

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

**File Ref: F2013159
Decision Ref: D0042015**

Participants:

Peter Murphy
Complainant

- and -

Department of State Development
Agency

DECISION AND REASONS FOR DECISION

FREEDOM OF INFORMATION – Decision by agency to refuse access to documents concerning State Agreements – clause 3 – personal information – clause 4(3) – information about the business, professional, commercial or financial affairs of a person – clause 4(6) – consent to disclosure – clause 6 – deliberative processes – clause 7 – legal professional privilege – clause 8(2) – confidential information – clause 9 – the State’s economy – clause 10 – the State’s financial or property affairs.

Freedom of Information Act 1992: sections 24, 74 and 102(1); Schedule 1, clauses 3(1); 4(3); 4(6), 6(1), 6(4); 7(1); 8(2); 9(1), 9(2); and 10(1).

Apache Northwest Pty Ltd and Department of Mines and Petroleum [2012] WASCA 167
Attorney-General's Department v Cockcroft (1986) 64 ALR 97
Coco v A.N Clark (Engineers) Ltd [1969] RPC 41
Collier Knyn and Associates Pty Ltd v City of Perth [1995] WAICmr 62
Commonwealth v John Fairfax & Sons (1980) 147 CLR 39
Esso Australia Resources Ltd v The Commissioner of Taxation (1999) 168 ALR
Harris v Australian Broadcasting Corporation (1983) 78 FLR 236
Manly v Ministry of the Premier and Cabinet (1995) 14 WAR 550
Re Addisons and Racing and Wagering Western Australia [2008] WAICmr 3
Re Gahan and Town of Stirling [1994] WAICmr 19
Re Hancock Prospecting P/L and Department of Industry and Resources [2005] WAICmr 1
Re Hemsley and City of Subiaco [2008] WAICmr 46
Re Kimberley Diamond Company NL and Department for Resources Development [2000] WAICmr 51
Re Kimberley Diamond Company NL and Department of Resources and Development (No2) [2000] WAICmr 63

Re McGowan and Minister for Regional Development; Lands [2011] WAICmr 2
Re Metcalf Pty Ltd. and Western Power [1996] WAICmr 23
Re Ravlich and Minister for Regional Development; Lands [2009] WAICmr 9
Re Veale v Town of Bassendean [1994] WAICmr 4
Re WA Newspapers and Dampier Port Authority [1996] WAICmr 13
Re West Australian Newspapers Limited and Western Power Corporation [2005]
WAICmr 10
Re Waterford and Department of the Treasury (No. 2) (1984) 5 ALD 588

DECISION

The agency's decision to refuse access is set aside. In substitution, I find that:

- The disputed documents are not exempt under clauses 4(3), 6(1), 7, 8(2), 9(1) or 10(1) of Schedule 1 to the FOI Act.
- Document 1 contains personal information about a third party that is not prescribed details under clause 3. Pursuant to section 24 of the FOI Act, it is practicable for the agency to edit that document to delete exempt personal information under clause 3.

Sven Bluemmel
INFORMATION COMMISSIONER

24 March 2015

REASONS FOR DECISION

1. This complaint arises from a decision made by the Department of State Development (**the agency**) to refuse Mr Peter Murphy (**the complainant**) access to certain documents under the *Freedom of Information Act 1992* (**the FOI Act**).

BACKGROUND

2. In February 2013, the complainant applied to the agency under the FOI Act for access to documents as follows:

exchanges between the State and the agreement company in the lead up to the discharging of an obligation. The particular obligations of interest are the secondary and steel obligations under the Mount Newman Agreement and metallised agglomerates and steel obligations under the Hamersley Range and Mount Bruce Agreements. The Mount Newman Agreement files are: 80/77 vol 1; consignment number 6582 . 81/77 vols 2 and 3 (vol 1 is open and has been accessed by me); both consignment number 6582. 82/77 vol 4 (earlier volumes are open and have been accessed by me); consignment number 6582. 85/77 vol 1; consignment number 6582. 89/77 vol 7 (earlier volumes are open and have been accessed by me); consignment number 6582. 94/88 (not open); consignment number 6639. 17188 vols 1 and 2 (both not open); both consignment number 6639. 384/91 vols 1 and 2 (both not open) both consignment number 6870. 69/85 vol 1; consignment number 6639. I am looking for all papers that deal with the secondary processing obligation extinguished by the beneficiation plant at Mount Newman and the steelmaking obligation extinguished by the Pilbara Energy Project. The Hamersley Range and Mount Bruce Agreement files are: 30/77 vols. 6 to 9 (earlier volumes are open and have been accessed by me); all consignment number 6582. 39/77 vol 3 (earlier volumes are open and have been accessed by me); consignment number 6582. 50/89 vols 1 and 2; (both not open); both consignment number 6639. 47/84 vols. 5 to 7 (earlier volumes are open and have been accessed by me); all consignment number 6639. 1242/91 vols 1-3 (all not open); all consignment number 6870. 105/87 vol 1; consignment number 6639. I am looking for all papers that deal with the metallized agglomerates obligation extinguished by the HI smelt plant at Kwinana being built as an alternative investment under the Hamersley Range 1968 Agreement (commonly known as the Paraburdoo Agreement) and any papers regarding the steelmaking obligations under the Mount Bruce Agreement. A further request for viewing six additional files include: 1991/384v1, 1991/384v2, 1991/383v1, 1991/383v2, 1991/382v1 and 1991/1241v1.

3. I understand that the volume and consignment numbers in the access application refer to the classification numbers used in the State Records Office archive catalogue.
4. By notice of decision dated 10 May 2013 the agency decided to refuse access and advised the complainant that the requested documents were exempt under clause 4(3) of Schedule 1 to the FOI Act.
5. The complainant applied for internal review of the agency's decision. On 31 May 2013, the agency confirmed its decision that the disputed documents were exempt

under clause 4(3). The agency also provided the complainant with an additional document schedule describing and numbering 128 documents.

6. By letter received in June 2013, the complainant applied to me for external review of the agency's decision.

REVIEW BY THE INFORMATION COMMISSIONER

7. Following my receipt of this complaint, the agency produced to me copies of the disputed documents with its FOI file maintained in respect of the complainant's access application. My officers also obtained further information from the parties in respect of the agency's decision. There has also been considerable communication between my office and the parties in relation to the release of further documents to the complainant.
8. At the outset, it is important to note that the disputed documents are considerably aged, ranging from 1971 to 1993.
9. On 9 January 2014, the parties attended a conciliation conference to try and resolve this matter without taking further formal steps. The matter was not resolved. However, the agency agreed to provide written submissions in support of its claims under clause 4(3) and to comment on the background to the creation of State Agreements.
10. In February 2014, the agency provided a revised schedule of the disputed documents. The agency also commented on the operation of State Agreements.
11. The agency asserted that its submissions justifying its exemption claims were contained in the revised document schedule. The agency was required to provide this further material to cure the deficiencies in the agency's decisions described below.
12. In the revised document schedule the agency also made numerous additional claims for exemption other than under clause 4. The agency asserted that various of the disputed documents were also exempt under clauses 1(1), 6(1), 7(1), 8(2), 9(1) and 10(1) of Schedule 1 to the FOI Act.
13. Section 74(1) of the FOI Act requires the Information Commissioner to ensure that matter claimed to be exempt is not disclosed during the course of dealing with a complaint. The agency's revised document schedule could not be released to the complainant because it contained matter claimed to be exempt.
14. As a result, the agency was requested to provide further information to the complainant to explain the basis of its decision to claim that the disputed documents were exempt. The agency declined to do so. The reason given for the agency's failure to provide the information requested by my office was the significant time and resources that the agency had spent in dealing with the access application. However, the agency conceded that the original decision lacked detail and may not have enabled the complainant to understand the reasons for refusal of access.
15. The agency asserted that the demands on staff and other priorities were also the reason that the agency would not provide further information to the complainant. These

factors are irrelevant to the agency's obligation under the FOI Act to provide sufficient information to the complainant.

