDA           |
| S349        | Handwritten note dated 10 February 1994  | NDA           |
| S350        | Copy letter O'Shea Corser & Wadley to Walker Pender Solicitors (agents for O'Shea Corser & Wadley) dated 11 February 1994  | s.43(1)       |
| S352        | Copy page of index to brief  | s.43(1)       |
| S353        | Copy letter O'Shea Corser & Wadley to Mr K Wilson Barrister-at-law dated 18 February 1994  | s.43(1)       |
| S355        | Original letter Walker Pender to O'Shea Corser & Wadley dated 18 February 1994   | s.43(1)       |
| S356        | Original facsimile cover sheet O'Shea Corser & Wadley to Counsel dated 21 February 1994. (This does not appear to relate to Mr Price's claim - separate action. Document mis-filed)                                      | outside scope |
| S357        | Internal facsimile verification sheet for fax referred to above  | outside scope |
| S358        | Handwritten note regarding filing  | NDA           |

| <b>Page</b> | <b>Description</b>   | <b>Decision</b> |
|-------------|--|-----------------|
| S361        | Diary note dated 21 February 1994 regarding telephone conversation between O'Shea Corser & Wadley and Department of Transport  | s.43(1)         |
| S362        | Diary note dated 21 February 1994 of telephone conversation between O'Shea Corser & Wadley and Gatton Police Station   | s.43(1)         |
| S363        | Diary note of telephone conversation between O'Shea Corser & Wadley and Counsel dated 4 February 1994  | s.43(1)         |
| S366-368    | Diary note dated 21 February 1994 of telephone conversation between O'Shea Corser & Wadley and Counsel   | s.43(1)         |
| S369        | Diary note dated 21 February 1994 of telephone conversation between O'Shea Corser & Wadley and Counsel   | s.43(1)         |
| S370        | Diary note dated 22 February 1994 of telephone conversation between O'Shea Corser Wadley and Walker Pender   | s.43(1)         |
| S371        | Diary note dated 22 February 1994 of telephone conversation between O'Shea Corser & Wadley and Counsel   | s.43(1)         |
| S372        | Letter Keith Wilson, Barrister at Law to O'Shea Corser & Wadley dated 23 February 1994   | s.43(1)         |
| S373        | Copy letter O'Shea Corser & Wadley to Freemans Loss Adjusters dated 3 March 1994   | s.43(1)         |
| S374        | Original letter O'Shea Corser & Wadley to Freemans Loss Adjusters (forwarded by facsimile transmission to Freemans) dated 3 March 1994                                     | s.43(1)         |
| S375        | O'Shea Corser & Wadley, record of facsimile transmissions dated 2 and 3 March 1994 - it appears that only the last reference relates to facsimile letter to loss adjusters | NDA             |
| S376        | Original facsimile transmission cover sheet O'Shea Corser & Wadley to Freemans Loss Adjusters dated 3 March 1994   | s.43(1)         |
| S377-378    | Draft copy letter O'Shea Corser & Wadley to the Nominal Defendant dated 3 March 1994   | NDA             |
| S379        | Diary note dated 3 March 1994 of telephone conversation between O'Shea Corser & Wadley and Nominal Defendant   | NDA             |
| S381        | Original letter Nominal Defendant to O'Shea Corser & Wadley dated 11 March 1994.   | NDA             |
| S382        | Diary note of conversation between O'Shea Corser & Wadley and Counsel dated 14 March 1994  | s.43(1)         |
| S383        | Original letter Nominal Defendant to O'Shea Corser & Wadley dated 14 March 1994  | NDA             |
| S384        | Copy letter O'Shea Corser & Wadley to Counsel dated 14 March 1994  | s.43(1)         |
| S386-387    | Draft affidavit of Kylie Margaret Torlach  | NDA             |
