

## MINERALOGY AND RESOURCES

OFFICE OF THE INFORMATION  
COMMISSIONER (W.A.)

File Ref: 95031  
Decision Ref: D00296

Participants:

**Mineralogy Pty Ltd**  
Complainant

- and -

**Department of Resources Development**  
Respondent

### DECISION AND REASONS FOR DECISION

FREEDOM OF INFORMATION - refusal of access - documents of agency - clause 6 - deliberative processes - public interest - factors for and against disclosure of documents - public interest in knowing processes by which agencies make decisions affecting general public - public interest in preserving integrity of agency decision-making processes - clause 7 - legal professional privilege - legal advice given by the agency's legal advisers - confidential communication between a legal adviser and the agency for the "sole purpose" of giving legal advice - documents recording substance of legal advice given by agency's legal adviser - clause 4(3) - commercial or business information - requirements to establish exemption under clause 4(3) - section 31 - refusal by agency to give information as to the existence or non-existence of the requested documents, in accordance with s.31 of the *Freedom of Information Act 1992* - observations about nature and purpose of s.31.

*Freedom of Information Act 1992 (WA)* ss. 15(1), 15(2), 20, 31, 43(2), 68(1), 70(1), 70(4), 72(1)(b), 74(1)(b), 75(1), 76(1), 102(1), Schedule 1 clauses 1, 2, 4(3), 5, 6(1), 7.

*Freedom of Information Act 1992 (Qld)* s. 35.

*Austen v Secretary, Attorney-General's Department* (1986) 10 ALD 169.

*Re EST and Department of Family Services and Aboriginal and Islander Affairs* (Information Commissioner, QLD, 30 June 1995, unreported).

*Re Clements and Graylands Hospital* (Information Commissioner, WA, 9 November 1995, unreported).

*Trade Practices Commission v Sterling* (1979) 36 FLR 244.

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

*Re Coastal Waters Alliance of Western Australia Incorporated and Department of Environmental Protection and Cockburn Cement Limited* (Information Commissioner, WA, 28 September 1995, unreported).

*Re Waterford and Department of the Treasury (No 2)* (1984) 5 ALD 588.

## DECISION

The decision of the agency is varied. In substitution it is decided that:

- (i) none of the disputed documents is exempt under clause 4(1) or clause 4(3) of Schedule 1 to the *Freedom of Information Act 1992*;
- (ii) certain of the disputed documents and parts of documents which are identified in the schedule attached to this decision, are exempt under clause 6 of Schedule 1 to the *Freedom of Information Act 1992*;
- (iii) one document which is identified in the schedule attached to this decision is not exempt under clause 6(1) of Schedule 1 to the *Freedom of Information Act 1992*;
- (iv) certain of the disputed documents and parts of documents which are identified in the schedule attached to this decision, are exempt under clause 7 of Schedule 1 to the *Freedom of Information Act 1992*; and further,

I confirm the agency's decision, in accordance with s.31 of the *Freedom of Information Act 1992*, without giving information as to the existence or non-existence of documents of the kind requested by the complainant, to refuse access on the basis that if such documents existed they would be exempt under clause 1 or clause 2 of Schedule 1 to the *Freedom of Information Act 1992*.

B.KEIGHLEY-GERARDY  
INFORMATION COMMISSIONER

5th January 1996

## REASONS FOR DECISION

### BACKGROUND

1. This is an application for external review by the Information Commissioner arising out of a decision of the Department of Resources Development ('the agency') to refuse Mineralogy Pty Ltd ('the complainant') access to certain documents requested under the *Freedom of Information Act 1992* ('the FOI Act').
2. Since 1990 the complainant has been negotiating with the Government of Western Australia for the establishment of a major development project in the Pilbara known as the Fortescue Project. The agency is the Department responsible for the negotiation and administration of relevant State Agreement Acts and the agency has been involved in the negotiations with the complainant and its legal advisers with a view to finalising an Agreement relating to the Fortescue Project.
3. On 29 August 1994, the complainant lodged an access application under the FOI Act with the agency. In that application, which was framed in extremely broad terms, the complainant sought access, *inter alia*, to all documents relating to the complainant and its Chief Executive Officer, Mr Clive Palmer, including, but not limited to all memoranda, letters and documents sent or received by the agency from any party, other than the complainant, in respect of the complainant's business, between 1 January 1990 and 29 July 1994; applications for mining tenements and exploration licences; records of meetings and discussions between the agency and the complainant; intra and inter-departmental memoranda; and reports and recommendations to the Minister for Resources Development.
4. On 6 December 1994, the agency's decision-maker Mr Suttie, Director, Policy and Advisory Services in the agency, provided the complainant with a notice of decision. Without identifying the number or type of documents determined by the agency to be within the ambit of the access application, Mr Suttie granted the complainant access to a number of documents and denied access to others. Mr Suttie informed the complainant, *inter alia*, that various of the documents were exempt under one or more of clauses 2, 4, 6 and 7 of Schedule 1 to the FOI Act. Further, without giving information as to the existence or non-existence of any documents of the kind described in the access application, Mr Suttie also refused the complainant access to documents on the basis that as the agency, in its negotiating role on behalf of the State, acts under the authority of Cabinet, may hold certain documents relating to Cabinet processes and, if such documents existed, which the agency neither confirmed nor denied, then they would be exempt under clause 1 of Schedule 1 to the FOI Act.