16. The previous A/Information Commissioner noted in *Re Ravlich and Minister for Regional Development; Lands* [2009] WAICmr 9 at [10]-[19], that if an agency gives an applicant a notice of decision that does not contain sufficient findings of fact and a clear statement of the basis on which an exemption is claimed, it is unlikely that the applicant will have a clear understanding of the reasons why access is refused and why the requirements of any exemption clause or clauses are satisfied. Only if applicants understand all of the elements involved in applying a particular exemption and why access is refused are they in a position to decide whether to accept the decision or to test it by way of external review on complaint to the Information Commissioner.
17. Although I do not have sufficient information to reach a concluded view given the very broad nature of the access application, I consider that the agency may have been justified in refusing to deal with the application on the basis that it would divert unreasonable resources away from its key functions, as contemplated by section 20 of the FOI Act. However, once it decided to deal with the application, the agency was required to make a decision that complied with its obligations under the FOI Act.
18. After February 2014, following further discussions with my Legal Officer and consultation with third parties, the agency released a significant number of documents or edited documents to the complainant. Seventy three documents or edited documents remain in dispute, as described below.

State Agreements

19. In February 2014 the agency provided the following comments describing State Agreements:
 - State Agreements are contracts between the government of Western Australia and proponents of major projects which are ratified by an Act of Parliament.
 - There are 25 iron ore and steel agreements in force and the access application relates to 60% of those agreements. The relevant State Agreements deal with the State's resources and major infrastructure projects.
 - State Agreements are generally very long term instruments and the majority are still in force, albeit that they may be varied from time to time. A period of 50 years is not a long time in the mining industry. Therefore, the dates of the disputed documents are not a determinative factor.

Onus of proof

20. Section 102(1) of the FOI Act provides that, in any proceedings concerning a decision made under the Act by an agency, the onus is on the agency to establish that its decision was justified or that a decision adverse to another party should be made. Consequently, the agency bears the onus of establishing that its decision to refuse the complainant access to the disputed documents was justified. The complainant does not have to establish that he is entitled to be given access to the disputed documents. The

complainant is entitled to be given access to those documents unless the agency establishes a claim for exemption.

The agency's notices of decision

21. On receipt of the complaint my Complaints Coordinator advised the agency that its decisions were deficient and did not comply with the FOI Act.
22. Section 30 of the FOI Act sets out the details that must be included in an agency's notice of decision given to an access applicant. If an agency decides to refuse access to a document, section 30(f) of the FOI Act provides that the agency must include the following details in its notice of decision:
 - the reasons for the refusal;
 - the findings on any material questions of fact underlying those reasons; and
 - reference or references to the material on which those findings were based.
23. In this case, neither the agency's initial decision nor the internal review decision complied with the requirements of section 30(f). Apart from citing the exemption clause in respect of each document for which exemption was claimed, neither decision explained how the requirements of each particular exemption provision were satisfied.
24. The agency was advised that the notices of decision did not give the complainant sufficient details of the reasons for refusing access to the requested documents and the findings on any material questions of fact underlying those reasons, referring to the material on which those findings were based.
25. Given the matters outlined, I consider that the agency failed to comply with its obligations under the FOI Act in dealing with the complainant's application.
26. However, after March 2014 there were extensive negotiations between my Legal Officer and the parties. As a result, the number of documents in dispute was narrowed significantly. In September 2014 the agency's FOI Coordinator provided the complainant with an additional document schedule of the documents now in dispute. This was of further assistance to the complainant and my office. However, the schedule simply recited exemption clauses relied on by the agency, without explaining the basis of those claims to the complainant.
27. In January 2015 I provided the parties with my preliminary view in this matter. My preliminary view was that:
 - The disputed documents are not exempt under clauses 1(1), 4(3), 6(1), 8(2), 9(1) or 10(1) of Schedule 1 to the FOI Act.
 - Material in Documents 59, 84, 85 and 118 may be of a kind that is exempt under clause 7(1) because it may be subject to legal professional privilege. However, the agency is required to provide further information to allow me to determine whether this disputed information is exempt.

- If the complainant seeks access to the material in Document 1 claimed to be exempt under clause 3(1), he is required to provide submissions about the application of the limits in clause 3(1), particularly clauses 3(4) and 3(6).
28. The agency accepted my finding in relation to clause 1(1) but did not accept the balance of my preliminary view. The agency offered various comments in relation to the preliminary review. However, despite my invitation to do so, the agency did not provide any new submissions in relation to its claims under clauses 4(3), 6(1), 7, 8(2), 9(1) or 10(1) of Schedule 1 to the FOI Act.
29. In response to my preliminary view, the complainant confirmed that he did not seek access to the matter I had identified as exempt under clause 3.

THE DISPUTED DOCUMENTS

30. The disputed documents are outlined in the annexed document schedule marked 'Annexure A' produced by the agency in September 2014.

Other parties

31. In October and November 2013, the agency sought the views of BHP Billiton Iron Ore Pty Ltd (**BHP**) about the release of edited documents then in dispute and provided it with a schedule of documents.
32. However, the terms of the agency's consultation with BHP were not clear from the agency's FOI file. Therefore, my Legal Officer required the agency to provide documents in relation to its consultation with BHP.
33. By letter dated 11 April 2013, but received on 11 April 2014, BHP advised me that:
- BHP Billiton Iron Ore Corporate Affairs has reviewed the documents proposed for edited access, namely document numbers 1, 28, 32, 33, 49, 55, 58, 70, 72, 93, 98-100, 110 and 116. While BHP Billiton Iron Ore appreciates the agency's proposal to apply certain exemptions to the material in question, following examination of the documents we have no concerns around its release.*
34. My Legal Officer advised the agency of the terms of BHP's response.
35. The agency advised that it sent BHP the document schedule attached to its email to my office dated 5 November 2013. That schedule included numerous other documents not referred to in BHP's reply received in April 2014. The agency stated that those other documents were the subject of consultation with BHP. However, it is not clear to me what response, if any, BHP was asked by the agency to provide about those other documents.
36. The agency also consulted Rio Tinto about the disclosure of documents relevant to that company. By letter dated 21 November 2013, Rio Tinto advised the agency as follows:

Rio Tinto considers the documents are commercially sensitive to it and, therefore, agrees with the previous assessment by the agency in that regard. However, given the particular circumstances of the complainant, RIO is prepared to agree to the disclosure of documents.

37. Following extensive negotiations a significant number of documents involving BHP and Rio Tinto are no longer in dispute.

CLAUSE 4 – COMMERCIAL AND BUSINESS INFORMATION

38. The agency claims that various disputed documents are exempt under clause 4(3) of Schedule 1 to the FOI Act. Clause 4 provides, so far as is relevant:

- (3) *Matter is exempt matter if its disclosure –*
 - (a) *would reveal information (other than trade secrets or information referred to in subclause (2)) about the business, professional, commercial or financial affairs of a person; and*
 - (b) *could reasonably be expected to have an adverse effect on those affairs or to prejudice the future supply of information of that kind to the Government or to an agency.*
- (4) *Matter is not exempt matter under subclause (1), (2) or (3) merely because its disclosure would reveal information about the business, professional, commercial or financial affairs of an agency.*
- (5) *...*
- (6) *Matter is not exempt matter under subclause (1), (2) or (3) if the applicant provides evidence establishing that the person concerned consents to the disclosure of the matter to the applicant.*
- (7) *Matter is not exempt matter under subclause (3) if its disclosure would, on balance, be in the public interest.*

39. In *Attorney-General's Department v Cockcroft* (1986) 64 ALR 97 at page 106, the Full Federal Court said that the words 'could reasonably be expected' were intended to receive their ordinary meaning and required a judgment to be made by the decision-maker as to whether it is reasonable, as distinct from something that is irrational, absurd or ridiculous, to expect the stated consequences to follow if the documents in question were disclosed. This approach was accepted as the correct approach in *Apache Northwest Pty Ltd and Department of Mines and Petroleum* [2012] WASCA 167.