| S388        | O'Shea Corser & Wadley record of facsimile transmissions for 5 and 16 March 1994 - records facsimile to Keith Wilson, Barrister at Law                                     | NDA             |
| S391        | O'Shea Corser & Wadley record of facsimile transmission for 15 and 16 March 1994   | NDA             |
| S393-394    | Diary note dated 16 March 1994 regarding telephone conversation between O'Shea Corser & Wadley and Plummer & Pullinger   | s.43(1)         |
| S395        | Diary note dated 16 March 1994 regarding telephone conversation between O'Shea Corser & Wadley and their Counsel   | s.43(1)         |
| S399-400    | Diary note of telephone conversation dated 18 March 1994 between O'Shea Corser & Wadley and Counsel  | s.43(1)         |
| S401        | Memorandum dated 18 March 1994 recording telephone conversation between O'Shea Corser & Wadley and Nominal Defendant   | NDA             |
| S402        | Original letter Walker Pender to O'Shea Corser & Wadley dated 28 March 1994  | s.43(1)         |
| S403        | Copy page 11 of Nominal Defendant submission regarding external review with handwritten notes  | outside scope   |
| S404        | Copy page 5 of signed record of interview of D Morgan  | outside scope   |
| S405-414    | Remainder of Nominal Defendant submission  | outside scope   |
| S415        | Copy of part of page 1 of "Schedule - List of Documents In Issue", prepared by Information Commissioner's Office with preliminary views noted                              | outside scope   |
| S416        | Copy letter Internal Reviewer Mr P V Bartlem to Information Commissioner dated 28 March 1995   | outside scope   |
| S421        | Copy letter O'Shea Corser & Wadley to Nominal Defendant dated 6 April 1994   | NDA             |
| S422        | O'Shea Corser & Wadley general account payment advice dated 31 March 1994  | NDA             |
| S423        | Copy letter O'Shea Corser & Wadley to Walker Pender  | NDA             |
| S424        | Receipt from Walker Pender dated 8 April 1994  | NDA             |
| S425        | Walker Pender "with compliments" slip  | NDA             |
| S427        | Original letter Nominal Defendant to O'Shea Corser & Wadley dated April 1994   | NDA             |

| <b>Page</b> | <b>Description</b>  | <b>Decision</b> |
|-------------|---|-----------------|
| S429        | Copy letter O'Shea Corser & Wadley to Nominal Defendant dated 10 May 1994   | NDA             |
| S431        | Diary note of internal communications within O'Shea Corser & Wadley dated 19 May 1994   | NDA             |
| S432        | Diary note of telephone conversation between O'Shea Corser & Wadley and Walker Pender dated 19 May 1994   | s.43(1)         |
| S433        | Diary note of telephone conversation between O'Shea Corser & Wadley and Walker Pender dated 20 May 1994   | s.43(1)         |
| S434        | Memo for file dated 20 May 1994 regarding telephone conversation between O'Shea Corser & Wadley and Walker Pender and telephone conversation between O'Shea Corser & Wadley and Counsel | s.43(1)         |
| S435        | Original letter Walker Pender to O'Shea Corser & Wadley dated 23 May 1994   | s.43(1)         |
| S436        | Copy letter O'Shea Corser & Wadley to Mr Wilson of Counsel dated 26 May 1994  | s.43(1)         |
| S437        | O'Shea Corser & Wadley payment advice slip dated 25 May 1994  | NDA             |
| S438        | Copy letter O'Shea Corser & Wadley to Walker Pender dated 26 May 1994   | NDA             |
| S440-441    | Copy letter O'Shea Corser & Wadley to Nominal Defendant dated 27 May 1994   | NDA             |
| S442        | Diary note dated 27 May 1994 regarding telephone conversation between O'Shea Corser & Wadley and Nominal Defendant  | NDA             |
