'ALE' & 'RBA' and Central Queensland University; W (Third Party)

(S 9/95; S 10/95, 20 January 1997, Information Commissioner)

(This decision has been edited to remove merely procedural information and may have been edited to remove personal or otherwise sensitive information.)

REASONS FOR DECISION

Background

1. Application for review no. S 9/95 is a 'reverse FOI' application by a staff member (whom I shall refer to as "Applicant 1") of the Faculty of …. of the respondent, the Central Queensland University, who seeks review of the respondent's decision to grant [W] (also a staff member of the same Faculty) access under the *Freedom of Information Act 1992* Qld (the FOI Act) to a memorandum from Applicant 1 to the Dean of the Faculty. Application for review no. S 10/95 is a 'reverse FOI' application by another staff member (whom I shall refer to as "Applicant 2") of the same Faculty, who seeks review of the respondent's decision to grant [W] access under the FOI Act to a memorandum from Applicant 2 to the Dean of the Faculty. In each case, the applicant for review contends that the memorandum in issue comprises exempt matter under s.40(c), s.44(1), s.46(1)(a) and s.46(1)(b) of the FOI Act. Anonymity is necessary because both applicants for review assert that their identities are exempt from disclosure to [W] under the FOI Act. The memoranda in issue deal with similar topics, and the grounds for exemption put forward by the applicant in each case are similar. It is appropriate to deal with the two cases together.

2. The University has explained the background to [W's] initial FOI access application as follows:

> *In 1994 the Vice-Chancellor received complaints from a number of academic staff of the Faculty of … against the Dean, …. .* [W] *was one of the complainants. The Vice-Chancellor convened a small panel to consider the allegations. At a hearing of the panel with* [the Dean], [the Dean] *tabled a rebuttal of the allegations and, in support of his statements, attached a number of letters and memos.* [The documents in issue were among the attachments to the rebuttal.]
>
> [W] *and the other complainants were given a copy of* [the Dean's] *rebuttal but not the attachments. …*

3. By letter dated 11 October 1994, [W] sought access, under the FOI Act, to any documents cited in the Dean's rebuttal which referred to [W]. Under s.51 of the FOI Act, the University consulted a number of persons, including the present applicants for review. Following consultation, Mr K G Window, Registrar of the University, determined that [W] should be given access to a number of documents, including the documents now in issue. The

applicants for review each lodged separate applications for internal review of Mr Window's decision, in so far as it concerned the memoranda they had respectively authored, claiming exemption under one or more provisions of s.40, s.44(1) and s.46(1) of the FOI Act.

4. With respect to the document authored by Applicant 1 (document 1), Professor R J Breakspere of the University wrote to Applicant 1 after the 14 day period for making an internal review decision had expired, indicating that, because no decision had been made within time, Mr Window's decision was deemed to be affirmed under s.52(6). With respect to the document authored by Applicant 2 (document 2), Professor Breakspere determined that the document was not exempt under s.41(1), s.44(1) or s.46(1). In considering the application of the public interest balancing test incorporated in s.46(1)(b) of the FOI Act, Professor Breakspere stated:

> *It is in the public interest that the University conducts its staff relations in a fair, open and above-board way. If documents are held in the University which are critical of the behaviour or performance of a staff member, then it is in that staff member's interest and in the interest of the University as a whole that the staff member be aware of those criticisms, be given the opportunity to respond to them, and to modify his behaviour and improve his performance if necessary.*

5. By letters dated 16 January 1995, Applicant 1 and Applicant 2 then applied to me for external review, under Part 5 of the FOI Act, of the deemed decision by the respondent affirming Mr Window's initial decision, and of Professor Breakspere's internal review decision, respectively.

External review process

6. [W] was notified of the reviews and he applied for, and was granted, status as a participant in them (see s.78 of the FOI Act).

7. The document in issue in each external review was obtained and examined. Document 1 is a memorandum from Applicant 1 to the Dean dated 6 June 1994. In it, Applicant 1 describes matters relating to interaction between [W] and two students (as to the manner in which the two students were performing in their first fieldwork, practical teaching sessions) and raises concerns with the Dean about particular aspects of [W's] work performance. It is expressed to be written in response to a request from the Dean to put concerns about [W] to the Dean in writing. Document 2 is a memorandum from Applicant 2 to the Dean dated 2 June 1994. Its subject matter is similar in nature to the subject matter of document 1.

8. Letters to Applicant 1 and Applicant 2 were forwarded from my office on 25 August 1995 and 29 August 1995, respectively, conveying the preliminary views formed after an initial assessment of the documents in issue, i.e., that the documents in issue did not comprise exempt matter under any of the provisions of the FOI Act raised by the applicants. In the event that the applicants did not accept those preliminary views, they were invited to lodge a written submission, and/or evidence, in support of their contentions that the memoranda they had respectively authored comprised exempt matter under the FOI Act. The applicants were

asked to lodge any evidence, on which they wished to rely, in the form of sworn affidavits or statutory declarations.

9. Neither applicant accepted the preliminary views conveyed to them, and both provided written submissions to me. However, since receiving the preliminary views conveyed to them, neither applicant has sought to argue that s.40(a), s.40(b) or s.40(d) of the FOI Act applies to the documents in issue. I take this as tacit acceptance that those exemption provisions cannot apply to the documents in issue. Having examined the documents in issue, I am satisfied that there is simply no basis for the application of s.40(a), s.40(b) or s.40(d) of the FOI Act to the documents in issue in these reviews, and I find that the documents in issue are not exempt matter under any of those exemption provisions.

10. I arranged for the exchange of written submissions, and responses to them, between the participants. Some submissions by the applicants were edited so as to delete matter which is claimed by the applicants to be exempt, including matter which might reveal the identities of the applicants. None of the written submissions were supported by evidence on oath or declaration, a factor which, having regard to all the relevant circumstances, may affect the credence or the weight to be accorded to assertions of fact made in the written submissions. I list below the written submissions of the participants made in the course of these external reviews:

1. submissions made by Applicant 1:
    2. external review application dated 16 January 1995
    3. submission dated 9 March 1995
    4. submission dated 6 October 1995
    5. submission dated 29 February 1996
    6. submission dated 23 April 1996

7. submissions made by Applicant 2:
    8. external review application dated 16 January 1995
    9. submission dated 4 October 1995
    10. submission dated 29 February 1996

11. submissions made by, or on behalf, of [W]:
    12. submission dated 28 November 1995
    13. submission dated 28 March 1996.

11. The University has not made any further submissions in the course of these external reviews and has been content to rely on the reasons for decision given to the applicants by Mr Window and Professor Breakspere to justify its determinations.