The agency's submissions – clause 4(3)

40. The agency relies on the matters set out in the document schedule produced to my office in February 2014 to support its claims under clause 4(3). Although the agency provided fairly detailed submissions in relation to Document 1, the agency provided reasons in the broadest terms for its claim for exemption in respect of the other disputed

documents. Generally, in respect of the other disputed documents, the agency simply cites exemption clauses and/or refers to the comments provided in relation to Document 1.

41. In summary, the agency submits as follows:

- Although the disputed documents date from 1971 to 1993 a number of relevant State Agreements are still in force. Given the long duration of State Agreements, the disputed information remains relevant to the commercial interests of the agency and third parties.
- Many State Agreements have no termination dates and their term is linked to mining leases granted pursuant to State Agreements, in this case, the iron ore operation of the third parties.
- Document 1 reveals commercial information of BHP. In particular, the document refers to a study by BHP about a plant that did not proceed.
- The release of Document 1 may affect the BHP's corporate image and the State's relationship with a particular remote community.
- Document 1 reveals commercial information about BHP, specifically about its operations.
- Document 1 specifically refers to BHP's study that proposes to locate a particular plant in a certain place. The plant did not proceed, however the proposed location for the proposed plant is currently contentious. The State is currently reviewing the potential health effects of the plant. Therefore the release of these documents may affect BHP's corporate image and affect its, and the State's, relationship with a certain community. Further, BHP requested in Document 44 that the fact such a study is taking place be kept confidential.
- If this commercial information were disclosed by the agency, it would reveal commercially sensitive information of the proponent which would be detrimental to the proponent. The agency notes *Re McGowan and Minister for Regional Development; Lands* [2011] WAICmr 2 where the Commissioner stated (at [68]) that, although organisations undertaking business with government in relation to the management and development of the State's mineral resources should expect to be subject to a higher degree of scrutiny and accountability in respect of that work, he did not consider it to be in the public interest for such organisations to suffer commercial disadvantage because of it.
- Proponents would be more wary of the information they provide to Government under the State Agreement process in the knowledge that it is at risk of being disclosed under FOI. This would be detrimental to the operation of the State Agreements and the ability of the Minister to consider proposals with the fullest amount of information required. This would further adversely affect the business dealings between the State and the proponent which should not be adversely affected by the operation of the FOI Act (*Re Hancock Prospecting P/L and Department of Industry and Resources* [2005] WAICmr 1).

Public interest – clause 4(7)

42. The agency submits that:

- Disclosure is not in the public interest because it would prejudice the way in which third parties deal with the State (*Re WA Newspapers and Dampier Port Authority* [1996] WAICmr 13 at [29]), and the way in which State Agreements, a key instrument for the development of the State and its economy, are facilitated.
- Disclosure would restrict information that proponents supply which is needed to ensure that the State Agreement is administered effectively and its benefits are optimised. Further, it is in the public interest to maintain the confidentiality of sensitive commercial information and business information about State Agreement project proponents which is in the hands of Government (*Re Metcalf Pty Ltd. and Western Power* [1996] WAICmr 23 at [50]).

Consideration – clause 4(3)

43. To establish a claim for exemption under clause 4(3), the agency must demonstrate that the disputed documents contain information about the business, professional, commercial or financial affairs of a person (which includes an incorporated body), and also that the disclosure of that information could reasonably be expected to have an adverse effect on those affairs or, in the alternative, to prejudice the future supply of information of that kind to the Government or to an agency.

44. Finally, if the requirements of both paragraphs (a) and (b) of clause 4(3) are satisfied, the limits on exemption set out in clauses 4(4) to 4(7) must also be considered.

45. Under section 102(1) of the FOI Act, the onus is on the agency to establish that access to the disputed documents should not be given to the complainant. To establish the requirements of clause 4(3), the agency must:

- identify the specific matter in each document, the disclosure of which would reveal information about the business, professional, commercial or financial affairs of a person or organisation and identify the particular kind of affairs and the particular person or organisation;
- explain how the disclosure of each of the documents could reasonably be expected to have an adverse effect on those affairs or prejudice the future supply of the same kind of information to the Government or to an agency;
- explain why there are grounds reasonably to expect that the disclosure of each of those documents could have the effect claimed; and
- provide information and/or material to support those statements.

Clause 4(3)(a)

46. From my examination of the disputed documents, those documents appear on their face to contain some information concerning the business or commercial affairs of third parties. Therefore, it may be possible for the agency to satisfy the provisions of paragraph (a) of clause 4(3) in respect of material in some of the disputed documents, but not necessarily all of the matter contained in every document. However, even if paragraph (a) of clause 4(3) were satisfied in respect of all of the matter contained in the disputed documents, in order to establish a claim for exemption under clause 4(3) it is necessary to satisfy both paragraphs (a) and (b) of that clause.

Clause 4(3)(b)

47. Other than asserting that disclosure of the disputed documents could reasonably be expected to have adverse effects on other parties' professional, commercial or financial affairs, the agency has provided little of substance in support of that assertion.
48. In my view, business is well aware that engaging with government, particularly on major infrastructure projects, necessarily attracts a greater level of scrutiny and public interest than would be the case in a purely private commercial venture. Those enterprises are also entered into for the mutual benefit of commercial entities and the State.
49. In addition, as previously noted, the documents are considerably aged, dating from 1971 to 1993. Therefore, it is difficult to see how those documents have any relationship to the current commercial affairs of other parties. As a result, I do not consider that the agency has established how disclosure of events dating back so long could reasonably be expected to have the adverse outcomes alleged by the agency.
50. Further, clause 4(6) provides that matter is not exempt matter under subclause (3) if the applicant provides evidence establishing that the person concerned consents to the disclosure of the matter to the applicant.
51. By letter dated 11 April 2013, but received on 11 April 2014, BHP advised that it had 'no concerns around the release' of Documents 1, 28, 32, 33, 49, 55, 58, 70, 72, 93, 98-100, 110 and 116.
52. Therefore, of the documents remaining in dispute under clause 4(3), BHP has agreed to the disclosure of documents 1, 70, 72, 93, 98, 110 and 116.
53. Document 83 is the only document remaining in dispute concerning Rio Tinto that the agency claims is exempt under clause 4(3).
54. Although evidence of consent to disclosure was not provided by the applicant, I consider that the relevant documents concerning BHP and Rio Tinto are not exempt under clause 4(3) because BHP and Rio Tinto have consented to disclosure of that matter.

