

TICKNER AND POLICE

**OFFICE OF THE INFORMATION
COMMISSIONER (W.A.)**

**File Ref: 94110
Decision Ref: D00695**

Participants:

Elizabeth Jean Tickner
Applicant

- and -

Police Force of Western Australia
Respondent

DECISION AND REASONS FOR DECISION

FREEDOM OF INFORMATION - clause 3(1) - refusal of access - documents held by agency related to murder investigation - personal information about third parties - public interest factors for and against disclosure - third parties desire for privacy - requirements to establish exemption under clause 3(1) - identity of confidential sources of information - documents cannot be edited to remove exempt matter.

FREEDOM OF INFORMATION - clause 5(1)(b) - refusal of access - witness statements and depositions - records of interview - information provided by third parties - interpretation of clause 5(1)(b) - reveal an investigation - fact or substance of investigation - section 31 - requirements to establish exemption under clause 5(1)(b) - clause 5(1)(e) - endanger life or physical safety of any person - limitations in clause 5(4) - public interest.

FREEDOM OF INFORMATION - clause 8(2) - confidential communications.

FREEDOM OF INFORMATION - refusal of access where documents cannot be found - notice issued under s.26 - sufficiency of search - whether agency has taken reasonable steps to find documents - extent of searches by agency.

FREEDOM OF INFORMATION - section 74(1) - Information Commissioner required to avoid disclosure of exempt matter - general description of information about third parties.

Freedom of Information Act 1992 (WA) ss. 23(2); 24; 26(2); 31; 68(1); 72(1)(b); 74(2); 75(1); 102(3); Schedule 1 clauses 3(1), 4, 5(1)(b), 5(1)(c), 5(1)(d), 5(1)(e), 5(4), 8(2); Glossary in Schedule 2.

Re Veale and Town of Bassendean (Information Commissioner WA, 25 March 1994, unreported).

Re Kobelke and Minister for Planning and Others (Information Commissioner WA, 27 April 1994, unreported).

Re A and Heathcote Hospital (Information Commissioner WA, 9 June 1994, unreported).

Re Hayes and The State Housing Commission of Western Australia (Homeswest) (Information Commissioner WA, 17 June 1994, unreported).

Re Gray and The University of Western Australia (Information Commissioner WA, 23 June 1994, unreported).

Re Manly and Ministry of the Premier and Cabinet (Information Commissioner WA, 16 September 1994, unreported).

Re C and Department for Community Development (Information Commissioner WA, 12 October 1994, unreported).

Re Smith and State Government Insurance Commission (Information Commissioner WA, 5 December 1994, unreported).

Re Edwards and Ministry of Justice (Information Commissioner WA, 12 December 1994, unreported).

Sankey v Whitlam (1978) 142 CLR 1.

Aboriginal Sacred Sites Protection Authority v Maurice; Re The Warumungu Land Claim, (1986) 10 FCR 104.

The Commonwealth v Northern Land Council (1993) 67 ALJR 405.

D v National Society for the Prevention of Cruelty to Children (1978) AC 171.

DPP v Smith [1991] 1 VR 63.

Commissioner for Police v District Court of New South Wales (1993) 31 NSW LR 606.

Ryder v Booth (1985) VR 869.

Accident Compensation Commission v Croom (1991) 2 VR 322.

Sohb v Police Force of Victoria (1994) 1 VR 41.

Searle Australia Pty Ltd v Public Interest Advocacy Centre (1992) 36 FCR 111.

News Corp Ltd v NCSC (1984) 1 FCR 64.

Re Read and Public Service Commission (Information Commissioner WA, 16 February 1994, unreported).

Re Eccleston and Department of Family Services and Aboriginal and Islander Affairs (1993) 1 QAR 60.

Attorney-General's Department v Cockcroft (1986) 10 FCR 180.

DECISION

It is decided that the following two of the three decisions of the agency of 9 September 1994, are confirmed:

- (i) Document 8 is exempt under clause 5(1)(b) of Schedule 1 to the *Freedom of Information Act 1992*; and
- (ii) access to documents relating to "request 8" of the access application is refused on the ground that the requested documents cannot be located.

Further, it is decided that the third decision of the agency of 9 September 1994, is varied. The matter deleted from Documents 3 and 7 is exempt matter under clauses 3(1) and 5(1)(b) of Schedule 1 to the *Freedom of Information Act 1992*.

Further, it is decided that Documents 1, 2, 4, 5, 6 and 9-26 are exempt under clauses 3(1) or 5(1)(b), or both, of Schedule 1 to the *Freedom of Information Act 1992*.

B.KEIGHLEY-GERARDY
INFORMATION COMMISSIONER

7th March 1995

REASONS FOR DECISION

BACKGROUND

1. This is an application for external review by the Information Commissioner arising out of a decision of the Police Force of Western Australia ('the agency') to refuse Ms Tickner ('the applicant') access to documents resulting from a police investigation into the 1975 murder of Shirley Finn.
2. On 31 May 1994, the applicant lodged an access application with the agency under the *Freedom of Information Act 1992* ('the FOI Act') seeking access to all documents relating to:
 1. *whether the names of people who visited her establishments were known to police. If so, were any members of Parliament involved, who were they, and what did their statements and/or police inquiries reveal;*
 2. *how many people made claim to part or all of the \$20,000 reward. Who were they and what information did they offer;*
 3. *the statement to police by Mrs Finn's lesbian lover, Rosie Black;*
 4. *the final report in relation to tracing the murder weapon;*
 5. *the conclusions/final reports of CIB Supt B Brennan and Det Sgt B Read;*
 6. *"arrangements" between Mrs Finn and the police in relation to the operation of her brothel/escort agencies/nightclubs;*
 7. *transcript of tape recorded interview between Mrs Finn's father and civil rights campaigner Archie Marshall over her \$100,000 tax bill;*
 8. *documents (including eye witness reports) relating to the two people allegedly at the scene of the crime in a green car, and investigations into the information provided by John Mearns of Carnarvon;*
 9. *statement by madam Linda Watson alleging police involvement;*
 10. *internal investigation reports into police officer Bernie Johnson;*
 11. *correspondence between police and the Australian Taxation Office and/or police investigations in relation to her \$100,000 tax bill."*