12. Section 81 of the FOI Act provides that in a review under Part 5 of the FOI Act, the agency which made the decision under review has the onus of establishing that the decision was justified or that the Information Commissioner should give a decision adverse to the applicant. In the present case, therefore, the formal onus remains on the University to justify its decision that the documents in issue are not exempt from disclosure to [W] under the FOI Act. The University can

discharge this onus, however, by satisfying me that any one of the necessary elements which must be established, to attract the application of each of the exemption provisions relied on by the applicants, cannot be made out. Thus, the applicant in a "reverse-FOI" case, while carrying no formal legal onus, must nevertheless, in practical terms, be careful to ensure that there is material before the Information Commissioner from which I am able to be satisfied that all elements of the exemption provisions relied upon are established.

Relevant provisions of the FOI Act

13. The following provisions of the FOI Act are relevant to my decision:

> ***40.*** *Matter is exempt matter if its disclosure could reasonably be expected to—*
>
> *...*
>
> *(c) have a substantial adverse effect on the management or assessment by an agency of the agency's personnel; …*
>
> ***41.(1)*** *Matter is exempt matter if its disclosure -*
>
> *(a) would disclose—*
>
> *(i) an opinion, advice or recommendation that has been obtained, prepared or recorded; or*
>
> *(ii) a consultation or deliberation that has taken place;*
>
> *in the course of, or for the purposes of, the deliberative processes involved in the functions of government; and*
>
> *(b) would, on balance, be contrary to the public interest.*
>
> ***(2)*** *Matter is not exempt under subsection (1) if it merely consists of —*
>
> *(a) matter that appears in an agency's policy document; or*
>
> *(b) factual or statistical matter; or*
>
> *(c) expert opinion or analysis by a person recognised as an expert in the field of knowledge to which the opinion or analysis relates.*
>
> ***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.*
>
> ***46.(1)*** *Matter is exempt if—*

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

(b) it consists of information of a confidential nature that was communicated in confidence, the disclosure of which could reasonably be expected to prejudice the future supply of such information, unless its disclosure would, on balance, be in the public interest.

(2) *Subsection (1) does not apply to matter of a kind mentioned in section 41(1)(a) unless its disclosure would found an action for breach of confidence owed to a person or body other than—*

(a) a person in the capacity of—

(i) a Minister; or

(ii) a member of the staff of, or a consultant to, a Minister; or

(iii) an officer of an agency; or

(b) the State or an agency.

14. The applicants have, in their written submissions, contended that the documents in issue comprise exempt matter under s.40(c), s.44(1), s.46(1)(a) and s.46(1)(b) of the FOI Act. I will first consider the application of s.46(1), before proceeding to consider other exemption claims.

Application of s.46 of the FOI Act

15. I consider that parts of both documents in issue are excluded from exemption under s.46(1) by virtue of s.46(2). In *Re "B" and Brisbane North Regional Health Authority* (1994) 1 QAR 279, at p.292 (paragraph 35), I explained that s.46(2) is generally the logical starting point for the application of s.46 of the FOI Act:

35. FOI administrators who approach the application of s.46 should direct their attention at the outset to s.46(2) which has the effect of excluding a substantial amount of information generated within government from the potential sphere of operation of the s.46(1)(a) and s.46(1)(b) exemptions. Subsection 46(2) provides in effect that the grounds of exemption in s.46(1)(a) and s.46(1)(b) are not available in respect of matter of a kind mentioned in s.41(1)(a) (which deals with matter relating to the deliberative processes of government) unless the disclosure of matter of a kind mentioned in s.41(1)(a) would found an action for breach of confidence owed to a person or body outside of the State of Queensland, an agency (as defined for the purposes of the FOI Act), or any official thereof, in his or her capacity as such an official. Section 46(2) refers not to matter of a kind that would be

exempt under s.41(1), but to matter of a kind mentioned in s.41(1)(a). The material that could fall within the terms of s.41(1)(a) is quite extensive (see Re Eccleston *at paragraphs 27-31) and can include for instance, material of a kind that is mentioned in s.41(2) (a provision which prescribes that certain kinds of matter likely to fall within s.41(1)(a) are not eligible for exemption under s.41(1) itself).*

16. In *Re Eccleston and Department of Family Services and Aboriginal and Islander Affairs* (1993) 1 QAR 60, I undertook a detailed analysis of s.41 of the FOI Act, in which I stated (at pp.70-71; paragraphs 27-29) that the critical words in s.41(1)(a) are "deliberative processes involved in the functions of government". (The word "government" is given a non-exhaustive definition in s.7 of the FOI Act and includes an agency and a Minister.) The words in question extend to cover deliberation for the purposes of any decision-making function of an agency. They do not, however, cover the purely procedural or administrative functions of an agency. One passage in particular has come to be accepted as correctly explaining the meaning of the term "deliberative processes" involved in the functions of an agency. In *Re Waterford and Department of Treasury (No. 2)* (1984) 5 ALD 588 at 606; 1 AAR 1 at 19-20, the Commonwealth Administrative Appeals Tribunal (comprising Deputy President Hall, Mr I Prowse and Professor Colin Hughes) said:

> *The action of deliberating, in common understanding, involves the weighing up or evaluation of the competing arguments or considerations that may have a bearing upon one's course of action. In short, the deliberative processes involved in the functions of an agency are its thinking processes - the processes of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.*

(See also *Re James and Australian National University* (1984) 2 AAR 327 at p.335; the relevant passage is reproduced in *Re Cairns Port Authority and Department of Lands* (1994) 1 QAR 663 at p.685; paragraph 44).

17. Parts of the documents in issue comprise a recounting by the respective authors of factual matters. However, other parts of the documents in issue answer the description of "*opinion, advice or recommendation that has been obtained, prepared or recorded ... in the course of, or for the purposes of, the deliberative processes involved in the functions of government*" (in this instance, deliberative processes with respect to the University's personnel management functions) and hence comprise matter of a kind mentioned in s.41(1)(a) of the FOI Act. Those parts are the second and third last paragraphs of document 1, and the third, fifth, seventh (except for the penultimate sentence of the seventh paragraph, which is a purely factual statement), ninth and tenth paragraphs of document 2.

18. By virtue of s.46(2), s.46(1) does not apply to matter of a kind mentioned in s.41(1)(a) unless its disclosure would found an action for breach of confidence owed to a person or body other than the persons or bodies mentioned in s.46(2)(a) and (b). Documents 1 and 2 were written by officers of the respondent University to the Dean of their Faculty about administrative matters falling within the core functions of the Faculty. In my opinion, it is clear on their face

that the documents in issue were written by their respective authors in their capacities as officers of the University. I find wholly unconvincing the attempts, in the applicant's written submissions, to convince me that the documents in issue were written by the authors in a personal capacity. (Applicant 1, in his written submissions, argued that he was not directed by the Dean to provide document 1 and was under no obligation as an officer of the University to do so (the second proposition is dubious for reasons indicated at paragraphs 31-32 below) - but these factors are hardly determinative of the capacity in which he wrote document 1).