55. It is also my view that BHP and Rio Tinto's agreement to the disclosure of information about the business or commercial affairs of those entities in the relevant documents fundamentally weakens the agency's assertions that disclosure of those documents could reasonably be expected to have any adverse effect on those parties under clause 4(3)(b).
56. The phrase 'could reasonably be expected to prejudice the future supply of information of that kind to the Government or an agency' in clause 4(3)(b) is not to be applied by reference to whether the particular entity whose information is being considered for disclosure could reasonably be expected to refuse to supply such information in the future, but by reference to whether disclosure could reasonably be expected to prejudice future supply of such information from a substantial number of sources available or likely to be available to the Government or an agency: see *Re Gahan and Town of Stirling* [1994] WAICmr 19.
57. The agency has not explained to me how the disclosure of any particular information identified in the disputed documents could reasonably be expected to have the adverse effects claimed, other than by putting forward that assertion.
58. As previously observed, in my view, business is well aware that engaging with government, particularly on major infrastructure projects, necessarily attracts a greater level of scrutiny and public interest than would be the case in a purely private commercial venture.
59. I consider that private organisations or persons having business dealings with government must necessarily expect greater scrutiny of, and accountability for, those dealings than in respect of their other dealings but should not suffer commercial disadvantage because of them: see *Re West Australian Newspapers and Western Power Corporation* [2005] WAICmr 10 at [101].
60. The agency deals with large infrastructure projects of significance to the state and private organisations frequently engage with the State Government through this agency in pursuance of such projects, presumably to mutual benefit. There is no evidence currently before me that, as a consequence of certain documents being made public, and accepting that release of documents under the FOI Act is release to the world at large, business would be more reluctant to deal with the State in future.
61. Therefore, I am not persuaded that disclosure of the disputed documents could reasonably be expected to have an adverse effect on the business or commercial affairs of the complainant, nor to prejudice the future supply of information of that kind to Government.
62. Consequently, I am not satisfied that the requirements of paragraph (b) of clause 4(3) are met. As a result, I consider that the disputed documents are not exempt under clause 4(3).
63. Given that I do not consider that the disputed documents are exempt under clause 4(3), it is not necessary for me to consider the public interest test in clause 4(7).

CLAUSE 6 – DELIBERATIVE PROCESSES

64. The agency claims that parts of the disputed documents are exempt under clause 6(1). To the extent that it is relevant, Clause 6 provides:

- (1) *Matter is exempt matter if its disclosure –*
- (a) *would reveal –*
- (i) *any opinion, advice or recommendation that has been obtained, prepared or recorded; or*
- (ii) *any consultation or deliberation that has taken place,*
- in the course of, or for the purpose of, the deliberative processes of the Government, a Minister or an agency; and*
- (b) *would, on balance, be contrary to the public interest.*
- ...
- (4) *Matter is not exempt under subclause (1) if at least 10 years have passed since the matter came into existence.*

The agency's submissions – clause 6

65. In summary, the agency submits as follows:

- State Agreements and variations thereof are subject to scrutiny by Parliament. The disputed documents deal with attracting investment to the State and the development of major resources.
- The disputed documents contain Briefing Notes for various Ministers regarding State Agreement obligations, current proposals and requests for extension.
- The disputed documents reveal how the State responds to negotiations, agreements and amendments, and how the government collects, collates, considers, processes and establishes a State Agreement or requests for variation.
- Disclosure reveals the State's negotiations and deliberations with respect to the release of BHP's secondary processing obligations.
- The secondary processing obligations clauses are common in many iron ore State Agreements. Therefore, even though some decisions relating to secondary processing (e.g alternative investment proposals, extensions of time to meet obligations) have already been made, 'the agency's deliberation on such will apply to other State Agreements with secondary processing obligations.' These decisions have not yet been made.
- Accordingly, revealing such deliberations would be contrary to the public interest as it will prejudice the State's negotiation position with respect to such discussions, and decisions on secondary processing it will need to deal with in the

future. It will have a detrimental effect on the State's ability to maximise a commercial outcome with other State Agreement proponents with which it is negotiating the application of secondary processing.

- Although it is 10 years since this matter came into existence, as described in clause 6(4), the material is still relevant and current and forms part of a wider ongoing conversation between the State and other iron ore State Agreement proponents.

Consideration – clause 6

66. To establish that the disputed documents are exempt under clause 6(1), the agency must satisfy the requirements of both paragraphs (a) and (b) of that provision. If the requirements of both paragraphs (a) and (b) are satisfied, the disputed document will be exempt, subject to the limits on exemption contained in clauses 6(2)-(4).
67. The purpose of the exemption in clause 6 and the meaning of the phrase 'deliberative processes' has been considered in a number of formal decisions; see, for example, *Re Addisons and Racing and Wagering Western Australia* [2008] WAICmr 3. I agree with the view of the Commonwealth Administrative Appeals Tribunal in *Re Waterford and Department of the Treasury (No. 2)* (1984) 5 ALD 588 that the deliberative processes of the Government, a Minister or an agency are their 'thinking processes', the process of reflection, for example, on the wisdom and expediency of a proposal or a particular decision or course of action.
68. Clause 6(4) provides that matter is not exempt under subclause (1) if at least 10 years have passed since the matter came into existence. Having examined the disputed documents, I am satisfied that at least 10 years have passed since all of the disputed documents came into existence.
69. The agency submits that the material in the disputed documents 'is still relevant and current, and forms part of a wider ongoing conversation between the State and other iron ore State Agreement proponents.' However, any argument based on clause 6(1) is irrelevant to my determination if clause 6(4) applies.
70. As a result, given the age of the disputed documents, it is not necessary for me to consider whether, if disclosed, the disputed documents would reveal any opinion, advice or recommendation that has been obtained, prepared or recorded, or any consultation or deliberation that has taken place, in the course of, or for the purpose of, those deliberative processes.
71. For the same reason, it is also not necessary for me to consider whether disclosure would, on balance, be contrary to the public interest under clause 6(2).
72. As a result, for the reasons outlined above, I do not consider that the disputed documents are exempt under clause 6(1).

CLAUSE 7 – LEGAL PROFESSIONAL PRIVILEGE

73. The agency claims that parts of Documents 59, 84, 85 and 118 are exempt under clause 7(1) of Schedule 1 to the FOI Act as follows:
- Document 59 at paragraph 3;
 - Document 84 at the final two paragraphs on page 2;
 - Document 85 at final bullet point on page 4; and
 - Document 118 at point 7 on page 2.
74. Clause 7(1) provides that ‘matter is exempt matter if it would be privileged from production in legal proceedings on the ground of legal professional privilege’.

The agency’s submissions – clause 7

75. The agency has not provided comprehensive submissions in respect of the claim under clause 7(1). Rather, the agency states that the matter described at [73] is ‘legal advice which was either sought or obtained from State Solicitor’s Office’ or that the matter is ‘legal advice or the subject of legal advice which was either sought or obtained from State Solicitor’s Office.’
76. In response to my preliminary view inviting additional submissions, the agency repeated the assertions noted above and commented that the ‘State Solicitor’s Office confirmed by advice that the clause 7 exemption should be claimed in respect of these documents’.

Consideration – clause 7

77. In brief, legal professional privilege protects from disclosure confidential communications between clients and their legal advisers, if those communications were made or brought into existence for the dominant purpose of giving or seeking legal advice: *Esso Australia Resources Ltd v The Commissioner of Taxation* (1999) 168 ALR 123 at 132 (*Esso*).
78. Document 59 is a memorandum from the ‘Co-ordinator DRD’ to the Minister for Resources Development. I understand that DRD is the former Department of Resources Development. Documents 84 and 85 are memoranda from the Chief Executive Officer of the agency to the Minister for State Development. Document 118 includes a file note titled ‘notes used in discussion with CEO on 9.11.92.’
79. Documents 59, 84 and 85 make brief references to advice about State Agreements. However, those documents are not confidential communications between the agency and its legal advisers. Despite my request to do so, the agency has not provided evidence of the dominant purpose for which the advice referred to by the agency was brought into existence. Nor has the agency provided any evidence of the confidentiality attaching to that advice. Therefore, the agency has failed to explain how those documents attract legal professional privilege as described in *Esso*.

80. Document 118 does not appear to disclose any legal advice. Therefore, other than the agency's assertions, there is no evidence before me about how matter in that document amounts to confidential communications between a client and its legal advisers made for the dominant purpose of giving or seeking legal advice, in the terms set out in *Esso*.
81. Consequently, I am also not persuaded that Documents 59, 84, 85 and 118 are privileged from production in legal proceedings on the ground of legal professional privilege as provided by clause 7(1).

