

Decision D0012015 – Published in note form only

Re Mineralogy Pty Ltd and Department of Mines and Petroleum [2015] WAICmr 1

Date of Decision: 29 January 2015

Freedom of Information Act 1992: Schedule 1, clauses 3(1), 4(1), 4(2) and 4(3)

On 14 November 2013 the access applicant applied to the agency under the *Freedom of Information Act 1992* (**the FOI Act**) for documents relating to certain exploration licences, and documents consisting of the complaints by, or on behalf of, Mineralogy Pty Ltd against certain of those exploration licences.

In accordance with its obligations under section 33 of the FOI Act, the agency consulted with the relevant third parties. Mineralogy Pty Ltd (**the complainant**) is one of the third parties. The complainant advised the agency that it objected to the release of any of the documents identified and claimed exemptions under clauses 3(1), 4(2), and 4(3) of Schedule 1 to the FOI Act. The complainant further claimed that the documents were subject to copyright and, if released, should only be made available by inspection. The agency decided that the documents were not exempt and to give the access applicant edited access to them. On 9 April 2014 the complainant applied to the Information Commissioner (**the Commissioner**) for external review of the agency's decision.

Following receipt of the complaint, the Commissioner obtained the disputed documents from the agency together with the FOI file maintained in respect of the access application. The Commissioner's office also sought further information from the complainant to support its claims for exemption. The access applicant was invited to be joined as a party to the complaint but declined to do so.

On 5 September 2014 the Commissioner provided the parties with a letter setting out his preliminary view of the complaint. The Commissioner's preliminary view was that the disputed documents – which related to the process of obtaining exploration licences and conducting exploration activities over a 12 year period between 1985 and 1997 – were not exempt under clauses 3(1), 4(2) or 4(3) of Schedule 1 to the FOI Act. The Commissioner was also of the preliminary view that giving the access applicant access to a copy of the disputed documents would not infringe copyright.

The complainant did not accept the Commissioner's preliminary view and made further submissions in support of its claim for exemption under clauses 3(1), 4(2) and 4(3). The complainant also made new submissions that some of the disputed documents were exempt under clause 4(1) of Schedule 1 to the FOI Act. After reviewing the complainant's further submissions and all of the information before him, the Commissioner was not dissuaded from his preliminary view.

In considering clause 3(1), the Commissioner considered that the personal information about a representative of the complainant contained in the disputed documents – which was the only personal information in dispute – was not exempt because the information related solely to that individual's role as a representative of the complainant. In weighing the public interest factors for and against disclosure of that information pursuant to clause 3(6), the Commissioner decided that, as much of the information is publicly available, its disclosure

would not involve any real encroachment on the privacy of the individual concerned, consistent with *Re McGowan and Minister for Regional Development; Lands and Mineralogy Pty Ltd* [2011] WAICmr 2.

Although the complainant submitted that the disputed documents generally have commercial value and are therefore exempt under clause 4(2), the Commissioner considered that the documents are historic and contain no information of commercial value. Accordingly, the Commissioner was not persuaded that the disputed documents, if disclosed, would reveal information that has a commercial value to any person as required by clause 4(2).

The Commissioner was satisfied on the information before him that the disputed documents contain matter that, if disclosed, would reveal information about the business, commercial or financial affairs of a person and that the requirements of clause 4(3)(a) were met. However, given the nature and age of the documents, the Commissioner was not persuaded that disclosure of the disputed documents could reasonably be expected to have an adverse effect on the affairs of a person, or prejudice the future supply of information of that kind to the Government or an agency, as required by 4(3)(b). As a result, the Commissioner considered that the disputed documents were not exempt under clause 4(3).

The Commissioner was also not persuaded by the complainant's submissions that the disputed documents contain trade secrets and therefore found that the disputed documents were not exempt under clause 4(1).

Consequently, the Commissioner found that the disputed documents are not exempt under clauses 3(1), 4(1), 4(2) or 4(3) of Schedule 1 to the FOI Act and confirmed the agency's decision to give the access applicant access to an edited copy of them.

During the external review process, the complainant also submitted that the disputed documents were exempt under clauses 7(1) and 8(1) of Schedule 1 of the FOI Act; that some of the disputed documents were publicly available and were therefore not subject to the FOI Act pursuant to section 6; and that the disputed documents were not documents of an agency as defined in clause 4 of the Glossary to the FOI Act. However, the Commissioner was of the view that, as the agency had consulted the complainant as a third party pursuant to sections 32 and 33 of the FOI Act, he was not obliged to consider the complainant's submissions other than those in relation to the exemptions in clauses 3 and 4 of Schedule 1 to the FOI Act. Accordingly, in the circumstances of this case he did not do so.