19. I find that documents 1 and 2 were written by Applicant 1 and Applicant 2, respectively, in their capacities as officers of the respondent University. Hence, the parts of the documents in issue identified in the last sentence of paragraph 17 above are not eligible for exemption under s.46(1) of the FOI Act, by virtue of s.46(2). It is necessary that I consider the application of s.46(1) to the balance of the documents in issue.

Section 46(1)(a)

20. In *Re "B" and Brisbane North Regional Health Authority* (1994) 1 QAR 279, I considered in detail the elements which must be established in order for matter to qualify for exemption under s.46(1)(a) of the FOI Act. 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 or Minister faced with an application, under s.25 of the FOI Act, for access to the information in issue (see *Re "B"* at pp.296-297, paragraph 44). In this instance, there is an identifiable plaintiff in each case, i.e., Applicant 1 and Applicant 2, who would have standing to bring an action for breach of confidence.

21. There is no suggestion in the present cases of a contractual obligation of confidence arising from the circumstances of the communication of the information in issue from the applicants to the Dean, as a representative of the management of the University. Therefore, the test for exemption under s.46(1)(a) must be evaluated in terms of the requirements for an action in equity for breach of confidence, there being five cumulative criteria which must be established:

    (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).

22. I am satisfied that the information which is claimed to be confidential can be identified with specificity. As to the second criterion listed above, I am satisfied that [W] is not aware of the precise contents of the documents in issue. I note that the documents have been passed on by the Dean to other officers of the University for the purposes of the Dean's rebuttal of complaints. While this fact may have relevance to my assessment of the third criterion, it does not, in my opinion, constitute a sufficiently wide distribution to deprive the documents in issue of "the necessary quality of confidence" for the purposes of satisfaction of the second criterion: see *Re "B"* at p.306, paragraph 71(b), and *Attorney-General's Department and Australian Iron and Steel Pty Ltd v Cockroft* (1986) 10 FCR 180. I have a conceptual difficulty in respect of those parts of the documents in issue (the third and fourth paragraphs of document 1, and the fourth and sixth paragraphs of document 2) which set out a factual account of statements made by [W]. Presumably, the applicants would assert the accuracy of those accounts. It is problematical whether equity can be invoked to protect from disclosure to [W], on the basis that it is confidential information *vis-à-vis* [W], an account of statements made by [W]. I do not propose to explore this issue further, since I am satisfied that criterion three cannot be established in respect of the documents in issue, for reasons explained below.

23. With respect to criterion three, the question of whether a legally enforceable duty of confidence is owed depends on an evaluation of the whole of the relevant circumstances, including (but not limited to) the nature of the relationship between the parties, the nature and sensitivity of the information, and the circumstances relating to its communication, such as those referred to by a Full Court of the Federal Court of Australia in *Smith Kline and French Laboratories (Aust) Limited and Ors v Secretary, Department of Community Services and Health* (1991) 28 FCR 291 at pp.302-303: see *Re "B"* at p.316 (paragraph 84) and pp.314-316 (paragraph 82).

24. In his submission dated 6 October 1995 (at p.2), Applicant 1 asserts that:

> *Before putting my comments in writing, the Dean indicated his specific undertaking to maintain the confidentiality of authorship of the document. It was clearly evident at the time of writing that what would be written would be held in confidence, particularly the source of the information. I would never have reduced the elements*

of our private conversation to writing had I nothad the Dean's assurance that the source of the information would remain confidential between us.

25. While Applicant 1 contends that all of document 1 is exempt under s.46(1)(a), the only assertion of an express assurance relates to the confidentiality of the identity of Applicant 1 as a source of information. [W] challenged whether such an assurance would have been made, given the circumstances of the case, but Applicant 1 has repeated the assertion that an assurance of confidentiality was given with respect to the identity of Applicant 1. It should, however, be noted that no evidence by way of affidavit or statutory declaration (either from Applicant 1 or the Dean) has been put forward by Applicant 1 to support the assertion which [W] challenged, and accordingly its evidentiary value is limited.

26. Applicant 1 also stated in his submission dated 6 October 1995 (at p.2):

... the Dean made known to me that in order for him to act on my concerns expressed orally and in confidence, he required them to be reduced to a written form.

27. Clearly then, Applicant 1 would not have written and submitted document 1 to the Dean, if he had not wanted action taken by the management of the University in respect of his concerns. I also note that, in his submission dated 29 February 1996, Applicant 1 states:

As I have previously implied, in writing the document my expectation was that the Dean might take action regarding the situation I described to him, particularly as it affected the affairs of the students of the Faculty who were the subject of this document. I, therefore, concur with the Deputy Information Commissioner's preliminary view in this regard when he states that:

> In the circumstances, it would seem quite possible and indeed logical that one step which the Dean would take on receiving the document in question would be to put matters to [W], ask for his explanation and, if satisfied that there had been some failing on his part, encourage him to perform better in the future.

28. There is nothing on the face of document 1 or document 2 which suggests that the contents of the documents, or their authors' identities were intended to be treated as confidential. Applicant 1 asserts that the Dean gave him an assurance of some kind in respect of keeping confidential Applicant 1's identity as the author of document 1. (Whether the assurance was absolute, or conditional, or something along the lines of "I will do my best to keep your name out of it" is unknown to me - there is simply no evidence before me on the point). Applicant 1 makes no similar claim of an express assurance of confidentiality in respect of the contents of document 1. Applicant 1 must therefore be asserting that the relevant circumstances surrounding the communication of document 1 from Applicant 1 to the Dean gave rise to an obligation of confidence binding on the University not to use or disclose its contents in a manner not authorised by Applicant 1 (see *Re "B"* at pp.318-319, paragraphs 89-90, and 93). Even assuming that some kind of express assurance as to confidentiality of identity was given by the Dean to Applicant 1, that would amount to one relevant factor, which must be

examined in the light of all the relevant circumstances, to determine whether equity would impose an obligation of confidence binding on the University. In my opinion, when regard is had to all the relevant circumstances, equity would not impose an obligation of confidence binding the University not to disclose to [W] the contents of document 1, or the identity of its author.