3. On 15 August 1994, some 31 days after the statutory period of 45 days within which an agency is obliged to make, and give notice of, a decision on an access application, Acting Senior Sergeant Ross, without identifying any of the documents, refused the applicant access and claimed that all documents were exempt from disclosure under clauses 5(1)(b),(c) and (d) of Schedule 1 to the FOI Act.
4. The applicant applied to the agency for internal review of that decision on 23 August 1994. On 9 September 1994, Acting Chief Superintendent Rose varied the initial decision and advised the applicant that access would be provided to copies of documents relating to requests 3 and 4 from which exempt matter had been deleted, documents relating to request 7 would be released and access was refused to documents relating to request 5 on the ground that they were exempt under clauses 5(1)(b),(c) and (d) of Schedule 1 to the FOI Act. The applicant was also informed that documents relating to requests 1, 2, 6, 8, 9, 10 and 11 either could not be found or did not exist and access was, therefore, refused under s.26(2) of the FOI Act.
5. Subsequently, there appeared an article in *The West Australian* newspaper written by the applicant, a journalist with that paper, based on that advice from the agency, alleging that evidence was missing from the murder file. That report prompted the agency to respond to what it perceived to be an inaccurate story. A memorandum was sent by facsimile to the Editor in Chief, in which the agency claimed that no documents were missing from the file, and that an incorrect reason had been given to the applicant for not providing access under the FOI Act. The agency then claimed the requested documents were all exempt under clauses 5(1)(b),(c) and (d) of Schedule 1 to the FOI Act.
6. On 21 September 1994, the applicant applied to the Information Commissioner for external review of three "decisions" of the agency, namely a decision to provide access to copies of two documents from which matter had been deleted, a decision to refuse access to another document and, finally, a decision that other documents, the subject of the access application, did not exist or could not be found.

REVIEW BY THE INFORMATION COMMISSIONER

7. On 22 September 1994, I notified the agency, pursuant to s.68(1) of the FOI Act, that I had accepted this complaint for review. Taking into account the agency's response to the applicant, I considered it necessary that I inspect the requested documents in order to determine whether the agency's claims for exemption were justified. In my view, it is not apparent from the nature of the documents described in the access application that all of the documents were exempt and I did not consider that the agency was justified in relying on s.23(2) of the FOI Act to avoid identifying the documents in dispute, particularly as it had, on internal review, identified some of them. Therefore, in accordance with my authority under s.75(1) and s.72(1)(b) of the FOI Act, I required the production to me of

the requested documents together with the file maintained by the agency in respect of this matter. As the agency had not identified the number or type of documents in dispute, I also requested the production of a schedule listing and describing each document identified by the agency as being within the ambit of the access application, and the exemptions claimed for each document or part of those documents. The material requested, including the schedule identifying the documents, was provided to me by the agency on 7 October 1994, together with a further submission claiming various exemptions for those documents and stating the reasons for those claims.

8. On 6 October 1994, I received written advice from the applicant authorising another journalist, Mr Mendez, ('the agent') to act on her behalf for the purpose of the review by my office. That authority was accepted by my office and both the applicant and the agent participated in various stages of the review process.
9. On 17 October 1994, a meeting was held at my office between the parties to discuss the process of review. The agency agreed to provide the applicant with edited copies of its submission and the schedule of documents with exempt matter deleted. At that meeting the agency's representative explained the procedures taken to locate and identify the requested documents and, in general terms, the operating procedures employed by the Major Crime Squad, which has carriage of the murder investigation, and where documents relating to that investigation are kept. In relation to request 8, the agency explained that no documents could be found and it detailed the searches taken to locate documents answering that description, to no avail.
10. On 24 October 1994, one of my officers met with the agent, who was dissatisfied with the quality and adequacy of the reasons provided by the agency in its submission to me. The agent queried whether the records of the Vice and Consorting squads had been checked for relevant documents and agreed to withdraw request 6 if those records were searched. A further written submission was received from the agent on 2 November 1994, responding to the agency's claims and reasons, and additional time was sought to prepare a more detailed argument for access to the requested documents.
11. On 3 November 1994, with the agreement of the agency, my Principal Solicitor attended at the offices of the Major Crime Squad. The purpose of that visit was to inquire into the adequacy of the searches undertaken in respect of requests number 1, 6, 8, 9 and 10. I also sought confirmation from the agency that relevant third parties had been advised about the access application. Subsequently, a number of third parties contacted my office and objected to the release of documents containing personal information about themselves.
12. Following discussions between the agency and my office, during the course of dealing with this complaint, the agent was provided with access to edited copies of some further documents. In addition, as a result of inquiries conducted by my officers, on 8 December 1994, the agent withdrew the requests for access to documents relating to requests 1, 6, 9 and 10. On 2 February 1995, after examining the documents remaining in dispute and considering the submissions of

the parties, I formed a preliminary view that those documents were exempt from disclosure under various clauses of Schedule 1 to the FOI Act. This view was conveyed to the parties. However, the agent was not satisfied with this result. As it was apparent to me that there was no likelihood of reaching a conciliated settlement between the parties, I proceeded to a formal decision on the matter.

THE DISPUTED DOCUMENTS

13. The 26 documents remaining in dispute and the exemptions claimed for those documents are described below:

No.	Folio	Date	Description	Exemptions
1	1	30/07/86	Correspondence	3(1) 5(1)(e) 8(2)
2	2	02/08/86	Correspondence	3(1) 5(1)(e) 8(2)
3	3-4	23/06/75	Witness statement	3(1) 5(1)(b) 8(2)
4	5-11	25/06/75	Witness deposition	3(1) 5(1)(b),(e) 8(2)
5	12	07/07/75	Witness deposition	3(1) 5(1)(b),(d) 8(2)
6	13-14	17/07/75	Witness statement	3(1) 5(1)(b) 8(2)
7	15-16	30/06/75	Ballistics report	5(1)(b)
8	17-40	10/02/76	Report of Det Sgt Read	3(1) 5(1)(b) 8(2)
9	41	28/08/75	Report on Mrs Finn (one paragraph only)	Deleted matter not relevant to access application
10	42	01/07/75	Serial 106 Details of information from a witness	3(1)