| S444        | Original facsimile transmission cover sheet dated 2 June 1994 from O'Shea Corser & Wadley to Counsel  | s.43(1)         |
| S445        | Activity report of facsimile transmission dated 2 June 1994   | NDA             |
| S446        | Memorandum for file dated 2 June 1994 of telephone conversation between O'Shea Corser & Wadley and Counsel  | s.43(1)         |
| S449        | Copy letter dated 7 June 1994 O'Shea Corser & Wadley to Nominal Defendant   | NDA             |
| S452        | Diary note dated 10 June 1994 of telephone conversation between O'Shea Corser & Wadley and Nominal Defendant leaving message  | NDA             |
| S454-455    | Portion of draft letter of O'Shea Corser & Wadley   | NDA             |
| S456-457    | Copy letter O'Shea Corser & Wadley to Nominal Defendant dated 14 June 1994  | NDA             |
| S459B       | Walker Pender receipt dated 30 May 1994   | NDA             |
| S459A       | "With compliments" slip from Walker Pender  | NDA             |
| S460        | Diary note dated 22 June 1994 of internal communication within O'Shea Corser & Wadley   | NDA             |
| S461        | Letter Nominal Defendant to O'Shea Corser & Wadley dated June 1994  | NDA             |
| S462        | Diary note dated 27 June 1994 of telephone conversation between O'Shea Corser & Wadley and Nominal Defendant  | NDA             |
| S463        | Copy letter O'Shea Corser & Wadley to Nominal Defendant dated 27 June 1994  | NDA             |
| S464-465    | Copy account Freemans Plummer & Pullinger to Nominal Defendant dated 1 June 1994  | NDA             |
| S466        | Original letter Nominal Defendant to O'Shea Corser & Wadley dated 29 June 1994  | NDA             |
| S467        | Request for computer generated bill of costs  | NDA             |
| S468        | Copy letter O'Shea Corser & Wadley to Nominal Defendant dated 7 July 1994   | NDA             |
| S470        | Copy letter O'Shea Corser & Wadley to Monsours Legal Costs dated 7 July 1994  | s.43(1)         |
| S474        | Diary note dated 19 July 1994 of telephone conversation between O'Shea Corser & Wadley and Monsour Legal Costs  | s.43(1)         |
| S475        | Copy letter O'Shea Corser & Wadley to Nominal Defendant dated 25 July 1994 regarding costs  | NDA             |
| S476        | Memorandum for file dated 29 July 1994 regarding telephone conversation with Monsours Legal Costs   | s.43(1)         |
| S477        | Diary note dated 29 July 1994 regarding telephone conversation between O'Shea Corser & Wadley and Monsour Legal Costs   | s.43(1)         |
| S479        | Letter dated 29 July 1994 Monsour Legal Costs to O'Shea Corser & Wadley   | s.43(1)         |
| S484        | Diary note of telephone conversation dated 29 August 1994 between O'Shea Corser & Wadley and Nominal Defendant  | NDA             |
| S485        | Copy letter O'Shea Corser & Wadley to Nominal Defendant dated 29 August 1994  | NDA             |
| S486        | Copy letter O'Shea Corser & Wadley to Nominal Defendant dated 1 September 1994  | NDA             |
| S487        | Diary note of telephone conversation dated 6 September 1994 between O'Shea Corser & Wadley and Nominal Defendant  | NDA             |

| <b>Page</b> | <b>Description</b>  | <b>Decision</b> |
|-------------|---|-----------------|
| S492        | Copy letter O'Shea Corser & Wadley to Nominal Defendant dated 10 October 1994 | NDA             |
| S495        | Copy letter O'Shea Corser & Wadley to Nominal Defendant dated 17 October 1994 | NDA             |

**RE PRICE AND NOMINAL DEFENDANT  
APPLICATION FOR REVIEW S 2/95  
SCHEDULE B  
LIST OF DOCUMENTS IN ISSUE ON  
LOSS ASSESSORS' FILE**