29. I have reached the same view in respect of document 2, since the relevant circumstances surrounding its communication to the Dean are not materially different. Applicant 2 asserts that document 2 was "*provided to the Dean on the verbal understanding by the Dean to me that the memo would be held in confidence*" (submission dated 4 October 1995) and seeks support for this assertion in Mr Windows' finding that the memorandum was "communicated in confidence". (I note that Mr Window's finding is not binding on me.) Again, I note that Applicant 2's assertion of an express assurance of confidentiality was not supported by affidavits or statutory declarations, by himself and/or the Dean, attesting to the material facts, and his assertion is of limited evidentiary value. Applicant 2 also went on to say:

> *Indeed you are correct in assuming on page 5* [of the preliminary views letter from my office] *that even though I supplied the information to the Dean in confidence, that I could reasonably have the expectation that the matter would be dealt with by the Dean and* [W]. *However, my understanding was that the issues raised in my memo would be addressed, as they have been as mentioned above, and not details cited in the memo or the memo itself provided to* [W]. *This assumption was reinforced by the verbal acknowledgment given to me by the Dean.*

30. Applicant 2 had earlier in his submission asserted that "[W] *has had opportunity to deal with the issue of practicum supervision with the Dean, the issue raised in the memo, on a number of occasions and in a number of forums*".

31. Documents 1 and 2 describe an aspect of [W's] performance as a staff member of the University which the authors considered was incorrect and/or inappropriate, and which had the potential to have a detrimental effect on two students of the University. The applicants, as staff members of the University, had a positive duty to act in their employer's best interests, a duty which extended to an obligation to disclose relevant information which they received in their capacities as employees of the University: see *Re Shaw and The University of Queensland* (Information Commissioner Qld, Decision No. 95032, 18 December 1995, unreported), at paragraphs 55-57. Clearly, information regarding a failing in the performance of the duties of a staff member in the assessment of, and guidance given to, students must be regarded as information of significance to the achievement of the core functions of the University. Moreover, it is information of a kind which, in my opinion, the University would have been obliged to investigate, and, if satisfied of its substance, the University would have been obliged to take appropriate corrective measures.

32. The material before me indicates that documents 1 and 2 were provided at the direct request of the Dean for the purposes of his administration of the Faculty. The fact that the Dean may have voiced his requirements as a request rather than a direction or that the information may have been volunteered (although in accordance with the duty owed to the University) for the

better running of the University does nothing, in my view, to take the supply of information outside of the work context. I find it difficult to accept that the information contained in documents 1 and 2, which the applicants had a duty to disclose to their employer, could be the subject of a legally binding duty of confidence owed by the employer to the applicants.

33. To my mind, the most significant of the relevant circumstances which I must consider (in determining whether the relevant circumstances were such as to give rise to an equitable obligation of confidence), is the use or uses to which the Dean and the University were likely to put the information supplied by the applicants (and which should reasonably have been in the contemplation of the applicants at the time they communicated the information): see *Re "B"* at p.319, paras 92-93. In my view, upon receiving documents 1 and 2 (both of which were clearly forwarded to the University with the intention that they should be acted upon), the University was obliged to proceed to investigate and verify the substance of the concerns raised in the documents, and (if necessary) take corrective action, while acting in accordance with procedures that were fair to all concerned, including not only the students whose position was allegedly under threat of being unfairly prejudiced, but also [W]. Since the concerns expressed in both document 1 and document 2 were predicated on certain factual matters recounted in those documents, I consider that elementary fairness required that those factual matters be put to [W] to establish whether he accepted that they constituted a reasonably fair and accurate account of the relevant facts, or whether he asserted that the documents contained inaccurate, incomplete or misleading accounts. The very nature of the information recorded in the documents in issue is, in my opinion, such that it could not have been fairly put to [W] without inevitably disclosing the identities of the authors of the documents in issue.

34. Both applicants acknowledge that one option open to the Dean on receipt of the documents in issue was to raise with [W] the matters of concern recorded in them. (Indeed, the applicants assert that the Dean has tried to raise the matter with [W], but [W] has avoided discussing the issue). In my view, any reasonable person in the position of the applicants would have anticipated that one of the options for the Dean, in the proper management of his staff, would have been to provide [W] with copies of the documents in issue and ask for his response. Even if the Dean chose to summarise the complaints rather than providing copies of the documents to [W], the nature of the complaints, and the evidence on which they depended, was such that the identities of the applicants would, in my opinion, have inevitably been disclosed. While no doubt cases would arise in the administration of a University Faculty where the Dean could take appropriate action on a complaint against a Faculty member without disclosing the source of the complaint (e.g., where the complainant is able to point to documentary evidence which independently verifies the basis for complaint), I do not consider that this is such a case. The context in which the information was obtained by the applicants was such that the taking of appropriate action in respect of the information should reasonably have been understood as being likely to involve the disclosure of their identities, and of the contents of documents 1 and 2.

35. In my opinion, the University came under a duty to take appropriate action in respect of the information conveyed in documents 1 and 2. There were wider interests involved than just the interests of the authors of those documents. While I consider that equity may have

required that the University treat documents 1 and 2 in confidence as against the world at large, I consider that equity would have imposed no restraint on any limited disclosure of documents 1 and 2 that was necessary or appropriate for the purpose of taking appropriate action in respect of the matters raised in documents 1 and 2. In particular, I consider that equity would not impose an obligation of confidence restraining the University from disclosing documents 1 and 2 to [W].

36. The applicants also argue that a document signed by a number of staff members (which I will refer to as "the petition": see paragraph 45 below) shows a general expectation among members of the Faculty that matter of this type will be kept confidential. The petition is framed in general terms; it does not direct itself to the contents of the specific documents in issue. It notes that there are "*different levels of confidentiality which apply in different situations*". It refers to a number of specific work-related tasks in which information is supplied, none of which coincide with the situation in this case. I do not consider that the petition is of any assistance to the applicants in establishing an understanding of confidentiality between the University and the applicants in respect of any part of the documents in issue, which would preclude their supply to [W]. Its general nature, and its acknowledgment that expectations vary, cannot form a basis for a finding of a general understanding of confidentiality which would extend to the specific documents in issue.

37. In my view, an assessment of the whole of the relevant circumstances leads me to find that the respondent University was not fixed with an equitable obligation of confidence not to disclose the documents in issue to [W]. I therefore find that documents 1 and 2 do not comprise exempt matter under s.46(1)(a) of the FOI Act.

Section 46(1)(b)

38. In *Re "B"* at p.337 (paragraph 146), I indicated that, in order to establish the *prima facie* ground of exemption under s.46(1)(b) of the FOI Act, three cumulative requirements must be satisfied:

    (a) the matter in issue must consist of information of a confidential nature;

    (b) that was communicated in confidence;

    (c) the disclosure of which could reasonably be expected to prejudice the future supply of such information.

39. If the *prima facie* ground of exemption is established, it must then be determined whether the *prima facie* ground is displaced by the weight of identifiable public interest considerations which favour the disclosure of the particular information in issue.

40. In his original decisions, Mr Window determined that the two documents in issue were communicated in confidence and that their disclosure may prejudice the future supply of such information, but decided that disclosure of each would, on balance, be in the public interest. In the preliminary views letters from my office to the respective applicants, the view was

expressed that the memoranda may not have been communicated in confidence for the purposes of s.46(1)(b), and that disclosure might not reasonably be expected to prejudice the future supply of such information.