11	43	30/06/75	Serial 106 Details of information from a witness	3(1) 8(2)
12	44	01/07/75	Serial 106 Details of information from a witness	3(1) 8(2)
13	46	25/06/75	Serial 47 Details of financial arrangements of Mrs Finn	3(1) 8(2)
14	47-49	-	Serial 47 Details of financial arrangements of Mrs Finn	3(1) 8(2)
15	50	26/06/75	Serial 96 Details of financial arrangements of Mrs Finn	3(1) 8(2)
16	51	05/12/73	Correspondence to Commissioner for Taxation	3(1) 8(2)
17	52-53	Dec 1973	Letter from Mrs Finn to Commissioner for Taxation	3(1) 8(2)
18	54	27/02/74	Letter	3(1) 8(2)
19	55-56	14/03/74	Letter to Mrs Finn	3(1) 8(2)
20	57-59	14/03/74	Letter to Commissioner for Taxation	3(1) 8(2)
21	60	02/04/74	Letter	3(1) 8(2)
22	61	02/05/74	Letter to Commissioner for Taxation	3(1) 8(2)
23	62-63	11/08/75	Serial 397 Details of financial arrangements of Mrs Finn	3(1) 8(2)
24	64-67	08/08/75	Witness statement	3(1) 8(2)
25	68-72	19/11/75	Witness statement	3(1) 8(2)
26	73-77	04/02/82	Record of interview	3(1) 8(2)

14. In my view, the documents remaining in dispute may be grouped into four categories which cover the specific requests of the applicant. In the first category are documents relating to the reward posted by the government of the day. The first category relates to request 2 by the applicant and Documents 1 and 2 identified by the agency. The second category includes statements of a witness Rosie Black, and relates to request 3 by the applicant. Documents 3, 4, 5 and 6 fall into this category. The third category may be described as consisting of routine police reports to which requests 4, 5 and 8 relate. Documents 7-12 are included in this category. The fourth category deals with request 11 and includes Documents 13-26 relating to the business and financial affairs of Mrs Finn. Although Documents 13, 14 and 15 overlap both categories three and four I have considered them in the latter together with other documents relating to this particular aspect of the inquiry.
15. A related issue which remained the subject of complaint concerned the sufficiency of the searches conducted by the agency for documents relating to request 8. Although the applicant was also dissatisfied with the lack of documentation discovered by the agency with respect to request 1, in a letter dated 8 December 1994 I was advised that the agent did not wish to pursue that part of the complaint.

THE EXEMPTIONS

1. Documents relating to the reward (request 2)

(a) Clause 3 - Personal information

16. Document 1 (folio 1) and Document 2 (folio 2) are claimed to be exempt under clauses 3(1), 5(1)(e) and 8(2) of Schedule 1 to the FOI Act. Clause 3(1) provides:

"3. *Personal information*

Exemption

- (1) *Matter is exempt matter if its disclosure would reveal personal information about an individual (whether living or dead).*

Limits on exemption

- (2)...
- (3)...
- (4)...
- (5)...

- (6) *Matter is not exempt matter under subclause (1) if its disclosure would, on balance, be in the public interest."*
17. In the Glossary in Schedule 2 to the FOI Act, "**personal information**" is defined to mean: "*...information or an opinion, whether true or not, and whether recorded in a material form or not, about an individual, whether living or dead -*
- (a) *whose identity is apparent or can reasonably be ascertained from the information or opinion; or*
- (b) *who can be identified by reference to an identification number or other identifying particular such as a fingerprint, retina print or body sample."*
18. The FOI Act recognises that sensitive personal information about third parties may, from time to time, be contained in documents in the hands of State and local government agencies. That recognition gives rise to the exemption for personal information which is contained in clause 3. As I have said on numerous occasions, in my view, the purpose of the exemption in clause 3(1) is to protect the privacy of third parties (see *Re Veale and Town of Bassendean* (25 March 1994, unreported, at para 34); *Re Kobelke and Minister for Planning and Others* (27 April 1994, unreported, at para 68); *Re A and Heathcote Hospital* (9 June 1994, unreported, at para 23); *Re Hayes and The State Housing Commission of Western Australia (Homeswest)* (17 June 1994, unreported, at para 20); *Re Gray and The University of Western Australia* (23 June 1994, unreported, at para 14); *Re Manly and Ministry of the Premier and Cabinet* (16 September 1994, unreported, at para 46); *Re C and Department for Community Development* (12 October 1994, unreported, at para 22); *Re Smith and State Government Insurance Commission* (5 December 1994, unreported, at para 13); *Re Edwards and Ministry of Justice* (12 December 1994, unreported, at para 15)).
19. The protection of individual privacy is an important feature of the legislation in Western Australia and I consider that there is a public interest in the maintenance of that privacy. However, the FOI Act also provides a mechanism in s.24 for the deletion of personal information, where practicable, in order to encourage the release of information. In some instances, the mention of a person's name may reveal "personal information" about that individual. In my view, more is normally required in order to establish the exemption under clause 3(1). Parts (a) and (b) of the definition of "personal information" indicate that the disclosure of the document must reveal more information about a person than just his or her name in order to attract the exemption.
20. In this matter, Documents 1 and 2 consist of hand-written letters purporting to provide information about the murder and to claim the advertised reward. Taking into account the fact that they are hand-written, the information contained in the documents and the context in which the letters were created, I am satisfied from my examination of both documents that they contain "personal information" about the author and also "personal information" about other third parties. In my view, that information is, *prima facie*, exempt matter under clause 3(1) of

Schedule 1 to the FOI Act. The disclosure of those documents would reveal more about the individuals referred to therein, other than just names. I am also satisfied that access to a copy of those documents from which all of the personal information has been deleted, is not an option, given the amount of exempt matter contained in both documents.

21. The agent suggested that both documents could be re-typed to provide access to their contents whilst maintaining the secrecy of the identity of the author. The practice of re-typing documents to provide access to their contents has been adopted by agencies both in Western Australia and in other FOI jurisdictions to facilitate the giving of access to information. In my view, the adoption of such practices is to be encouraged, save in certain circumstances. However, an agency is not obliged to create a new document in order to give effect to an applicant's right of access under the FOI Act. Whilst I would not wish to discourage an agency from adopting such a procedure in appropriate circumstances, I do not consider that procedure to be viable in this instance. This is because the nature of the matter contained in Documents 1 and 2 is such that even if it were to be reproduced in a typed format, exempt personal information would be disclosed by the act of disclosing the contents of the letters.
22. The onus of persuading me that the disclosure of documents containing personal information about a third party or parties would, on balance, be in the public interest, lies on the access applicant under s.102(3). The agent made a number of submissions to me based on the public interest. In particular, the agent said:

"Some 50 calls have been received from members of the public after the West Australian ran a series of articles about the Finn murder. Fifty calls to a newspaper about a series of reports is a comparatively big response. The only greater public response in recent times happened when the West Australian wrote an unflattering review of Paul McCartney's concert at the Subiaco oval in March 1993. On that occasion the newspaper's switchboard was jammed by readers wishing to complain.