**NDA** = Not a "document of an agency", for the purposes of the FOI Act.

| <b>Pages</b> | <b>Description</b>   | <b>Decision</b> |
|--------------|--|-----------------|
| L24-27       | Copy letter O'Shea Corser & Wadley to Nominal Defendant dated 14 October 1993                              | S.43(1)         |
| L33          | Handwritten note regarding names and contact telephone numbers   | NDA             |
| L34          | Handwritten points   | NDA             |
| L35          | Letter Graeme Eastaugh to Plummer & Pullinger dated 15 December 1993                                       | s.43(1)         |
| L36          | Copy letter Plummer & Pullinger to Mr G Eastaugh dated 14 December 1993                                    | s.43(1)         |
| L37          | Copy letter Plummer & Pullinger to Nominal Defendant dated 17 November 1993 (preliminary report)           | s.43(1)         |
| L38          | Copy letter Plummer & Pullinger to Mr Jeff Sleaford dated 23 November 1993                                 | s.43(1)         |
| L39-L40      | Copy unsigned statement of Wayne Maxwell Vonhoff   | s.43(1)         |
| L41          | Copy letter Plummer & Pullinger to Mr W M Vonhoff dated 14 December 1993                                   | s.43(1)         |
| L42-L43      | Copy unsigned statement of Pamela Eastaugh   | s.43(1)         |
| L44          | Copy letter Plummer & Pullinger to Mrs P Eastaugh dated 14 December 1993                                   | s.43(1)         |
| L45-L54      | Unsigned copy transcript of interview with Graeme Wolseley Eastaugh  | s.43(1)         |
| L55-L56      | Copy signed statement of Jason Matthew Booth dated 25 January 1993   | s.43(1)         |
| L57-L58      | Copy signed statement of Pamela Joan Eastaugh  | s.43(1)         |
| L59-L60      | Copy signed statement of Graeme Eastaugh   | s.43(1)         |
| L61          | Unmarked diagram of scene  | s.43(1)         |
| L62-L63      | Copy unsigned statement of Wayne Maxwell Vonhoff   | s.43(1)         |
| L64-L65      | Copy unsigned statement of Pamela Eastaugh   | s.43(1)         |
| L66-L75      | Copy unsigned record of interview with Graeme Eastaugh   | s.43(1)         |
| L76          | Unmarked diagram of scene  | s.43(1)         |
| L77          | Original letter Nominal Defendant to Plummer & Pullinger dated 12 November 1993                            | s.43(1)         |
| L78          | Photocopy of photographs Nos. 5, 6, 7 and 8  | s.43(1)         |
| L79          | Photocopy of photographs Nos. 1, 2, 3 and 4  | s.43(1)         |
| L80          | Copy marked diagram of scene   | s.43(1)         |
| L81-L82      | Copy unsigned statement of Pamela Eastaugh   | s.43(1)         |
| L83-L92      | Copy unsigned record of interview with Graeme Eastaugh   | s.43(1)         |
| L93-L94      | Copy unsigned statement of Wayne Maxwell Vonhoff   | s.43(1)         |
| L95-L96      | Copy signed statement of Pamela Eastaugh   | s.43(1)         |
| L97-L106     | Copy signed transcript of interview with Graeme Eastaugh   | s.43(1)         |
| L107-L117    | Copy unsigned record of interview with Daniel Morgan   | s.43(1)         |
| L118         | Copy letter Plummer & Pullinger to Mr Daniel Morgan dated 13 January 1994                                  | s.43(1)         |
| L119-L128    | Copy unsigned record of interview with Jason Matthew Booth   | s.43(1)         |
| L129         | Copy letter Plummer & Pullinger to Mr Jason Booth dated 13 January 1994                                    | s.43(1)         |
| L130-L131    | Copy record of interview with David Glen Peterson  | s.43(1)         |