Communicated in confidence

41. At paragraphs 152-153 of my decision in *Re "B"*, I made the following comments with regard to the phrase "communicated in confidence":

> *I consider that the phrase "communicated in confidence" is used in this context to convey a requirement that there be mutual expectations that the information is to be treated in confidence. One is looking then for evidence of any express consensus between the confider and confidant as to preserving the confidentiality of the information imparted; or alternatively for evidence to be found in an analysis of all the relevant circumstances that would justify a finding that there was a common implicit understanding as to preserving the confidentiality of the information imparted.*
>
> *The matters discussed at paragraphs 103 and 104 above concerning the scope or extent of an obligation of confidence will also be relevant to the extent of the mutual understanding as to confidence for the purposes of s.46(1)(b), i.e. it is a question of fact whether in the circumstances it was or must have been the intention of the parties that the recipient should be at liberty to divulge the information to a limited class of persons which may include a particular applicant for access under the FOI Act. Likewise the matters discussed at paragraphs 105 and 106 above concerning the confider authorising the disclosure of information previously communicated in confidence are also relevant here.*

42. As I have indicated above, there is nothing on the face of the documents in issue to suggest that they were communicated in confidence. Both applicants have asserted that they understood that the documents were communicated in confidence and have asserted that the Dean gave them an assurance of confidentiality in some form. But there is no satisfactory evidence before me on which to base a finding that an express mutual understanding of confidence existed between the Dean, representing the management of the University, and Applicants 1 and 2, or a finding as to its scope or limits. As to whether there were circumstances indicative of a common implicit understanding of confidence, I have referred above (at paragraphs 26-27, 29-35) to a number of factors which lead me to believe that it was not reasonable for the applicants, in the circumstances, to form an expectation that the documents would be held in confidence as against [W].

43. I note, too, that the Dean seems to have used the documents for purposes other than simply dealing with the issues raised in them, having passed them on to more senior University administrators in defence of allegations made against him by [W] and other staff of the Faculty. Once in control of the University officers conducting that inquiry, it was open to them to put the material adverse to [W] to him for response, if that was considered necessary or appropriate for the proper conduct of the inquiry, in accordance with the legal duty to follow fair procedures. (It appears that this did not in fact occur, although I note that the

inquiry was terminated before its completion.) It is trite law that an understanding or obligation of confidence may lapse with the passage of time, or be overridden by supervening events or materially changed circumstances. If there once was a mutual understanding of confidence between the Dean and the applicants with respect to the documents in issue, it appears that it no longer existed as a mutual understanding by the time that [W] lodged his access application under the FOI Act.

44. In all the circumstances, I find that the second requirement for exemption under s.46(1)(b) is not satisfied, and that the documents in issue are therefore not exempt under s.46(1)(b) of the FOI Act.

Prejudice to future supply of information

45. In response to the preliminary view conveyed to them, in letters from my office, that disclosure of the documents in issue would not prejudice the future supply of such information, the applicants supplied a petition, which appears to have been signed by 16 persons. The petition refers to the signatories as members of the staff of the Faculty, although only some of them have actually included their position within the Faculty. I set out the text of that petition below:

> *We, the undersigned members of staff of the Faculty of …, Central Queensland University, write to you in the context of the possibility of documents written by us as officers of this agency in confidence to the Dean being made available through provisions of the* Freedom of Information Act. *While we respect and support the need for processes affecting staff members' livelihood and advancement being open within limits carefully worked out, we also note that there are different levels of confidentiality which apply in different situations.*
>
> *Academic work in general relies strongly on peer advice and participation in matters such as refereeing work for publication, staffing selection, promotion, resource allocation for research, conference attendance and the like. These processes in this Faculty are open to elected members and some officers by virtue of their position; they follow proper procedures and their procedures are visible to others. However, the content of what they do is in confidence between the different layers of the committees and those responsible for implementation. The candidate (e.g. for promotion) is normally given copies of material pertaining to them, but usually not with names for colleagues participating attached.*
>
> *If there is no provision for in-confidence written advice to the Dean which can then be acted upon in the proper manner (e.g. by reference to the individual staff or student concerned) then an important aspect of peer review is lost. This prejudices the likelihood of future supply of information, especially in difficult incidents or sensitive matters, including funding, reputation, policy directions and/or assessment.*

Given the large number of issues arising with staff and students, it would be impossible, and probably inadvisable, for the Dean to deal with all of these orally, and thus some form of writing would be required.

If matters that we cover in documents written by us as staff members in confidence to the Dean of the Faculty relating to staff or student performance are to be made available without opportunity for the author to maintain anonymity, then we have to consider that we need to refrain from supplying such documents to the Dean. Particularly in such a small faculty as ours, anonymity cannot be guaranteed, even if names are removed from discussion. In the last eighteen months, evidence suggests that anonymity has not been possible to maintain in the face of FOI requests. If each time that there is a disagreement with a decision FOI is used as a recourse by the aggrieved staff member, then not only will the process be lengthened, potentially disadvantaging other members of staff, but also staff such as ourselves will be reluctant to offer to serve on committees or perform other tasks which require judgements to be communicated. This would disrupt the proper operations of the Faculty, adding additional stress in a time of higher workloads and increased diversity of demand on the sector. We submit that we would need to refrain from supplying such information to the Dean.

46. The first thing to note about the petition is that it does not relate specifically to the documents in issue. It is a general statement of principle by the staff members concerned and it acknowledges "*that there are different levels of confidentiality which apply in different situations*". As far as the law is concerned, each case must be determined on its own merits, and that is what I have done in respect of the particular documents in issue in this case.

47. Caution is indicated with respect to predictions of prejudice to the future supply of like information based on the comments of a small number of staff asked to sign a general statement of principle. If one is discussing information supplied by an employee to management relating to work performance of that employee or his or her colleagues, then to assert that disclosure of such information will prejudice the future supply of like information is really to assert that a significant number of staff of the organisation will refuse to carry out their lawful obligations as employees. It is essentially an admission that the constitution of the staff involved lacks the qualities necessary to carry out their duties as public officers in the provision of information to the management of the organisation.

48. No doubt many staff would prefer, if possible, to avoid the possibility of confrontation over comments made to the Dean about the performance of another staff member. However, that is quite a different thing than actually deciding to refrain from providing information where provision of that information is considered necessary in the interests of students and the University generally. I am not satisfied that a significant number of academics would refrain from doing their duty in this regard, merely because of disclosure of the documents in issue in this external review.