In the Finn case, notes were taken on more than 30 of the 50 or so calls because it was deemed at the time that duplicate information- assertions that were identical to claims previously expressed by other callers - was of little value.

Many of the callers alleged police involvement, either in the actual killing or knowledge of the culprit.

By the nature of this unsolicited response, the only conclusion that could be drawn was that the community at large suspected a police cover-up, at the very least, and murder by police, at worst.

If there was a cover-up, it is in the public interest that it be uncovered now. This is also in the interests of justice but also to satisfy concerns that paid public servants, such as police, carry out the job that they are paid to perform. It is also in the interests of the WA police force that the odour of

a cover-up should not be allowed to contaminate the reputation of the body as a whole, which includes many fine professionals."

23. The agent also claimed that, in his view, it was intolerable for the community to suffer in silence and ignorance when assertions about police involvement in the murder were widely held. The agent further claimed that the disclosure of Documents 1 and 2 would go a long way towards alleviating that situation by showing whether the assertions were well founded or groundless.

The Public Interest Test

24. The meaning of the term "public interest" is not defined in the WA FOI Act, nor is it defined in any other similar FOI legislation in other jurisdictions. In my view a rigid definition of the term is neither possible nor desirable. In Freedom of Information legislation, the "public interest test" is used to balance competing interests. Whilst there is a public interest in access to information, there is also a public interest in the proper functioning of government agencies and in protecting the privacy of individuals and the commercial interests of business organisations.
25. There are a number of cases in other jurisdictions in Australia and England, where the courts have considered the nature of the "public interest" and how the public interest should be weighed in the circumstances of a particular case: cf. *Sankey v Whitlam* (1978) 142 CLR 1; *Aboriginal Sacred Sites Protection Authority v Maurice; Re The Warumungu Land Claim*, (1986) 10 FCR 104; *The Commonwealth v Northern Land Council* (1993) 67 ALJR 405; *D v National Society for the Prevention of Cruelty to Children* (1978) AC 171.
26. When considering where the balance of the public interest lies, in a particular instance, in the case of *Sankey v Whitlam*, Gibbs ACJ said, at pp 39, "...that the court must weigh one competing aspect of the public interest against the other and decide where the balance lies." As I have said in previous decisions, in applying the public interest test, the difference between matters of general interest and those of private concern only, must be recognised. The public interest is an interest that extends beyond what the public may be interested in today or tomorrow depending on what is newsworthy. In *DPP v Smith* [1991] 1 VR 63 the Victorian Supreme Court, when considering an appeal relating to an application for access to documents under the Victorian FOI Act, said at p.73:

"There are many areas of national and community activities which may be the subject of the public interest. Nevertheless used in the context of this statute, it does not mean that which gratifies curiosity or merely provides information or amusement."

The Supreme Court then said, at p.75:

"The public interest is a term embracing matters, among others, of standards of human conduct and of the functioning of government and government instrumentalities tacitly accepted and acknowledged to be for

the good order of society and for the well being of its members. The interest is therefore the interest of the public as distinct from the interests of an individual or individuals. There are...several and different features and facets of interest which form the public interest. On the other hand, in the daily affairs of the community events occur which attract public attention. Such events of interest to the public may or may not be ones which are for the benefit of the public; it follows that such form of interest per se is not a facet of the public interest."

27. Further, in *D v National Society for the Prevention of Cruelty to Children*, op. cit., Lord Hailsham said, at p.230:

"There are, however, cases where confidentiality is itself a public interest and one of these is where information is given to an authority charged with the enforcement and administration of the law...Whether there are other cases, and what these may be, falls to be decided in the future. The categories of public interest are not closed, and must alter from time to time whether by restriction or extension as social conditions and social legislation develop."

28. In my view, the public interest which the agent identified as being relevant to this case, is mainly curiosity which some readers of the newspaper have in relation to items of news. That curiosity is not a facet of the public interest about which I must be concerned. I do not find the agent's arguments compelling. In my view, the agent has not demonstrated, to my satisfaction, that there is a public interest in the disclosure of those documents that outweighs the public interest in protecting the privacy of individuals whose personal information would be disclosed by granting access to Documents 1 and 2. The right of access enshrined in the FOI Act is designed to make government agencies accountable. Its purpose does not include opening to the public gaze the personal and private lives of citizens, especially where there is no demonstrable public benefit in doing so. In my view, there is no public interest in the disclosure of personal information where that type of information has no connection with the stated objects of the FOI Act. Documents 1 and 2 fall into this category.
29. If it were the case that disclosure of Documents 1 and 2 would shed any light on the truth or otherwise of the claims made by the agent, there may well be a public interest in the administration of the law that requires the disclosure of those documents. However, in this matter, that is not the case. Whilst the agent is at a disadvantage in that he is not in a position to know the precise nature of the contents of those documents, I have been able to examine them. I have considered their contents along with other information contained in the documents remaining in dispute. There is no information in Document 1 or 2, the disclosure of which could either reinforce or dispel the beliefs which the agent claims some members of the public hold about some members of the agency in connection with this crime. However, I am unable to be more precise in describing the nature of their contents without breaching my duty under s.74(2). Accordingly, I find that those documents are exempt under clause 3(1) of Schedule 1 to the FOI Act.

(b) The claims for exemption under clauses 5(1)(e) and 8(2)

30. The agency also claimed exemption under clauses 5(1)(e) and 8(2) of Schedule 1 to the FOI Act for Documents 1 and 2. As I have found those two documents to be exempt under clause 3(1) it is unnecessary for me to consider that claim in detail. However, on the basis of the claims of the agency, which claims have been put to the applicant and the agent, I consider that those documents may also be exempt under clause 5(1)(e) of Schedule 1 to the FOI Act. I make no finding with respect to the claims for exemption for Documents 1 and 2 under clause 8(2) of Schedule 1 to the FOI Act.