CLAUSE 8 – CONFIDENTIAL COMMUNICATIONS

82. Clause 8(2) provides as follows:

- (2) *Matter is exempt matter if its disclosure —*
- (a) *would reveal information of a confidential nature obtained in confidence; and*
 - (b) *could reasonably be expected to prejudice the future supply of information of that kind to the Government or to an agency.*

83. The exemption is in two parts and both parts (a) and (b) must be satisfied to make out the exemption.

The agency's submissions – clause 8(2)

84. The agency's submissions in relation to claims under clause 8(2) are set out under Document 3 in the February 2014 schedule. Those submissions are repeated in relation to other documents claimed to be exempt under clause 8(2). In summary, the agency submits as follows:
- BHP has requested that the fact a certain study is taking place be kept confidential.
 - State Agreement negotiations, at the inception of the State Agreement, and relating to proposals, have implied equitable obligations of confidence. Information provided by the proponent may reveal commercial or financial affairs of the proponent which could be commercially sensitive to it and which it would not want to be in the public domain (particularly where such information – in respect of a public company – is not required to be disclosed under the relevant Listing Rules).
 - Disclosure would be detrimental to the proponent and possibly provide an advantage to competitors as it would reveal the proponent's commercial strategies. There are many iron projects in Western Australia and proponents in those industries seek government support for greenfields projects. Disclosure of that information would be to the proponents' disadvantage (see *Coco v A.N Clark (Engineers) Ltd*, [1969] R.P.C 62; *Commonwealth v John Fairfax & Sons* (1980) 147 CLR 39; *Re Kimberley Diamond Company NL and Department of Resources and Development (No2)* [2000] WAICmr 63).

- The documents contain information about negotiations with the State and BHP's secondary processing obligations. This information is commercial to BHP.
- Disclosure of this information could reasonably be expected to prejudice the future supply of information – 'refer to submissions regarding Document 1.'
- Release of this information could be reasonably expected to prejudice the future supply of information of that kind to the Government or agency in the future – 'refer to submissions made with respect to Clause 4(3) above.'

Consideration – clause 8(2)

85. The first question is whether disclosure would 'reveal information of a confidential nature'. If information is not in the public domain and is known by a small number or a limited class of persons, it may be concluded that it is inherently confidential. However, in my view, the agency has not provided any probative material to indicate that disclosure would reveal information of a confidential nature obtained in confidence and could reasonably be expected to prejudice the future supply of information of that kind to the Government or to an agency.
86. There is simply no material before me, other than the agency's assertions, on which I can rely to decide whether clause 8(2) applies to the disputed documents.
87. In addition, as previously observed, BHP and Rio Tinto have agreed to the disclosure of information about the business or commercial affairs of those entities in the relevant documents.
88. As a result, the agency has not discharged its onus to establish that clause 8(2) applies to the disputed documents. Therefore, I do not consider that the disputed documents are exempt under clause 8(2).

CLAUSE 9 – THE STATE'S ECONOMY

89. The agency claims that some of the disputed documents are exempt under clause 9 of Schedule 1 of the FOI Act. To the extent that it is relevant clause 9 provides as follows:
- (1) *Matter is exempt matter if its disclosure could reasonably be expected to –*
 - (a) *have a substantial adverse effect on the ability of the Government or an agency to manage the economy of the State; or*
 - (b) *result in an unfair benefit or detriment to any person or class of persons because of the premature disclosure of information concerning any proposed action or inaction of the Parliament, the Government or an agency in the course of, or for the purpose of, managing the economy of the State.*
 - (2) *Matter is not exempt matter under subclause (1) if its disclosure would, on balance, be in the public interest.*

Agency's submissions – clause 9

90. In summary, the agency submits as follows:

- Disclosure of the disputed documents would reveal the State's negotiations and deliberations with respect to the release of BHP's secondary processing obligations. Many State Agreements exist in the iron ore sector. Benefits to the State from the operation of these State Agreements include town developments in the form of infrastructure and social benefits, railway development for the purpose of export of commodities, and contribution to the State's economy.
- Revealing the State's negotiating style in general, its negotiating parameters, the content of negotiations between other State Agreement proponents and what it conceded in previous negotiations and the State's policy positions with respect to proposals, could have a substantial adverse effect on the ability of the Government and the agency to manage the economy of the State as it would take away the advantage the State has in State Agreements, specifically in the negotiation and implementation of a core instrument of the State in the development of its resources industry and, therefore, the economy.
- With respect to any matter relating to the State's position, or developments relating to secondary processing obligations under State Agreements which are still afoot and which relate to the agency and the State managing the economy, specifically the manufacturing and resources economy

any release prior to the proponent satisfying such obligations, and the State's decision on any trade of such obligations, could be arguably premature and would arguably give an unfair benefit to the proponent with which the State is still to negotiate on the matters with.

Public interest – clause 9(2)

91. The agency submits that disclosure would be contrary to the public interest and refers to its submissions set out in relation to page 3, paragraph 5 of Document 1 and the 'application of clause 4(7).'

Consideration – clause 9

92. To establish an exemption under clause 9(1), the agency must show that the disclosure of the disputed documents could reasonably be expected to result in a 'substantial adverse effect' on the ability of the Government or the agency to manage the economy of the State. The requirement that the adverse effect must be 'substantial' is an indication of the degree of gravity that must exist before a prima facie claim for exemption is established: *Harris v Australian Broadcasting Corporation* (1983) 78 FLR 236.

93. In the context of clause 9(1), I accept that the word 'substantial' is best understood as meaning 'serious' or 'significant': *Re Hemsley and City of Subiaco and Anor* [2008] WAICmr 46 at [46].

94. The agency has not explained how and why disclosure of documents that reflect events from 1971 to 1993 could reasonably be relevant to present management of the economy or how and why such dated documents could in any sense be exempt because of ‘premature disclosure’ as provided by clause 9(1)(b).
95. In addition, there is nothing on the information before me to explain how disclosure of the disputed documents could reasonably be expected to have a substantial adverse effect on the ability of the Government or the agency to manage the economy of the State. The agency has made no attempt to estimate the impact of disclosure on the management of the economy or explain the precise nature of the adverse effect claimed or in what way that effect would be ‘substantial’.
96. In the absence of any probative material from the agency in support of its claims for exemption, I consider that the disputed documents are not exempt under clause 9(1). In light of that, it is unnecessary for me to consider whether or not the limit on the exemption in clause 9(2) applies.

CLAUSE 10 – THE STATE’S FINANCIAL OR PROPERTY AFFAIRS

97. The agency also claims that some of the disputed documents are exempt under clause 10(1) of Schedule 1 to the FOI Act. Clause 10(1) relevantly provides:
- (1) *Matter is exempt matter if its disclosure could reasonably be expected to have a substantial adverse effect on the financial or property affairs of the State or an agency.*
- ...
- (6) *Matter is not exempt matter under subclause (1), (2), (3), (4) or (5) if its disclosure would, on balance, be in the public interest.*

Agency submissions – clause 10(1)

98. In summary, the agency submits as follows:
- The agency operates in a commercial environment as it works closely with industry, communities and government agencies to deliver significant State initiatives and facilitates major resource, industrial and infrastructure projects, and in doing so receives matter from proponents relating to business proposals and plans, including relevant financial information.
 - Disclosure would reveal the agency’s negotiating strategy and processes of deliberation (*Re Veale v Town of Bassendean* [1994] WAICmr 4 at [58-50]) with respect to proposals on secondary processing obligations under State Agreements. Disclosure would prejudice the State’s and the agency’s ability to administer State Agreements, a core instrument of this State in the development of its resources industry, and therefore economy, and would have a detrimental effect on the State’s ability to maximise a commercial outcome. Accordingly, disclosure would have a substantial adverse effect on the financial affairs of the State ‘(see arguments with respect to clause 9(1)) (see *Collier Knyn and Associates Pty Ltd v City of Perth* [1995] WAICmr 62 at [17]).’