49. I am not satisfied that requirement (c) referred to in paragraph 38 above is established with respect to documents 1 and 2, and accordingly, on this basis too, those documents do not

qualify for exemption under s.46(1)(b) of the FOI Act. I have discussed the balance of public interest considerations in detail in relation to s.40(c) and s.41(1) below. Even if I had concluded that the matter in issue was communicated in confidence, and that there might be some prejudice to the future supply of like information, I would find that the factors favouring disclosure to [W] are sufficient to outweigh the public interest factors favouring non-disclosure of the documents in issue, in this case.

Application of s.40(c) of the FOI Act

50. I have previously discussed the application of s.40(c) of the FOI Act in my decisions in *Re Pemberton and The University of Queensland* (1994) 2 QAR 293, *Re Murphy and Queensland Treasury & Ors* (Information Commissioner Qld, Decision No. 95023, 19 September 1995, unreported) and *Re Shaw and The University of Queensland* (Information Commissioner Qld, Decision No. 95032, 18 December 1995, unreported). The focus of the s.40(c) exemption is on the management or assessment by an agency of the agency's personnel. The exemption will be made out if it is established that disclosure of the matter in issue could reasonably be expected to have a substantial adverse effect on the management or assessment by the University of its personnel, unless disclosure of the matter in issue would, on balance, be in the public interest.

51. The correct approach to the application of the phrase "could reasonably be expected to" is explained in *Re Cannon and Australian Quality Egg Farms Limited* (1994) 1 QAR 477 at p.515 (paragraphs 62-63). The test embodied in that phrase calls for the decision-maker to discriminate between unreasonable expectations and reasonable expectations, between what is merely possible (e.g. merely speculative/conjectural expectations) and expectations which are reasonably based, i.e., expectations for the occurrence of which real and substantial grounds exist. The ordinary meaning of the word "expect" which is appropriate to its context in the phrase "could reasonably be expected to" accords with these dictionary meanings: "to regard as probable or likely" (Collins English Dictionary, Third Aust. Ed); "regard as likely to happen; anticipate the occurrence ... of" (Macquarie Dictionary, 2nd ed); "Regard as ... likely to happen; ... Believe that it will prove to be the case that ..." (The New Shorter Oxford English Dictionary, 1993).

52. If I am satisfied that any adverse effects claimed by the applicants could reasonably be expected to follow from disclosure of the documents in issue, I must then determine whether those adverse effects, either individually or in aggregate, constitute a substantial adverse effect on the management or assessment by the University of its personnel. As I noted in *Re Pemberton* (at paragraph 122), I consider that, where the Queensland Parliament has employed the phrase "substantial adverse effect" in s.40(c), s.40(d), s.47(1)(a) and s.49 of the FOI Act, it must have intended the adjective "substantial" to be used in the sense of grave, weighty, significant or serious. In *Re Dyki and Federal Commissioner of Taxation* (1990) 22 ALD 124, Deputy President Gerber of the Commonwealth Administrative Appeals Tribunal remarked (at p.129, paragraph 21) that: "*the onus of establishing a substantial adverse effect is a heavy one* ...".

53. If I find that disclosure of the whole or any part of the documents in issue could reasonably be expected to have a substantial adverse effect on the management or assessment by the University of its personnel, then with respect to that matter, I must consider whether disclosure would nevertheless, on balance, be in the public interest.

Claimed adverse effects

54. The lengthy submissions of the applicants in this regard can be distilled into two claimed adverse effects:

    14. they claim that the ability of the Dean to receive confidential information relevant to the management and assessment of staff will be compromised through disclosure of the documents; and

    15. they contend that relations between staff of the Faculty will be soured by release of the documents in issue.

55. I accept, as a matter of general principle, that there may be communications between the employees and the management of an organisation (or indeed between managers of an organisation) in respect of which it would be better for the management of the organisation if they were kept secret. The test for exemption under s.40(c) of the FOI Act, however, is an onerous one, as I have indicated above. Each case must be judged on its merits and its particular circumstances, with relevant factors including the use that is intended to be made of the information communicated, and what obligations (whether imposed by legal requirements, published policy guidelines of the relevant agency, or even the dictates of good management practice) exist with respect to disclosure to persons whose interests are liable to be affected by the communication or by action taken in response to it.

56. In this case, I do not consider that disclosure of the documents in issue to [W] would lead a significant number of staff of the University to refrain from carrying out their obligations, as employees, in the provision of information to management, or to be more guarded in the information which they give to management (see paragraph 48 above). As I said in *Re Shaw* (at paragraph 32):

> *... if a person takes it upon himself or herself to complain about shortcomings in other staff, the interests of the University in the effective management of its personnel will be best served if that complaint is made in a form that will withstand scrutiny (including by the person complained against, who, if the University proposes to take action on the complaint, will ordinarily be entitled to know the substance of the complaint), i.e., a complaint framed in careful and temperate language, and supported by particulars of the evidence which substantiates the basis for complaint. Frank and honest opinion can still be, and preferably should be, expressed in this way. I do not consider that the prospect of disclosure of a complaint to the subject of the complaint could reasonably be expected to have an adverse effect on the management or assessment by the University of its personnel, let alone a substantial adverse effect.*

57. I note in this regard that, in my opinion, the concerns raised in the documents in issue were proper matters to be raised with the management of the University, and they were framed in careful language, supported by details of the evidence which substantiated the basis for complaint (at least so far as it was known to the applicants - whether it constituted all relevant evidence was a matter for inquiry by the management of the University). The complaints were made to the management of the University in such circumstances as, in my opinion, to attract the protection of qualified privilege under the law of defamation. On the material before me, I cannot see why the applicants apprehend such difficulty in standing by their complaints.

58. I am not satisfied that disclosure of the documents in issue to [W] could reasonably be expected to have a substantial adverse effect on the management or assessment by the University of the University's personnel. I am prepared to accept, however, that the task of constructively addressing problems of the kind raised in the documents in issue has greater prospects of success through co-operative effort if the process remains confidential to the parties involved. It may well be the case that disclosure of a document like the documents in issue to an outside party could reasonably be expected to have the prejudicial consequences contemplated by s.40(c). In *Re Pemberton* at paragraph 154, I said:

> *... Section 40* [of the FOI Act] *is an exemption provision of a kind where it is ordinarily proper, in assessing the relevant prejudicial effects of disclosure of the matter in issue to have regard to the effects of disclosure on persons other than just the particular applicant for access under the FOI Act. (I say "ordinarily", for the reasons explained at paragraphs 165-172 below).*

59. Rather than agitate issues as to whether this is an appropriate case for departure from the ordinary approach, or whether (applying the ordinary approach) a substantial adverse effect on the management or assessment by the University of the University's personnel could reasonably be expected, I prefer to state my finding that, applying the principles explained in *Re Pemberton* at paragraphs 164-193, I am satisfied that disclosure of document 1 to [W] would, on balance, be in the public interest. [W's] involvement in, and concern with, the information in document 1 gives rise to a public interest in his having access to what is recorded about him. I have discussed the relevant public interest considerations in more detail at paragraphs 71-74 below. I should also note, however, my complete agreement with the comments of Professor Breakspere quoted at paragraph 4 above.