| L132-L136    | Copy letter Plummer & Pullinger to Nominal Defendant (second report) dated 4 February 1994                 | s.43(1)         |
| L137         | Facsimile transmission copy of letter O'Shea Corser & Wadley to Freemans Loss Adjusters dated 3 March 1994 | s.43(1)         |
| L138         | Copy letter Plummer & Pullinger to Mr D D Morgan dated 10 March 1994                                       | s.43(1)         |
| L139         | Copy unsigned further statement of Daniel David Morgan   | s.43(1)         |
| L140-L149    | Copy signed record of interview with Jason Matthew Booth dated 17 February 1994                            | s.43(1)         |
| L150-L151    | Copy letter Plummer & Pullinger to Nominal Defendant dated 10 March 1994 (third report)                    | s.43(1)         |
| L152         | Copy letter Plummer & Pullinger to Mr Daniel Morgan dated 13 January 1994                                  | s.43(1)         |
| L153-L163    | Copy signed record of interview with Daniel Morgan taken 10 January 1994                                   | s.43(1)         |
| L164         | Copy signed further statement of Daniel David Morgan   | s.43(1)         |
| L165         | Copy letter Plummer & Pullinger to Nominal Defendant dated 12 April 1994 (fourth report)                   | s.43(1)         |
| L166         | Copy letter Plummer & Pullinger to Mr D G Peterson dated 13 April 1994                                     | s.43(1)         |

| <b>Pages</b> | <b>Description</b>  | <b>Decision</b> |
|--------------|---|-----------------|
| L167-L168    | Copy signed of record of interview with David Glen Peterson dated 5 May 1994.         | s.43(1)         |
| L169         | Copy letter Plummer & Pullinger to Nominal Defendant dated 15 May 1994 (fifth report) | s.43(1)         |
| L172         | Original letter Plummer & Pullinger to Mr D G Peterson dated 13 April 1994            | s.43(1)         |
| L173         | Copy letter Plummer & Pullinger to Mr W M Vonhoff dated 13 April 1994                 | s.43(1)         |
| L174         | Original letter Plummer & Pullinger to Mr D D Morgan dated 10 March 1994              | s.43(1)         |
| L175         | Copy Plummer & Pullinger "with compliments" slip dated 21 March 1994 to Mr D Morgan   | s.43(1)         |
| L176         | Copy letter Plummer & Pullinger to Mr D G Peterson dated 10 March 1994                | s.43(1)         |
| L177         | Copy letter Plummer & Pullinger to Mr W M Vonhoff dated 10 March 1994                 | s.43(1)         |
| L178         | Copy letter Plummer & Pullinger to Mr D G Peterson dated 6 January 1994               | s.43(1)         |
| L180         | Photographs and photographic negatives  | s.43(1)         |
| L183         | Front cover of loss assessor's file   | NDA             |
| L184         | Inside front cover of loss assessor's file  | NDA             |
| L185         | Inside back cover of loss assessor's file   | NDA             |
| L186         | Back cover of loss assessor's file  | NDA             |

**RE PRICE AND NOMINAL DEFENDANT  
APPLICATION FOR REVIEW S 2/95  
SCHEDULE C  
LIST OF DOCUMENTS IN ISSUE ON  
NOMINAL DEFENDANT'S FILE**

| <b>Page</b>    | <b>Description</b>   | <b>Decision</b>  |
|----------------|--|--|
| 47             | Letter dated 17.10.94 from solicitors to Nominal Defendant seeking instructions  | s.43(1)  |
| 48             | Letter dated 10.10.94 from solicitors to Nominal Defendant providing advice  | s.43(1)  |
| 49             | File Note dated 6.9.94 re instructions to solicitors   | s.43(1)  |