2. Documents containing statements of a witness (request 3)

(c) Clause 5 - Law enforcement, public safety and property security

31. Document 3 (folios 3-4), Document 4 (folios 5-11), Document 5 (folio 12) and Document 6 (folios 13-14) are claimed to be exempt from disclosure under clauses 3(1), 5(1)(b) and (e) and 8(2) of Schedule 1 to the FOI Act. I have examined each of those documents and I am satisfied that they contain personal information about the witnesses as well as Mrs Finn and other members of her family. The information that is personal information consists of, among other things, names and addresses, personal relationships and other information, the disclosure of which would clearly enable the identity of witnesses, or potential witnesses, to be discovered. That information is, *prima facie*, exempt matter under clause 3(1) of Schedule 1 to the FOI Act.
32. However, the matter that consists of personal information was obtained by police in the course of the investigation into the murder of Mrs Finn. As such it also forms part of the material relevant to that investigation. Clause 5(1)(b) of Schedule 1 to the FOI Act provides:

"5. Law enforcement, public safety and property security

Exemptions

(1) *Matter is exempt matter if its disclosure could reasonably be expected to:*

(a) ...

(b) *reveal the investigation of any contravention or possible contravention of the law in a particular case, whether or not any prosecution or disciplinary proceedings have resulted;"*

33. No other FOI legislation in Australia provides exemption for documents that could "reveal" an investigation but similar provisions in other Australian jurisdictions exempt matter that would, or could reasonably be expected to, "prejudice" such an investigation. The Concise Oxford Dictionary, Second

Edition, defines "reveal" as meaning, *inter alia*, "display or show; allow to appear" and "disclose, divulge, betray". The words "display" and "show" are also defined as follows:

"display" "expose to view; exhibit; show" and "allow to appear; reveal; betray".

"show" "allow or cause to be visible; manifest; appear".

34. In my view, clause 5(1)(b) is susceptible to at least two possible interpretations. In my decision in *Re C and Department for Community Development* (12 October 1994, unreported) at paragraph 33, I expressed the view that clause 5(1)(b) is designed to protect from disclosure information that would disclose the substance of an investigation. In that matter, as in this, the question that has again arisen is whether clause 5(1)(b) is concerned to exempt matter that could reasonably be expected to show, as a matter of fact, that there was, or had been, an investigation or whether it is concerned to exempt matter that could reasonably be expected to expose to view, the substance of an investigation.
35. I have been unable to determine, from the Parliamentary debates on the FOI legislation in Western Australia, the meaning that was intended to apply to the interpretation of this clause. Neither have the decided cases in other jurisdictions been of assistance in this regard, because the relevant exemptions are different. There are suggestions in some decided cases that FOI legislation should be interpreted with a "tilt" in favour of disclosure. For example, in *Commissioner for Police v District Court of New South Wales* (1993) 31 NSW LR 606, Kirby P, said at 626-627:

"I tend to favour the view that the Act, understood against its background and interpreted on conformity with the intention of parliament expressed in section 5, must be approached by decision-makers with a general attitude favourable to the provision of access claimed. It is important that the decision-makers (and especially in tribunals and courts which set the standards) should not allow their approaches to be influenced by the conventions of secrecy and anonymity which permeated public administration in this country before the enactment of the Act and its equivalents."

36. The relevant authorities in Victoria have also adopted a similar approach: cf *Ryder v Booth* (1985) VR 869; *Accident Compensation Commission v Croom* (1991) 2 VR 322 per Young CJ at 323; *Sohb v Police Force of Victoria* (1994) 1 VR 41.
37. However, by way of contrast, the Full Court of the Federal Court rejected this approach: see *Searle Australia Pty Ltd v Public Interest Advocacy Centre* (1992) 36 FCR 111 at 114-115; *News Corp Ltd v NCSC* (1984) 1 FCR 64. In the *News Corp Ltd* case, Bowen CJ and Fisher J said, at p.66:

"...In construing our Act we do not favour the adoption of a leaning position. The rights of access and the exemptions are designed to give a correct balance of the competing public interests involved. Each is to be interpreted according to the words used bearing in mind the stated objects of the Act."

38. In my decision in *Re Read and Public Service Commission* (16 February 1994, unreported) at paragraph 23, I indicated an acceptance of the "leaning" argument. Further, the Information Commissioner in Queensland has also signalled clear support for this approach: see *Re Eccleston and Department of Family Services and Aboriginal and Islander Affairs* (1993) 1 QAR 60.
39. On the first possible interpretation, clause 5(1)(b) would protect from disclosure those documents that could reasonably be expected to show, as a matter of fact, that there was, or had been, an investigation in a particular instance. If the conduct of an investigation into a contravention or possible contravention of the law is public knowledge, in my view, applying the first interpretation of clause 5(1)(b), would mean that this clause could not exempt any document connected with that investigation. Disclosure of any of those documents would not reveal the investigation because that fact would already be known. If this interpretation is correct then it follows that clause 5(1)(b) could only apply when the fact of an investigation is unknown. However, then clause 5(1)(b) would, *prima facie*, apply to every document in the hands of the police or a regulatory body in relation to the investigation of the particular matter. Such an interpretation would appear to make the provisions of s.31 of the FOI Act superfluous and I reject it.
40. There are many types of documents in the hands of law enforcement or regulatory bodies which documents, by their very nature, if disclosed, would have the effect of revealing the fact that an investigation had taken place or was currently underway. An example that comes to mind is a routine document recording information relayed to police that a crime had been committed. In the course of responding to, and inquiring into, such an incident, many documents are created by the police. Some of those documents would be quite innocuous and could be disclosed without compromising any resulting investigation. Others may contain more vital information that should necessarily remain secret to enable the investigation to proceed and in order to secure a conviction.
41. The disclosure of documents even remotely connected with an investigation may have the effect of "revealing" that there was in fact, or had been, an investigation. Of course, the mere fact that an agency relies on clause 5(1)(b) to deny access to requested documents also has the effect of revealing the fact of an investigation. In my view, if an agency wishes to keep secret the fact that there is or has been an investigation, the provisions of s.31 are appropriate for this purpose. Further, if the first possible interpretation of clause 5(1)(b) is applied to this matter the exemption could not apply to any documents relating to the investigation of the murder of Mrs Finn, as the existence of such an investigation has been public knowledge for almost 20 years. As I have already stated in paragraph 39 above, I reject the first interpretation.