60. As to the suggestion that disclosure of the documents in issue would have an adverse effect on staff relations and therefore cause problems for the management of staff within the Faculty, the submissions put before me make it clear that there are already significant differences of opinion between members of the staff of the Faculty. I do not consider that disclosure of the documents in issue would contribute to any major escalation of problems involving staff relations within the Faculty, such as to amount to a substantial adverse effect. I think it is important to note that the University itself does not contend that disclosure of the documents will have an adverse effect on its management or assessment of its staff. I note that both applicants (Applicant 1 at paragraph 3.3 of his submission dated 29 February 1996,

and Applicant 2 in the second last paragraph of his submission dated 29 February 1996) have referred to a fear of intimidatory behaviour being directed at them by [W], based on some past incidents involving [W], of which particulars are given. The incidents referred to in the material before me do not strike me as being so serious in nature as to afford a basis for a finding that disclosure of the documents in issue to [W] could reasonably be expected to have a substantial adverse effect on the management by the University of its personnel.

61. I am satisfied that the documents in issue are not exempt from disclosure to [W] under s.40(c).

Application of s.41(1) of the FOI Act

62. Although s.41(1) was not relied upon in the applicants' written submissions, I am prepared to consider its application to the documents in issue, given my findings (at paragraph 17 above) that substantial segments of the documents in issue comprise matter which falls within the terms of s.41(1)(a) of the FOI Act. The balance of the documents in issue, however, comprises merely factual matter which, by virtue of s.41(2)(b) of the FOI Act, is not eligible for exemption under s.41(1).

63. Whether the matter which falls within s.41(1)(a) is exempt depends on whether its disclosure would be contrary to the public interest, in terms of s.41(1)(b). The fact that matter falls within s.41(1)(a) carries no presumption that its disclosure would be contrary to the public interest: see *Re Eccleston* at p.68, paragraph 22. An applicant for access is not required to demonstrate that disclosure of deliberative process matter would be in the public interest; an applicant is entitled to access unless an agency or a 'reverse FOI' applicant can establish that disclosure of the relevant deliberative process matter would be contrary to the public interest. In *Re Trustees of the De La Salle Brothers and Queensland Corrective Services Commission* (Information Commissioner Qld, Decision No. 96004, 4 April 1996, unreported), I said (at paragraph 34):

> *The correct approach to the application of s.41(1)(b) of the FOI Act was analysed at length in my reasons for decision in* Re Eccleston, *where I indicated (see p.110; paragraph 140) that an agency or Minister seeking to rely on s.41(a) needs to establish that specific and tangible harm to an identifiable public interest (or interests) would result from disclosure of the particular deliberative process matter in issue. It must further be established that the harm is of sufficient gravity that, when weighed against competing public interest considerations which favour disclosure of the matter in issue, it would nevertheless be proper to find that disclosure of the matter in issue would, on balance, be contrary to the public interest.*

64. In Applicant 1's application for internal review, the solicitors for Applicant 1 contended that four public interest factors discussed in the decision of the Commonwealth Administrative Appeals Tribunal in *Re Howard and Treasurer of the Commonwealth of Australia* (1985) 3 AAR 169, apply in the present case. These are:

(i) the higher the office of the persons between whom the communications passed and the more sensitive the issues involved in the communication, the more likely it will be that communications should not be disclosed;

(ii) disclosure which will inhibit frankness and candour in future pre-decisional communications is likely to be contrary to public interest;

(iii) disclosure, which will lead to confusion and unnecessary debate resulting from disclosure of possibilities considered, tends not to be in the public interest;

(iv) disclosure of documents which do not fairly disclose the reasons for a decision subsequently taken may be unfair to a decision maker and may prejudice the integrity of the decision making process.

65. The applicants have made lengthy submissions suggesting that disclosure of the documents in issue would be contrary to the public interest. However, all of them tend to support one of the categories of purported public interest factors referred to above. In *Re Eccleston* (at pp.98-110, paragraphs 105-139), I considered in detail the relevance of these four factors to the question of the balance of the public interest.

66. With respect to the first criterion (see *Re Eccleston* at pp.102-103, paragraphs 120-122) I indicated that the mere fact of a document being a high level communication does not make its disclosure contrary to the public interest. In any event, with all due respect, the communications embodied in the documents in issue cannot be properly characterised as communications between the holders of high office, in terms of the hierarchy of government. I would also consider that the sensitivity of the issues involved in the communication should be assessed at the lower end of the scale. I do not consider that this can be regarded as a public interest factor of any significant weight favouring non-disclosure of either document in issue.

67. With respect to the second criterion referred to above, it is my view that claims of this nature should be disregarded unless a very particular factual basis is laid for the claim that disclosure will inhibit frankness and candour in future communications of a like kind, and that tangible harm to the public interest will result from that inhibition (see *Re Eccleston* at pp.106-107, paragraphs 132-134). I have discussed this point above in relation to the question of whether disclosure is likely to prejudice the future supply of information. I do not consider that a particular factual basis which would sustain a claim of this type has been established.

68. As to the third and fourth points quoted in paragraph 64 above, I have made comments in *Re Eccleston* at pp.107-109 (paragraphs 136-138); however, I am satisfied that these points simply do not apply to the matter now under consideration, which is not matter of the kind contemplated in those criteria, when they were formulated in *Re Howard*. None of the matter in issue comprises "possibilities considered", and its disclosure would not unfairly disclose the reasons for a decision subsequently taken.

69. The only public interest consideration favouring non-disclosure of the documents in issue, of the existence of which I am satisfied, is that which I have identified in paragraph 58 above. Against this must be weighed the public interest considerations favouring disclosure of the documents in issue.

70. Applicant 1 argues that there is "*absolutely no public interest in the document under consideration*". Applicant 1 suggests that in order to be in the public interest for it to be released, it is necessary to show that there is a significant public interest issue in its disclosure and that this is simply absent in the present case. I consider that there are a number of public interest factors favouring disclosure to [W] of the documents in issue.

