

Decision D0292011 – Published in note form only

Re Anna Plains Cattle Company Pty Ltd and Department of Regional Development and Lands [2011] WAICmr 29

Date of decision: 13 September 2011

Freedom of Information Act 1992: section 26; Schedule 1, clause 4(2), 4(3) and 4(7)

In September 2010, the complainant applied to the Department of Regional Development and Lands ('the agency') under the *Freedom of Information Act 1992* ('the FOI Act') for access to "all briefing materials provided by the Pastoral Lands Board to the Valuer General for determination of Pastoral Rents and Valuation 2009 ('the Valuation')". The agency identified six documents and gave the complainant access to some in full and some in edited form. The complainant sought internal review of that decision in relation to the attachment to one document. The agency confirmed its decision to refuse access to that document citing clauses 3(1) and 4(2) of Schedule 1 to the FOI Act.

The complainant applied to the Information Commissioner for external review of that decision and claimed that additional documents should exist but had not been identified by the agency. That claim was treated as a deemed decision by the agency to refuse access to documents. In the course of dealing with this matter, the agency gave the complainant access to an edited copy of the disputed document.

Subsequently, the Commissioner provided the parties with a letter setting out his preliminary view of the complaint. The Commissioner's view was that the matter deleted from the disputed document was, except for a small amount of information, exempt under clause 4(3) rather than clause 4(2). The former relates to the effect of disclosure on the commercial or business information of an organisation and the latter to information that has a commercial value to an organisation. The Commissioner also considered that further briefing materials used to determine the Valuation did exist and were held by the agency but that the wording of the access application meant that only those briefing materials provided by the Pastoral Lands Board to the Valuer General came within the scope of the access application.

The Commissioner invited the parties to accept his preliminary view or to make further submissions to him. The agency accepted the Commissioner's preliminary view and agreed to give the complainant access to the small amount of additional information that, in the Commissioner's view, was not exempt. The complainant did not withdraw its complaint and made further submissions.

The Commissioner did not accept the complainant's further submission that the disputed document could be edited in the manner it proposed, nor that the limit on the exemption in clause 4(7) applied in this case.

The Commissioner considered that the public interests in Government accountability and transparency were, in the main, satisfied by the access provided. The Commissioner also considered that it was not in the public interest to disclose commercial or financial information that private businesses generally keep confidential, where disclosure could reasonably be expected to have an adverse effect on those businesses and where there was no demonstrable benefit to the public by such disclosure.

In balancing the competing public interests, the Commissioner considered that those favouring non-disclosure of the information remaining in dispute outweighed those favouring disclosure in this case.

The Commissioner varied the agency's decision and found that the remaining information in the disputed document was exempt under clause 4(3) and that, although briefing materials used to determine the Valuation existed, they were outside the scope of the access application.