42. The second possible interpretation of clause 5(1)(b) is that the clause seeks to protect from disclosure documents that could reasonably be expected to expose to view the substance of an investigation, in a particular case, whether or not that investigation has resulted in disciplinary or prosecution proceedings. In my view, the words "in a particular case" mean, in the context of this access application, the investigation into the murder of Mrs Finn.
43. The Concise Oxford Dictionary also defines "*substance*" as meaning, *inter alia*, "*the essential material forming a thing*" and "*the real meaning or essence of a thing.*" Clearly, the various exemptions provided by the FOI Act recognise, and are designed to protect, certain public interests. In my view, clause 5 is intended to protect the public interest in law enforcement and regulatory bodies being able to effectively carry out their functions. In my opinion, the second possible interpretation of the exemption in clause 5(1)(b) is the interpretation that best facilitates this and that should be applied in Western Australia. That is, the exemption applies to those documents the disclosure of which could reasonably be expected to reveal the substance of an investigation in a particular instance.
44. I have reached this conclusion taking into account the ordinary dictionary meaning of the word "reveal" and the purpose of the FOI Act which is to promote access to documents. In my view, the application of the first possible meaning to clause 5(1)(b) would produce two undesirable results. Firstly, it would have the effect of limiting the exemption to those investigations the existence of which is not already publicly known, that is, secret investigations. Secondly, in relation to those secret investigations, it would have the effect of protecting every document, no matter how innocuous or how remotely connected to the investigation those documents might be. If the existence of an investigation is already known, as in this case, under the first interpretation, no document relating to it would be protected from disclosure as the fact of the investigation is already known. In my view, that result would have no useful application and it could not have been intended by the Parliament.
45. Applying the second interpretation to the circumstances of the matter before me, the documents claimed to be exempt under clause 5(1)(b) and which would attract the exemption under that clause, are those documents which, if disclosed, could reasonably be expected to reveal the essential material forming the basis of the investigation into the murder of Mrs Finn.

Application of clause 5(1)(b) to the documents in question

46. To establish the exemption under clause 5(1)(b) the agency must persuade me that there is a "reasonable expectation" that certain consequences will follow if a particular document were to be disclosed. A reasonable expectation is one based on reason; not irrational, absurd or ridiculous: *Attorney-General's Department v Cockcroft* (1986) 10 FCR 180 at 190. Further, it is my view that, in some circumstances, the contents of the documents themselves may provide the

evidence for concluding that the required effect could reasonably be expected to result from the disclosure of those documents.

47. Documents 3, 4, 5, and 6 contain information supplied by a witness. The dates on those documents suggest that the witness was interviewed by police on a number of occasions as the investigation into the murder progressed and certain matters required explanation or clarification. Again, I am unable to be more precise in describing the contents of those documents without breaching my duty under s.74(2). However, I am able to say that each document deals with specific material which, from my understanding of the submissions of the agency, is matter that is vital to on-going inquiries about this unsolved murder. That information may be relevant to the agency in a number of ways. For example, it may be used to identify hoax callers, to establish new avenues of inquiry, to identify possible suspects or to exclude as no longer relevant, other suspects or possible suspects. I am satisfied, from my reading of them, that those documents each contain information, which, if disclosed, would reveal the substance of that investigation.
48. The agent disputed the application of this exemption and claimed that the exemption under clause 5(1)(b) must be judged "*...on grounds the police [sic] has not found the killer after 19 years. Any new investigation of the case is as a result of the efforts of the West Australian and a line ought to be drawn between the investigation pre 14 Sep 94 (date of the paper's first report in the recent series of articles) and post 14 Sep 94.*

Accordingly, any aspect of the investigation which is not current does not fall within the normal meaning of investigation, as far as the Act is concerned."

49. In my view, the agent misunderstands the nature of the exemption. It is not a requirement under clause 5(1)(b) in Western Australia, unlike its counterparts in other FOI legislation in which the relevant phrase is "prejudice to the conduct of an investigation" (or similar), that disclosure have some impact on a current investigation. In my view, the exemption in Western Australia is satisfied by establishing that there are reasonable grounds for concluding that the substance of a particular investigation would be revealed by the act of disclosing documents the subject of an access application.
50. During the course of my dealing with this complaint, the agent raised the issue of the application of the public interest in clause 5(4) of Schedule 1 to the FOI Act. I am also satisfied that none of the limitations in sub-clause 5(4)(a)(i)-(iii) applies and that there is no scope for a consideration of whether there is any public interest in the disclosure of those documents. Sub-clause 5(4)(a)(i) provides:

"(4) *Matter is not exempt matter under subclause (1) or (2) if-*

(a) *it consists merely of one or more of the following-*

(i) *information revealing that the scope of a law enforcement investigation has exceeded the limits imposed by law;...*"

51. It was the agent's contention that that paragraph referred to two limits: the upper limit and the lower limit. It was claimed that the upper limit was where the agency went beyond its lawful powers and obligations, and the lower limit was where the agency failed to act. Based on that contention, it was the agent's view that it was in the public interest to disclose documents that would show inaction on the part of the agency in pursuing investigative "leads".
52. In my view, the limits to which sub-clause 5(4)(a)(i) refers include, *inter alia*, the legal limits on police powers of arrest, search, seizure and interrogation which are contained in various statutes in Western Australia. No evidence has been provided to me that would establish the basis for the agent's contention that it means otherwise and I reject that claim.
53. The agent also sought to establish that there was a public interest in the release of information in the possession of the police because the best chance to track down the killer, it was claimed, was for it to be brought into the open, presumably through publication in *The West Australian* newspaper. Whilst I accept that the print media play a useful part in assisting law enforcement agencies from time to time, the question of the public interest, and where the balance lies, does not arise. In my opinion, Documents 3, 4, 5 and 6 are not of a type described in either paragraphs (i), (ii) or (iii) of sub-clause 5(4)(a), and, for this reason, there is no scope for a consideration of whether there is any public interest in the release of those documents.
54. However, even if there was scope for a consideration of whether disclosure of documents containing the substance of an unsolved murder investigation, would, on balance, be in the public interest, the applicant has not persuaded me on this point. In my view, the mere fact that this murder has remained unsolved for almost 20 years does not provide grounds for concluding that there is a public interest in releasing investigation documents to the media, or to anyone else. The agent was advised by the agency that it considered this particular investigation was not closed. In my view, it is common knowledge that police files into unsolved major crimes, including murder, are never closed. Indeed, there is recent evidence in Australia and England that murder investigations can be solved many years after the event.
55. Therefore, I am satisfied, from my examination of the documents, that the disclosure of Documents 3, 4, 5 and 6 could reasonably be expected to reveal the substance of the investigation of a contravention of the law, namely the crime of murder, and in particular the murder of Mrs Finn, even though no prosecution or disciplinary proceedings have resulted. I find those documents to be exempt from disclosure under clause 5(1)(b) of Schedule 1 to the FOI Act.