71. There is first a public interest in enhancing the accountability of the University as a public authority. Disclosure of the documents would give an indication of a perception which had arisen in the eyes of two staff members that another staff member had failed in one aspect of the performance of his duties. Disclosure of the documents in issue would make the public aware of this perceived deficiency and would enable members of the public to question what steps the University had taken to address the issue, either by confirming that there was in fact no problem, or, if they did point out a problem, by taking appropriate action. These would be key documents in establishing whether the Dean and the University authorities had acted properly to ensure that the University was providing the best services possible to students. Another factor favouring disclosure would be the public interest in the accountability of [W] as a staff member of the University. Whether the public interest considerations identified in this paragraph are sufficient to balance or outweigh the public interest consideration favouring non-disclosure which is identified at paragraph 58 above, is difficult to judge. However, when account is taken of the additional public interest considerations which favour disclosure of the matter in issue to the particular applicant for access, [W], I consider that the balance of public interest clearly favours disclosure to [W]: in this regard, see, generally, *Re Pemberton* at pp.368-377, paragraphs 164-193.

72. There is a public interest in allowing [W] access to matter which suggests that his performance has in some way been deficient, in order to allow him to correct any deficiency. As a staff member of the University, [W's] salary is paid by the public purse and the public have a right to expect that [W] will make all endeavours to ensure that his performance in the provision of services to students and the public generally is kept at as high a level as possible. If he is not made aware of perceived deficiencies in his performance, he cannot correct them.

73. Apart from these general public interest considerations, there is also a public interest in [W] having access to adverse matter relating to him which remains on University records. The matter has already been used by the Dean in order to support his case to the University authorities. The documents have therefore come to the notice of not only the Dean but also other senior officers of the University. If they are to remain on University records, it is in the public interest that [W] have access to them in order that he can respond to them if he considers that they are incorrect, or can take note of them if the criticisms have merit.

74. In my view, the public interest factors favouring disclosure of the matter in issue to [W] clearly outweigh any public interest factors which might favour non-disclosure. I find that

none of the matter contained in the documents in issue is exempt matter under s.41(1) of the FOI Act.

Section 44(1) of the FOI Act

75. 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 the relevant variations of that phrase) as it appears in the FOI Act (see pp.256-267, paragraphs 79-114, of *Re Stewart*). In particular, I said that information concerns the "personal affairs of a person" if it relates to the private aspects of a person's life and that, while there may be a substantial grey area within the ambit of the phrase "personal affairs", that phrase has a well accepted core meaning which includes:

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

76. 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 matter in question.

77. At paragraphs 91-102 of *Re Stewart*, I discussed the distinction which has been drawn between matter concerning personal affairs and matter concerning employment affairs. Nothing in the body of the documents in issue concerns the personal affairs of the applicants. The applicants describe events which took place in an employment context and raise concerns relating to the actions of [W] in the carrying out of his duties as a staff member of the Faculty. As I have indicated above (see paragraphs 18 and 32), I consider that the matter was reported to the Dean as a part of the employment activities of the applicants, (see, generally, in this regard, *Re Pope and Queensland Health* (1994) 1 QAR at pp.658-660, paragraphs 110-116).

78. The applicants have submitted that their signatures on the documents in issue fall within the terms of s.44(1), and that there is no public interest in [W] having access to their signatures. In *Re Stewart* at p.257 (paragraph 80), I set out a list of examples of matter which had been held to fall within the meaning of the phrase "information concerning the personal affairs of a person", in cases which I considered to have been correctly decided. One of the examples listed was a person's signature (as distinct from a person's name): see *Re Corkin and Department of Immigration and Ethnic Affairs* (1984) 2 AAR 214. I consider that disclosure of the signatures of the applicants would disclose information concerning the personal affairs of the applicants, and that their signatures are therefore *prima facie* exempt matter under s.44(1) of the FOI Act. I do not consider that there is any public interest factor favouring disclosure which would outweigh the public interest in non-disclosure. I therefore find that the signature of each applicant is exempt matter under s.44(1) of the FOI Act. I note that the identities of the authors of the documents are made plain elsewhere in the documents, so there

is no suggestion that [W] will not be made aware of the identities of the authors because of deletion of their signatures.

79. There are also a number of references in the documents in issue to two students. The matter in issue which concerns the two students must properly be characterised as information concerning the personal affairs of the two students - it concerns matters such as their performance in their University course, and comments on their personal attributes. This matter is *prima facie* exempt from disclosure under s.44(1) of the FOI Act, subject to the application of the public interest balancing test incorporated in s.44(1).

80. In *Re Stewart* at p.258 (paragraph 81), I said:

> *For information to be exempt under s.44(1) of the FOI Act, it must be information which identifies an individual or is such that it can readily be associated with a particular individual. Thus deletion of names and other identifying particulars or references can frequently render a document no longer invasive of personal privacy, and remove the basis for claiming exemption under s.44(1). This is an expedient (permitted by s.32 of the Queensland FOI Act) which has often been endorsed or applied in reported cases: see, for example,* Re Borthwick and Health Commission of Victoria *(1985) 1 VAR 25 ...*
> .

81. I have noted above, at paragraphs 59 and 71-74, that there are a number of public interest considerations favouring disclosure to [W] of the documents in issue. In my view, the documents can be edited in a way that would provide [W] with sufficient information to satisfy the public interest considerations favouring disclosure, while also satisfying the public interest in protecting the privacy of the students concerned. (I note that [W] would be able to identify the students concerned, but s.44(1) is an exemption provision which is ordinarily to be applied by reference to the effects of disclosure to the world at large, and deletion of the students' names will afford them a measure of privacy protection.) This can be achieved by deleting the following matter:

    20. from document 1 - the names of the students, the nationality of one student, and the school at which they attended fieldwork; and
    21. from document 2 - the whole of the second paragraph, the names of the students, and the school at which they attended fieldwork.

82. I do not consider that [W's] understanding of the documents will be appreciably lessened by the removal of this material from the documents in issue. The public interest in [W] having access to the parts of the matter described above is not, in my view, sufficient to outweigh the public interest in protecting the privacy of the students. I therefore find that it is exempt matter under s.44(1) of the FOI Act.

83. Apart from the signatures of the applicants and the matter referred to in paragraph 81 above, I find that the documents in issue do not comprise exempt matter under s.44(1).

Decision

84. In application for review no. S 9/95, I vary the decision under review (being the deemed decision of the University under s.52(6) of the FOI Act), in that I find that the signature of Applicant 1, the names of the students, the nationality of one student, and the school at which the students attended fieldwork, comprise exempt matter under s.44(1) of the FOI Act, which may (in accordance with s.32 of the FOI Act) be deleted from the document in issue in that review. I find that the balance of the document in issue in that review is not exempt from disclosure to [W] under the FOI Act.

85. In application for review no. S 10/95, I vary the decision under review (being the decision of Professor Breakspere dated 22 December 1994) in that I find that the signature of Applicant 2, the whole of the second paragraph, the names of the students, and the school at which they attended fieldwork, comprise exempt matter under s.44(1) of the FOI Act, which may (in accordance with s.32 of the FOI Act) be deleted from the document in issue in that review. I find that the balance of the document in issue in that review is not exempt from disclosure to [W] under the FOI Act.