| 50             | Letter dated 1.9.94 from solicitors to Nominal Defendant seeking instructions  | s.43(1)  |
| 52             | Letter dated 29.8.94 from solicitors to Nominal Defendant enclosing Bill of Costs  | s.43(1)  |
| 62             | Letter dated 25.7.94 from solicitors to Nominal Defendant  | s.43(1)  |
| 63             | Letter dated 7.7.94 from solicitors to Nominal Defendant   | s.43(1)  |
| 64             | Letter dated 29.6.94 from Nominal Defendant to solicitors  | s.43(1)  |
| 65             | Letter dated 27.6.94 from solicitors to Nominal Defendant  | s.43(1)  |
| 66             | File note dated 27.6.94 re instructions  | s.43(1)  |
| 67-68          | Letter dated 14.6.94 from solicitors to Nominal Defendant  | s.43(1)  |
| 84-85          | Letter dated 27.5.94 from solicitors to Nominal Defendant  | s.43(1)  |
| 87             | Letter dated 10.5.94 from solicitors to Nominal Defendant  | s.43(1)  |
| 94             | Letter dated 11.3.94 from Nominal Defendant to solicitors  | s.43(1)  |
| 95-96          | Letter dated 3.3.94 from solicitors to Nominal Defendant   | s.43(1)  |
| 97             | Letter dated 3.3.94 from solicitors to Loss Adjusters  | s.43(1)  |
| 99             | Letter dated 10.12.93 from solicitors to Nominal Defendant   | s.43(1)  |
| 100            | Letter dated 19.11.93 from solicitors to Nominal Defendant   | s.43(1)  |
| 101            | Letter dated 12.11.93 from Nominal Defendant to Loss Adjusters   | s.43(1)  |
| 102            | Letter dated 9.11.93 from Nominal Defendant to solicitors  | s.43(1)  |
| 103            | File note dated 9.11.93 re phone call from solicitors  | s.43(1)  |
| 104            | Copy of page 102   | s.43(1)  |
| 107 (part)     | Letter dated 25 October 1993 from Buckley & Associates, Solicitors, to Nominal Defendant (last two paragraphs)                 | s.44(1)  |
| 113-116        | Letter dated 14.10.93 from solicitors to Nominal Defendant providing legal advice  | s.43(1)  |
| 117            | Letter dated 13.10.93 from Nominal Defendant to solicitors seeking legal advice  | s.43(1)  |
| 167-168 (part) | File note dated 22.7.93 (paragraphs 9-11,13-14)  | Paragraphs 9-11 - s.46(1)(a)<br>Paragraphs 13-14 - s.44(1) |
| 173-174        | Letter dated 12.4.94 from Loss Adjusters re record of interview  | s.43(1)  |
| 175-184        | Record of interview dated 10.1.94 without page 5 (D Morgan)  | s.43(1)  |
| 185-186        | Copy of pages 173-174  | s.43(1)  |
| 187-197        | Copy of pages 175-184 with page 5 included   | s.43(1)  |
| 198-200        | Letter dated 10.3.94 from Loss Adjusters - Third Report to Nominal Defendant re investigations, enclosing statement (D Morgan) | s.43(1)  |
| 201-210        | Record of interview with J Booth dated 7.1.94  | s.43(1)  |
| 213-215        | Letter dated 15.4.94 from Loss Adjusters - Fifth Report, enclosing record of interview ( D G Peterson)                         | s.43(1)  |
| 216-218        | Copy of pages 213-215  | s.43(1)  |
| 226-231        | Letter dated 4.2.94 from Loss Adjusters - Second Report  | s.43(1)  |
| 238-239        | Unsigned copy of pages 214-215   | s.43(1)  |
| 240-249        | Unsigned copy of pages 201-210   | s.43(1)  |
| 250-260        | Unsigned copy of pages 187-197   | s.43(1)  |
| 261-270        | Record of conversation dated 25.11.93 (G Eastaugh)   | s.43(1)  |
| 271-272        | Statement dated 15.12.93 (P J Eastaugh)  | s.43(1)  |
| 273-274        | Unsigned statement of W M Vonhoff  | s.43(1)  |
| 275            | Diagram of Left Hand Branch Road and driveways   | s.43(1)  |
| 276-277        | Photos of Left Hand Branch Road  | s.43(1)  |
|                | Video tape   | s.43(1)  |