The public interest – clause 10(1)

99. The agency submits that disclosure would be contrary to the public interest.

Consideration – clause 10(1)

100. The observations made above in my consideration of clause 9 are equally applicable to the agency’s claims under clause 10, insofar as my comments relate to the financial or property affairs of the State or the agency.

101. In summary, there is nothing on the information before me to explain how disclosure of the disputed documents could reasonably be expected to have a substantial adverse effect on the financial or property affairs of the State or the agency. The agency has made no attempt to estimate the impact of disclosure on those affairs or explain the precise nature of the adverse effect claimed, or in what way that effect would be ‘substantial’.

102. In the absence of any probative material from the agency in support of its claims for exemption, I do not consider that the disputed documents are exempt under clause 10(1). In light of that, it is unnecessary for me to consider whether or not the limit on the exemption in clause 10(6) applies.

CLAUSE 3 – PERSONAL INFORMATION

103. Finally, the agency claims that Document 1 includes personal information about a third party. Specifically, it contains the curriculum vitae of a named individual. I consider that kind of information is exempt under clause 3(1).

104. However, the complainant has agreed that he does not seek access to personal information. Section 24 of the FOI Act provides that if an access applicant requests access to a document containing exempt matter, and it is practicable for the agency to give access to a copy of the document from which the exempt matter has been deleted, and the agency considers that the applicant would wish to be given a copy, the agency has to give access to an edited copy. I consider that it is practicable for the agency to edit the document to delete exempt personal information under clause 3.

CONCLUSION

105. The agency’s decision to refuse access is set aside. In substitution I find that:

- The disputed documents are not exempt under clauses 4(3), 6(1), 7, 8(2), 9(1) or 10(1) of Schedule 1 to the FOI Act.
- Document 1 contains personal information about a third party that is not prescribed details under clause 3. Pursuant to section 24 of the FOI Act it is practicable for the agency to edit that document to delete exempt personal information under clause 3.

Annexure A DOCUMENT SCHEDULE

Edited Release of documents to complainant 09-09-14							
Doc No.	Source	Date	Author	Description	Page and/or paragraph	Decision	Exemption
1	89/197707	26-Apr-90	Department of Resources Development (DRD) to Minister for Resources	Briefing regarding meeting with Managing Director of BHP-Utah 26 April 1990	Page 2	Exempt	CI 3(1)
					Page 3, para 5	Exempt	CI 4(3)
					Page 3, para 5	Exempt	CI 6(1)(a)
					Page 3, para 5	Exempt	CI 8(2)
					Page 3, para 5	Exempt	CI 9(1)(a)
2	89/197707	01-Nov-89	DRD	Notes of Meeting in Ministers Office with BHP-UTAH Representatives on 1 November 1989	Page 3, para 5	Exempt	CI 10(1)
					Page 7	Exempt	CI 4(3)
					Page 7, paras 2 and 3	Exempt	CI 10(1)
					Page 1, para 1, 2 and 3	Exempt	CI 4(3)
3	89/197707	25-Oct-89	DRD	Notes of Meeting with Mt Newman Mining and DRD 24 October 1989	Page 2, paras 2, 3 and 4	Exempt	CI 6(1)(a)
					Page 1, paras 2 and 3		
					Page 1, paras 2 and 3	Exempt	CI 9(1)(a)
15	30/197707	29-Dec-88	Deputy Premier to Hamersley Iron Pty Ltd	Iron Ore (Hamersley Range) Agreement Act 1963-1987 Secondary Processing Proposals	All	Exempt	CI 6
					All	Exempt	CI 8(2)
					All	Exempt	CI 9(1)(a)
					All	Exempt	CI 10(1)
23	94/1988	04-Aug-88	DRD to Minister for Economic Development and Trade	BHP/State of Western Australia Some Historic perspectives relative to negotiations	Para 5	Exempt	CI 6(1), CI 9, CI 10
					All	Exempt	CI 6(1), CI 9(1)(b), CI 10
28	94/1988	25-May-79	Minister to BHP	Confirmation of Cabinet decision	page 2, para 3	Exempt	CI 4(2), CI 4(3), CI 9(1), CI 10(1)

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Doc No.	Source	Date	Author	Description	Page and/or paragraph	Decision	Exemption
31	94/1988	18-Nov-77	Mt Newman Mining Co Pty Ltd to Minister for Industrial Development, Mines, Electricity and Fuel and Energy	Acknowledging our submission entitled 'Proposal for a Beneficiation Plant in accordance with clause 11 (1) of the Act	All	Exempt	CI 4(3)(b), CI 8(2), CI 9(1), CI 10(1)
32	94/1988	23-Nov-71	Minister for Industrial Development, Mines, Electricity and Fuel and Energy to Mt Newman Mining Co Pty Ltd	Iron Ore (Mt Newman) Agreement Act 1964-67	Para 3	Exempt	CI 1(1)(b), 1(1)(d)
33	94/1988	12-Sep-78	Pilbara Iron Ltd to Minister for Industrial Development	Government and venturers should confirm the understandings	Point 3	Exempt	CI 9(1), CI 10(1)
34	94/1988	14-Apr-78	State Government	Minutes of Meeting with NT Newman Representatives to discuss secondary processing Commitments	All	Exempt	CI 4(3), CI 6(1), CI 9(1), CI 10(1)
35	94/1988	10-Dec-85	Minister for Industrial Development, Mines, Electricity and Fuel and Energy to Pilbara Iron Ltd	The Document dealing with the metallurgical plant is of interest from a technical standpoint and will be useful for future reference	Para 3 All	Exempt Exempt	CI 2 CI 6(1), CI 9(1), CI 10(1)
36	94/1988	24-Dec-85	Minister for Minerals and Energy to BHP	Iron Ore (Mt Newman) Agreement	All	Exempt	CI 4(3), CI 6(1), CI 9(1), CI 10(1)
37	94/1988	06-Mar-86	State Government	Notes of a meeting with BHP to further issues associated with Mt Newman transaction - 6 March 1986	All	Exempt	CI 4(3), CI 6(1), CI 8(2), CI 9(1), CI 10(1)
38	171/198801	21-Sep-90	State Government	Sinter Plant - Port Hedland - Notes of Meeting	All	Exempt	CI 4(3), CI, 8(2)
39	171/198801	07-Sep-90	DRD to Minister for Resources	Proposed Sinter Plant (Confidential Study) - BHP- Utah Ore	All	Exempt	CI 4(3), CI 6(1), CI 8(2), 9(1), CI 10(1)
40	171/198801	01-Aug-90	Consultant and DRD	Confidential - Port Hedland - Feasibility Study Stage 2, Phase 1 Progress & Financial Report April, May & June 1990 draft	All	Exempt	CI 4(3), CI 8(2)
41	171/198801	19-Jun-90	DRD	Notes of meeting with BHP-UTAH re BHP-UTAH Sinter Plant Port Hedland 05-06-1990	All	Exempt	CI 4(3), CI 8(2)
42	171/198801	14-May-90	BHP-Utah to Minister for Resources Development	Iron Ore (Mount Newman) Agreement	All	Exempt	CI 4(3), CI 8
43	171/198801	12-Apr-90	BHP-Utah to DRD	Port Hedland Sinter Plant feasibility study	All	Exempt	CI 4(3), CI 6, CI 8(2), CI 9, CI 10
44	171/198801	09-May-90	BHP-Utah to DRD	Iron Ore (Mt Newman) Agreement - Iron & Steel Making Obligations	All	Exempt	CI 4(3), CI 8(2)
45	171/198801	06-Mar-90	DRD to Acting Minister for Resources and Trade	Iron Ore (Mt Newman) Agreement - Iron & Steel Making Obligations	All	Exempt	CI 4(3), CI 6(1), CI 8(2), 9(1), CI 10(1)
46	171/198801	19-Feb-90	BHP-Utah to Minister for	Iron Ore (Mt Newman) Agreement Iron and	All	Exempt	CI 4(3), CI 6(1), CI 8(2),