(d) The claims for exemption under clauses 3(1) and 8(2)

56. Although the agency provided the applicant with a copy of Document 3 from which exempt matter had been deleted, I consider the balance of that document to contain personal information about third parties which is also exempt matter.

I acknowledge that the applicant has an edited copy of Document 3. In my view, the matter released to the applicant in this document would also be exempt matter under clause 3(1) and, possibly, also exempt under clause 5(1)(b). The agency also claimed exemption under clause 8(2) for the matter deleted from Document 3, and under clauses 3(1) and 8(2) of Schedule 1 to the FOI Act, for Documents 4, 5 and 6. As I have found that matter and those documents to be exempt under clause 5(1)(b) it is unnecessary for me to consider whether the exemptions under clauses 3(1) and 8(2) apply.

3. Routine police reports (requests 4, 5 and 8)

57. Documents 7-12 (folios 15-44) are described as routine police reports. They include a ballistics report on the murder weapon, a report of the Officer in Charge of the investigation to the Coroner, and other reports from police assisting the inquiry into certain aspects of the investigation. During the course of this review, following discussions with my office, the agency agreed to release edited copies of Documents 10, 11 and 12 to the agent and he was invited to withdraw this part of the complaint upon being provided with those edited copies of documents. However, the agent did not withdraw this part of the complaint. Some of the matter deleted from those documents consists of personal information about third parties which, *prima facie*, is exempt matter under clause 3(1). For the reasons given in paragraphs 24-29 above, I am not persuaded that there is any public interest in the disclosure of this deleted information.
58. Some of the matter deleted from those folios is also claimed to be exempt matter under clause 5(1)(b). I am unable to describe the nature of this matter without breaching my statutory duty under s.74(2) of the FOI Act to avoid the disclosure of exempt matter in my reasons for decision. However, I have examined each document and I am satisfied the material deleted from those documents consists of information that has not been previously disclosed to the public. In my view, its disclosure could reasonably be expected to reveal the substance of the investigation. For the reasons given in paragraphs 33-44 above, I find that the matter deleted from Documents 10, 11 and 12 is also exempt under clause 5(1)(b).
59. Exemption under this clause is also claimed for Documents 7 and 9. Document 7 contains routine police intelligence gathered during the course of the murder investigation and submitted to senior officers for consideration. That information includes personal information about third parties that is, *prima facie*, exempt under clause 3(1). The applicant has been provided with a copy of Document 9 from which matter has been deleted. The deleted matter consists of information that is outside the ambit of the access application. In my view, the decision to delete that information from the copy of the document to which the applicant has been given access, is correct.
60. The agent disputed the claim that all the personal information about third parties contained in the remaining documents was information that was not available to the public and suggested the release of information that was public knowledge or

the release of documents with the names of third parties substituted with letters of the alphabet. Of course the agent cannot know the precise nature of the personal information in those documents. It is for this reason that the function of the Information Commissioner includes the authority to require the production of the requested documents in order to determine whether the documents contain exempt matter or are documents of an agency. I have performed that task in this instance. I am satisfied that the personal information, together with other information, contained in those documents, if disclosed, would reveal the substance of an investigation. For the reasons given in paragraphs 33-44 above, I find this matter is exempt under clause 5(1)(b). Consequently, access to edited copies of the documents with the names of third parties deleted or disguised in the manner suggested by the agent, is not an option.

61. Exemption under clause 5(1)(b) is also claimed for Document 8, the final report of the Officer in Charge of the investigation to the Coroner. That document describes various stages of the investigation, including initial matters such as the identification of the body, the certification of life extinct and the post mortem examination. It also includes details of witnesses interviewed and inquiries undertaken. I am satisfied, from my reading of that document, that its disclosure would reveal the substance of the investigation. Therefore, I find that document is also exempt under clause 5(1)(b) for the reasons previously given. In my view, none of the limitations in sub-clause 5(4) applies to this document and there is no scope for a consideration of the public interest test.

(e) The claims for exemption under clause 8(2)

62. Document 8 was claimed to be exempt under clause 8(2) of Schedule 1 to the FOI Act. As I have found that document to be exempt under clause 5(1)(b) it is unnecessary that I consider the claims for exemption under that clause.

4. Documents relating to the financial and business affairs of Mrs Finn (request 11)

63. Documents 13-26 (folios 46-77) deal with certain matters of the business and financial affairs of the murder victim. Documents 16-22 are documents that it seems were seized from Mrs Finn's home by police officers investigating her murder. Documents 13, 14, 15 and 23 are police records of intelligence relating to that aspect of the investigation and Documents 24-26 are witness statements in respect of that matter. Some of the information in those documents is personal information about Mrs Finn which I consider to be exempt under clause 3(1). In addition, some personal information about third parties is also contained in those documents which I also consider to be exempt under clause 3(1). As I have previously stated, the onus under s.102(3) is on the applicant to establish that disclosure of this information would, on balance, be in the public interest.
64. The agent suggested that the privacy of individuals could be preserved by the substitution of names with a letter of the alphabet and the release of documents in that form. The agent also submitted that much of the personal information about

Mrs Finn was already in the public domain and, therefore, the information in those documents could be released. It was the agent's view that there was a public interest in the release of documents because of the controversy surrounding this crime. In seeking to persuade me that there was a public interest in the release of documents the agent said:

"It is submitted that the intention of keeping private the affairs of a dead person is to prevent others ghoulishly using the FOI to rake over the financial affairs of another. Not so in the Finn case. Her death created the problem. Had she not died in such a manner and with such peculiar circumstances around her death, the applicant would not be seeking this information. That, of course, does not defeat the privacy provision, but it is a mitigating factor in a case which has great public interest. In the case of people other than Ms Finn, efforts should be made to ascertain whether they are still alive. If they are found to be alive, the information may be best dealt with by sobriquet. If these individuals are deceased, the same rules as those pertaining to Ms Finn should apply.

Public Interest:

A financial motive is one of the most cogent explanations offered in the killing of Shirley Finn. In fact, the story of Shirley Finn's life and death is virtually meaningless without a financial theory for her demise. If it is accepted that the murder of Shirley Finn is a matter of legitimate public interest, it must also be accepted that such a belief goes hand-in-hand with an understanding of her finances."

