

Decision D0342012 – Published in note form only

***Re Benson and Department of Agriculture and Food and Another* [2012] WAICmr 34**

Date of decision: 19 December 2012

Freedom of Information Act 1992: Schedule 1, clauses 3(1), 3(3), 3(6) and 4(3); Glossary, clause 1

In November 2010, the Hon. Matthew Benson, MLC ('the complainant') applied under the *Freedom of Information Act 1992* ('the FOI Act') to the Department of Agriculture and Food ('the agency') for access to certain documents concerning the import of Yunma hemp seed varieties by Dharmic Pty Ltd ('Dharmic'). The agency identified two documents within the scope of the application and gave the complainant full access to one document but refused access to the second document – described as a 'Permit to Import' – under clause 4(3) of Schedule 1 to the FOI Act. The agency confirmed its decision on internal review. Thereafter, the complainant applied to the Information Commissioner for external review in relation to the one document to which the agency had refused access ('the Permit').

In the course of the Commissioner's office dealing with the matter, Dharmic was joined as a party to the complaint and made submissions to the Commissioner claiming that the Permit was exempt under clause 4(3). As the Permit contained business information about a further third party, that third party was also invited to be joined to the complaint and to make submissions but it declined to do so.

On 26 October 2012, the Commissioner provided the parties with a letter setting out his preliminary view of the complaint. The Commissioner's preliminary view was that, except for two signatures in the Permit which were exempt under clause 3(1) of Schedule 1 to the FOI Act, the Permit was not exempt under clause 4(3).

The parties were invited to accept the Commissioner's preliminary view or provide him with further submissions in support of their respective positions before the matter was finalised by way of a formal determination.

The agency accepted the Commissioner's preliminary view and withdrew its exemption claims. Dharmic did not accept the Commissioner's preliminary view and made further submissions. The complainant did not accept the Commissioner's preliminary view in respect of clause 3(1) and submitted that the two signatures in the Permit were not exempt under that provision because they were signatures of public officers and that it was in the public interest to disclose them in circumstances where the Permit was not exempt.

Having reviewed all the material before him, including the further submissions of the parties, the Commissioner was not dissuaded from his preliminary view. Although the Commissioner was satisfied that the disclosure of the Permit would reveal information about Dharmic's business affairs – and therefore that the requirements of clause 4(3)(a) were satisfied – the Commissioner was not satisfied on the information before him that the disclosure of any of that information

could reasonably be expected to have an adverse effect on Dharmic's or any other third parties' business affairs or prejudice the future supply of information of the kind in question to the Government or to an agency as required by clause 4(3)(b).

The Commissioner found that the two signatures in the Permit were *prima facie* exempt under clause 3(1) and was not persuaded that any of the limits on the exemption applied in this case. In particular, the Commissioner considered that the limit in clause 3(3) did not apply because signatures of officers or former officers of agencies were not 'prescribed details': see for example *Re Mossenson and Others and Kimberley Development Commission* [2006] WAICmr 3 at [24]. Further, in this case, the Commissioner found that the two signatures were not those of officers of an 'agency' as that term is defined in the FOI Act, as the signatures concerned officers of a Commonwealth government agency rather than a State government agency: see the Glossary to the FOI Act. Therefore, the Commissioner was of the view that clause 3(3) had no application since the Permit did not contain any prescribed details about officers of an agency.

In weighing the competing public interests pursuant to clause 3(6), the Commissioner found that, in this case, the public interest factors favouring non-disclosure outweighed those favouring disclosure of the two signatures. The Commissioner noted that there may be a strong public interest in the disclosure of signatures in a document where the validity of those signatures or the proper execution of the document were in issue, but found that this was not in issue in this case.

Consequently, the Commissioner set aside the agency's decision and found that the Permit was not exempt under clause 4(3) but that the two signatures in the Permit were exempt under clause 3(1) of Schedule 1 to the FOI Act.