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Doc No.	Source	Date	Author	Description	Page and/or paragraph	Decision	Exemption
47	171/198801	15-Feb-90	Resources Development DRD	Steelmaking Meeting with BHP to discuss and extension to its Iron and Steelmaking obligations 14 February 1990	All	Exempt	9(1), CI 10(1) CI 4(3), CI 6(1), CI 8(2), 9(1), CI 10(1)
48	171/198801	07-Feb-90	BHP-Utah to DRD	Iron Ore (mount Newman) Agreement Act	All	Exempt	CI 4(3), CI 6(1), CI 8(2), 9(1), CI 10(1)
51	171/198801	31-Oct-89	DRD	1964 Iron and steelmaking provisions File Notes: Meeting with BHP Utah Iron Ore	All	Exempt	CI 4(3), CI 6(1), 9(1), CI 10(1)
53	171/198801	27-Sep-90	DRD to Minister for Resources Development	Iron Ore (Mt Newman) Agreement - Iron & Steel Making Obligations	All	Exempt	CI 4(3), CI 6(1), CI 9(1), CI 10(1)
54	171/198801	12-Sep-89	DRD	File Notes: Meeting with BHP-Utah held 01/09/1989	All	Exempt	CI 4(3), CI 6(1), CI 8(2), CI 9(1), CI 10(1)
56	171/198801	01-Sep-89	DRD to Minister for Resources Development	Meeting with Me Gavin McDonald and Mr Geoff Wedlock of BHP-Utah	All	Exempt	CI 4(3), CI 6(1), C, 9(1), CI 10(1)
57	171/198801	20-Mar-89	DRD to Minister for Resources Development	Iron Ore (Mt Newman) Agreement - Iron & Steel Making Obligations	All	Exempt	CI 4(3), CI 6(1), C, 9(1), CI 10(1)
58	171/198801	31-Mar-89	BHP-Utah to Minister for Resources Development	Iron Ore (Mt Newman) Agreement - Iron & Steel Making Obligations	Para 2	Exempt	CI 4(3), CI 6(1), C, 9(1), CI 10(1)
59	171/198801	30-Mar-89	DRD to Minister for Resources Development	Iron Ore (Mt Newman) Agreement - Iron & Steel Making Obligations - Extension of deadline	All	Exempt	CI 4(3), CI 6, CI 9, CI 10
60	171/198801	26-Jan-89	BHP-Utah to Deputy Premier	Iron Ore (Mt Newman) Agreement - Iron & Steel Making Obligations	Para 3 All	Exempt Exempt	CI 7(1) CI 4(3), CI 6(1), C, 9(1), CI 10(1)
61	171/198801	20-Mar-89	DRD to Minister for Resources Development	Iron Ore (Mt Newman) Agreement - Iron & Steel Making Obligations; Clause 10,11,12,13,14,15,16,	See exemptions claimed for Doc 57 plus handwritten notes	Exempt	CI 4(3), CI 6(1), C, 9(1), CI 10(1)
62	171/198802	26-Feb-91	BHP-Utah, Strategic Development Manager to DRD	Port Hedland Sinter Plant Feasibility Study	All	Exempt	CI 4(3), CI 8(2)
65	171/198802	11-Jan-91	DRD, Assistant Agreements Officer	File note re BHP Presentation on proposed Sinter Plant 10 January 1991	All	Exempt	CI 4(3), CI 8(2)
66	171/198802	20-Dec-90	BHP-Utah, Strategic Development Manager to DRD,	Port Hedland Sinter Plant Feasibility Study	All	Exempt	CI 4(3), CI 8(2)
67	171/198802	12-Dec-90	DRD	File Note of Meeting about Sinter Plant Port Hedland held 10-12-1990	All	Exempt	CI 4(3), CI 8(2)
68	171/198802	28-Nov-90	BHP-Utah, Strategic Development Manager to DRD,	Port Hedland Sinter Plant Feasibility Study	All	Exempt	CI 4(3)
69	171/198802	15-Nov-90	DRD	File Note of Meeting about Sinter Plant Port Hedland held 8 Nov 1990	All	Exempt	CI 4(3), CI 8(2)
70	171/198802	09-Mar-90	Minister for Resources and Trade to BHP-Utah.	Iron Ore (Mt Newman) Agreement Iron and Steelmaking Obligations	Para 1, 2	Exempt	CI 4(3), CI 6(1), CI 8(2), CI 9(1), CI 10(1)

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Doc No.	Source	Date	Author	Description	Page and/or paragraph	Decision	Exemption
71	171/198802	08-Mar-90	DRD to Acting Minister for Resources and Trade	Recommendation for Acting Minister to sign letter to BHP-Utah re Iron Ore (Mt Newman) Agreement Iron and Steelmaking Obligations Proposal for a Beneficiation Plant"	All	Exempt	CI 4(3), CI 6(1), C, 9(1), CI 10(1)
72	171/198802 Duplicate of Document 31	18-Nov-77	Mt Newman Mining Co Pty Ltd to Minister for Industrial Development, Mines, Electricity, Fuel and Energy	From Minister for Industrial Development, Mines, Electricity and Fuel and Energy to Mt Newman Mining Co Pty Ltd	See exemptions claimed for Doc 31	See exemptions claimed for Doc 31	See exemptions claimed for Doc 31
73	171/198802	21-Oct-77	Office of the Deputy Premier to Hamersley Iron Pty Ltd	Ore processing plant at Mt Whaleback mine site	All	Exempt	CI 4(3), CI 6(1), C, 9(1), CI 10(1)
81	50/198901	30-Jun-89	Hamersley Iron Pty Ltd to the Minister for Resources Development	Establishment of the CRA's HI smelt large scale pilot plant in Western Australia	All	Exempt	CI 6(1), C, 9(1), CI 10(1)
82	50/198901	10-May-89	Hamersley Iron Pty Ltd to the Minister for Resources Development	Iron Ore (Hamersley Range) Agreement Act 1963 Paraburdoo Agreement CI 10(6) Alternative Investment Proposal	Pages 1-2 – See exemptions claimed for Doc 20	Pages 1-2 – See exemptions claimed for Doc 20	Pages 1-2 – See exemptions claimed for Doc 20
83	50/198902	11-Mar-91	Deputy Premier Minister for State Development; Goldfields to Hamersley Iron Pty Limited	Iron Ore (Hamersley Range) Agreement HI smelt research and development facility.	Page 3 Page 1, para 2 Page 2	Exempt Exempt	CI 4(3) CI 4(3), CI 6(1), C, 9(1), CI 10(1)
84	50/198902	08-Mar-91	CEO State Development to Minister for State Development	HI smelt research and development facility response to Hamersley Iron letter	Page 1 Final two paras on page 2	Exempt Exempt	CI 4(3), CI 6(1), C, 9(1), CI 10(1) CI 7
85	50/198902	31-Jan-91	State Development to Minister for State Development	HI smelt research and development facility approval of project proposals	All Page 4, final bullet point	Exempt Exempt	CI 4(3), CI 8(2) CI 7
86	384/199101	29-Jun-92	BHP Minerals to DSD	Iron Ore (Mt Newman) Agreement Act 1964 Steelmaking Obligations Power Station	All	Exempt	CI 4(3), CI 8(2)
90	384/199101	04-Jun-92	State Government	File note BHP Iron and Steelmaking Obligations - Meeting 29 May 1992	All	Exempt	CI 4(3), CI 8(2)
91	384/199101	18-May-92	DSD to Minister for State Development	Iron Ore (Mt Newman) Agreement Act Iron and Steelmaking Obligations	All	Exempt	CI 4(3), CI 6(1), CI 8(2), CI 9(1), CI 10(1)
92	384/199101	04-May-92	State Government	File note - Iron Ore (Mt Newman) Agreement Act Iron and Steelmaking Obligations - Meeting 1 May 1992	All	Exempt	CI 4(3), CI 6(1), CI 8(2), CI 9(1), CI 10(1)
93	384/199101	06-Apr-92	DSD to Minister for State Development	Iron Ore (Mt Newman) Agreement Act Iron and Steelmaking Obligations	Page 2, page 3 – para 4, page 5	Exempt	CI 4(3), CI 6(1), CI 8(2), CI 9(1), CI 10(1)
94	384/199101	30-Mar-92	DSD	File Notes of meeting held 23-03-1992	All	Exempt	CI 4(3), CI 6(1), CI 8(2),