65. In my view, the FOI Act does not distinguish between the rights of Mrs Finn as a deceased person, and any other deceased person whose personal information may be contained in documents in the hands of State and local government agencies. Sections 32 and 33 of the FOI Act require an agency to obtain the views of a third party, or the closest relative of a deceased third party, before deciding to give access to a document that contains matter that is exempt under clause 3 or clause 4 of Schedule 1 to the FOI Act. In this instance, the agency has taken reasonable steps to contact all third parties, including known relatives of Mrs Finn, to obtain their views. Not all third parties responded. However, many did and many of those objected to the release of their personal or business information. One relative of Mrs Finn objected to the release of that kind of information and another did not object. During my deliberations on this matter, I have considered the views of all third parties.
66. Documents 13-16 contain certain information relating to a particular aspect of Mrs Finn's financial affairs which was investigated in relation to her murder. To my knowledge, most of that information does not appear to have been publicly disclosed. No evidence has been put before me that establishes otherwise. The agency did not claim those documents were exempt under clause 5(1)(b) but claimed exemption under clause 8(2) of Schedule 1 to the FOI Act. Taking into account those documents and their part in the investigation, from my examination of them I am satisfied that they contain information which, if disclosed, could reasonably be expected to reveal the substance of the investigation into her

murder. Therefore, I find that those documents are exempt under clause 5(1)(b). I am also satisfied, for the reasons already provided, that access to edited copies of those documents is not an option, that none of the limitations in sub-clause 5(4)(a) applies and that, therefore, there is no scope for a consideration of the public interest.

(f) The claims under clauses 3(1) and 8(2)

67. As I have found Documents 13-16 to be exempt under clause 5(1)(b) of Schedule 1 to the FOI Act, it is unnecessary that I consider whether they are also exempt under clause 8(2). Parts of those documents are also exempt under clause 3(1). The remaining documents are all claimed to be exempt under clauses 3(1) and 8(2) of Schedule 1 to the FOI Act. However, taking into account the contents of the documents, the circumstances in which they were created and the circumstances in which they came into the hands of the police, I am satisfied, nevertheless, for the reasons already given, that all of these documents are exempt under clause 5(1)(b) of Schedule 1 to the FOI Act. Although I am not satisfied, from the material before me, that the exemption in clause 8(2) applies to each of these documents, it is unnecessary for me to consider whether they are also exempt under that clause, or under clause 3(1).
68. In conclusion, I find that all documents remaining in dispute between the parties are exempt under clauses 3(1) or 5(1)(b), or both, of Schedule 1 to the FOI Act. Although various other claims for exemption were made under other clauses in Schedule 1, I do not propose to consider those claims in view of the conclusion that I have reached. However, there remains the outstanding issue relating to the sufficiency of searches within the agency to locate certain documents requested by the applicant.

SUFFICIENCY OF SEARCH ISSUES (REQUEST 8)

69. Part of the complaint to my office concerns the sufficiency of the searches conducted within the agency to locate documents relating to information allegedly supplied by a witness, Mr John Mearns (request 8). In my view, it is not the function of the Information Commissioner to physically search for documents on behalf of applicants, nor is it my function to examine in detail an agency's record keeping system. My role is to determine whether there are reasonable grounds for believing that the requested documents exist and, if so, to determine whether the searches conducted by the agency were reasonable in all the circumstances.
70. The agency was unable to identify any documents that would satisfy the request for access to "*..information provided by John Mearns of Carnarvon.*" The agent claimed that five stories had appeared in *The West Australian* which indicated that police had interviewed Mr Mearns some time shortly after the murder. There was also material suggesting that Mr Mearns had allegedly complained in March 1982 about his treatment by police and a further indication that those complaints had

been investigated. Based on that information the agent claimed that documents recording interviews with Mr Mearns should be in existence in the agency.

71. A member of my staff attended at the offices of the Major Crime Squad, with the concurrence of the agency, on 3 November 1994. That visit was for the purpose of understanding the procedures by which information gleaned during a murder investigation is processed, acted upon and recorded, and to be taken through the searches undertaken by the agency in respect of the applicant's access application following her complaint to me.
72. It appears that during an inquiry such as a murder investigation, each piece of information is assigned a "serial number" and that any action taken with respect to that information is recorded, on a running sheet using the same serial number. Thereafter, the document recording the information and action taken in respect of each serial number is filed in numerical order and the names related to those serials are separately recorded in a serial index book. The name of any person supplying information is recorded in the index book, in alphabetical order, together with the information supplied. The name or names of persons to whom the information supplied relates are also recorded in the index book, in alphabetical order and this record is cross-indexed with the relevant serial number and running sheet. All information received by police relating to the murder of Mrs Finn, should be channelled through to the Major Crime Squad, including any information received from the public resulting from the articles appearing in *The West Australian* newspaper from time to time.
73. After notification that I had accepted this complaint, the FOI Manager in the agency manually searched the running sheets, the serials and the serial index book. That officer also attended at the Major Crime Squad offices and physically searched through all other documents relating to the murder of Mrs Finn.
74. Searches of the serials and the serial index book revealed that they contained no reference to Mr Mearns. From the searches undertaken, his name does not appear to be recorded elsewhere in any of the documents relating to this investigation. The agency's efforts to locate documents relevant to Mr Mearns included speaking with the former Officer in Charge of the Carnarvon Criminal Investigation Branch in 1982 (now retired). That officer was the only detective stationed at Carnarvon at the time Mr Mearns is alleged to have been interviewed by police. He has no recollection of an interview with Mr Mearns. He also stated that all detectives make a record of the duties performed by them on a daily basis, in individual journals kept for that purpose. However, he is no longer in possession of his journal.
75. The agency informed me that the present Officer in Charge of the Carnarvon Criminal Investigation Branch has searched the office and the Carnarvon police station storage facilities. That search has failed to locate the relevant journal or any other associated documents. The agency librarian has also searched the library facilities for relevant documents, to no avail. Inquiries at the State Archives have also failed to locate any documents that would satisfy the applicant's request. There does not appear to be a record in the agency of any initial approach by Mr Mearns to police, nor of any complaint in 1982 nor any record of action taken with respect to any such complaint.

76. If Mr Mearns did provide information to the agency following the murder and again in 1982, I am of the view that it is reasonable to expect some record to be made of those contacts with the agency. In fact it would be surprising if this had not been done. However, the searches undertaken by the agency have failed to locate any records of this nature. Nevertheless, I am satisfied that the searches undertaken by the agency to locate documents have been reasonable in all the circumstances. Therefore, I am not satisfied that the documents exist, although I consider there are reasonable grounds for believing that they should.