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Doc No.	Source	Date	Author	Description	Page and/or paragraph	Decision	Exemption
				between Minister for State Development, DSD, BHP Iron Ore and Minister's Press Secretary			CI 9(1), CI 10(1)
95	384/199101	13-Mar-92	DSD	File Notes of meeting held 10-03-1992 between DSD and BHP Iron Ore to discuss status of Sinter Plant Study	All	Exempt	CI 4(3), CI 8(2)
96	384/199101	25-Feb-92	DSD	File Notes of meeting held 20-02-1992 between DSD and BHP Iron Ore to discuss company's iron and steelmaking obligations	All	page 1, page 2 para 1-4 Exempt	CI 4(3), CI 8(2)
97	384/199101	31-Dec-91	Deputy Premier Minister for State Development; Goldfields to Mount Bruce Pty Limited	Iron (Mount Bruce) Agreement Act; Processing obligations	Para 3	Exempt	CI 4(3)
98	384/199101	23-Dec-91	Deputy Premier Minister for State Development; Goldfields to BHP Iron Ore	Iron Ore Agreement Acts - BHP Iron Ore Secondary Processing and Iron and Steelmaking Obligations	Para 1	Exempt	CI 4(3)
100	384/199101	10-Dec-91	BHP Iron Ore to Minister for State Development	Iron Ore Agreement Acts - BHP Iron Ore Secondary Processing and Iron and Steelmaking Obligations	Para 3	Exempt	CI 4(3), CI 8(2)
101	384/199101	09-Dec-91	DSD	Meeting notes of meeting with BHP executives in Melbourne 9 December 1991 re BHP's processing obligations	All	Exempt	CI 4(3), CI 6(1), CI 8(2), CI 9(1), CI 10(1)
103	384/199101	01-Aug-91	BHP Iron Ore & Kawasaki Steel Corporation	Information Statement re Port Hedland Sinter Plant	All	Exempt	CI 4(3), CI 8
105	384/199101	01-Aug-91	DSD	Briefing Notes for meeting with BHP Iron Ore re Port Hedland Sinter Plant	All	Exempt	CI 4(3), CI 6(1), CI 8(2), CI 9(1), CI 10(1)
106	384/199101	28-Mar-91	DSD to Minister for State Development	Iron Ore (Mt Newman) Agreement Act Iron and Steelmaking Obligations	All	Exempt	CI 4(3), CI 6(1), CI 8(2), CI 9(1), CI 10(1)
107	384/199101	28-Mar-91	BHP Iron Ore to Minister for State Development	Iron Ore (Mt Newman) Agreement Act Iron and Steelmaking Obligations	All	Exempt	CI 4(3), CI 8(2)
108	384/199101	22-Mar-91	BHP Minerals to DRD	Port Hedland Sinter Plant Feasibility Study	All	Exempt	CI 4(3), CI 8(2)
110	384/199102	13-Jan-93	Deputy Premier Minister for State Development; Goldfields to BHP Iron Ore	Proposed Port Hedland Integrated Energy System	Para 3	Exempt	CI 1(1)(a) CI 4(3), CI 6, CI 9, CI 10
111	384/199102	31 - Dec - 1992	DSD	File note of meeting of 31 December 1992 with BHP Iron Ore, DSD and Ministerial Advisor	All	Exempt	CI 4(3), 6(1), CI 8(2), CI 9(1), CI 10(1)
113	384/199102	23-Dec-92	DSD to Office of Deputy Premier	BHP gas turbine proposition	Page 2, para3 Page 3, para 1,2,4,5	Exempt	CI 4(3), CI 6(1), CI 9(1), CI 10(1)
114	384/199102	16-Dec-92	BHP Minerals to Minister for State Development	Iron and Steelmaking Obligations Iron Ore (Mt Newman) Agreement Act 1964	All	Exempt	CI 4(3), CI 6(1), CI 9(1), CI 10(1)
115	384/199102	04-Dec-92	DSD	Summary of meeting held 1-12-1992 DSD, BHP	All	Exempt	CI 4(3), CI 8(2).

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Doc No.	Source	Date	Author	Description	Page and/or paragraph	Decision	Exemption
116	384/199102	30-Nov-92	Deputy Premier Minister for State Development; Goldfields to BHP Iron Ore	Iron Ore (Mt Newman) Agreement Act 1964 Iron and Steelmaking Obligations	Para 5	Exempt	CI 4(3)
117	384/199102	27-Nov-92	DSD to Minister for State Development	Iron Ore (Mt Newman) Agreement Act 1964 Iron and Steelmaking Obligations	All	Exempt	CI 4(3), CI 6(1), CI 9(1), CI 10(1)
118	384/199102	10-Nov-92	BHP Minerals to DSD	Sinter Plant Study Land availability	All point 7 on page 5)	Exempt Exempt	CI 4(3), CI 8(2) CI 7
119	384/199102	10-Nov-92	DSD	File note re BHP Iron Ore - Processing obligations	All	Exempt	CI 4(3), CI 6(1), CI 9(1), CI 10(1)
121	384/199102	13-Oct-92	DSD	File Note re BHP Processing Obligations Meeting held 1 October 1992 with BHP, State Development and Minister	All	Exempt	CI 4(3), CI 6(1), CI 9(1), CI 10(1)
122	384/199102	01-Oct-92	DSD to Minister for State Development	BHP Iron Ore - Processing Obligations	Page 3, para 4, page 4 para 2	Exempt	CI 4(3), cl 8(2) (page 3, para 4), cl 9(1) (page 4, para 2), CI 2(1)(a) (para 7)
123	384/199102 Duplicate of Doc118	21-Aug-92	BHP Minerals to State Development	Sinter Plant Study Land availability	See exemptions claimed for Doc 118	Exempt	See exemptions claimed for Doc 118
124	384/199102 Part copy of Doc 91	18-May-92	DSD to Minister for State Development	Status Report: Iron and Steelmaking Obligations Iron Ore (Mt Newman) Agreement Act 1964	See exemptions claimed for Doc 91	Exempt	See exemptions claimed for Doc 91
125	384/199102	22-Jul-91	DSD	File note of meeting held with BHP Iron Ore to discuss BHP Agreements Rationalisation Progress	All	Exempt	CI 4(3), CI 6(1), CI 9(1), CI 10(1)
126	1242/199101	04-Feb-92	DRD	Iron Ore (Mount Bruce) Agreement Act; Processing obligations	All	Exempt	CI 4(3), CI 6(1), CI 9(1), CI 10(1)
127	1242/199101	23-Dec-91	DSD to Minister for State Development	Iron Ore (Mount Bruce) Agreement Act; Processing obligations	All	Exempt	CI 4(3), CI 6(1), CI 9(1), CI 10(1)
128	1242/199101	01-Dec-91	Hamersley to the Minister for State Development	Opportunities to engage in secondary processing of WA's iron ore resources	Paras 2, 3, 4, 5, and 6	Exempt	CI 4(3)