5. On 5 January 1995, the complainant applied for internal review of the agency's decision. The agency did not provide the complainant with a response to that request within the statutory period of 15 days provided for by s.43(2) of the FOI Act. By that failure the agency was taken to have confirmed the decision under review and, on 22 January 1995, the complainant applied to the Information Commissioner for external review of the agency's initial decision.

## **REVIEW BY THE INFORMATION COMMISSIONER**

6. On 7 March 1995, in accordance with my obligations under s.68(1) of the FOI Act, I notified the agency that I had received and accepted a complaint in respect of this matter. As the agency's notice of decision indicated that some 6,000 documents were estimated to be within the ambit of the access application, I did not initially request the production of those documents to me. However, pursuant to my power under s.72(1)(b) of the FOI Act, I sought the production of the agency's FOI file in respect of this matter, and required the preparation of a schedule identifying and describing the documents in dispute.
7. On 20 March 1995, one of my investigations officers convened a preliminary conference between Mr Palmer, on behalf of the complainant, and the agency in an effort to explore all avenues for a conciliated and negotiated resolution of this complaint. At that meeting an attempt was made to reduce the scope of the complainant's access application without success. However, the agency agreed to release further documents to the complainant and to provide an updated schedule identifying the disputed documents and to make that schedule available to my office and to the complainant. Although the agency had, in its notice of decision, agreed to provide the complainant with access to a number of documents and a deposit had been paid, at that stage of the proceedings neither Mr Palmer, nor anyone else representing the complainant, collected from the agency, those documents to which access had been granted. It is also my understanding that, at the date of this decision, the complainant has still not collected those documents from the agency, notwithstanding the fact that they have been available for collection for over 12 months.
8. I consider that the complainant's initial access application was so broad, and involved a request for access to so many documents that, having attempted to apply the provisions of s.20(2) of the FOI Act, it was open to the agency to have considered the application of s.20(1) and to refuse to deal with the access application on the basis that to do so would divert a substantial and unreasonable portion of the agency's resources away from its other operations. However, whilst the agency initially attempted some negotiations with the complainant, it chose, instead, to deal with the application according to the requirements of the FOI Act.
9. The fact that the agency chose to deal with the access application in the form in which it was lodged by the complainant suggests that the agency was willing to adhere to the spirit of the FOI Act. However, in effect, the broad nature of the access application meant that once this complaint was made to the Information

Commissioner, it became apparent to me that the agency had not dealt with the access application according to its obligations under the FOI Act, but had abrogated some of its responsibility to decide questions about access to the documents, to my office. Accordingly, in view of the nature of the access application and the number of documents involved, it did not seem practicable that I would be able to finalise this complaint for several months. The complainant was informed of the difficulties I faced in that regard.

10. On 13 April 1995, my office received from the agency a schedule of disputed documents. A copy of that schedule was provided to the complainant by my office. On 2 May 1995, the complainant disputed the accuracy of that schedule which it claimed identified 1099 disputed documents when, according to the complainant's calculations, the number of disputed documents was 2561. The schedule prepared by the agency referred to "documents", rather than folios. In the agency's initial notice of decision, the agency referred to the number of documents which it had identified as being within the ambit of the access application and estimated that number to be in the vicinity of 6,000. The notice of decision referred to documents to which access was granted; documents that were duplicate copies of others; documents considered by the agency to be outside the ambit of the access application; documents available for purchase or inspection outside the FOI Act; and documents to which access was refused for various reasons. However, from my examination of the agency's FOI file, it is clear that the agency's initial notice of decision referred to individual folios and not to "documents".
11. On 25 May 1995, a member of my staff attended at the agency, inspected the disputed documents and obtained copies of some of them for my examination. After considering the schedule prepared by the agency and the copies of the disputed documents produced for my inspection, I was of the view that the schedule was insufficient for my purposes as it did not clearly identify and describe the documents in dispute. On 23 August 1995, pursuant to my power under s.75(1) of the FOI Act, I required the production to me of all the documents in dispute. Thereafter, my investigations officer spent a considerable amount of time collating those documents and preparing new schedules in a form that would facilitate my determination of the matters in dispute between the parties.
12. By October 1995, I was in a position to proceed towards the finalisation of the complaint and I decided to do so by addressing the complaint in four parts and providing the parties with my preliminary view progressively, in relation to each of those parts. After examining the disputed documents and considering the material before me, on 9 October 1995, I provided the agency with my preliminary view and reasons for that view on the first part of its claims for exemption. Although I required the agency to respond to that preliminary view by 16 October 1995, the agency did not respond until 15 November 1995.

13. My preliminary view on part 2 of the complainant was provided to the agency on 16 October 1995. I received a response to that preliminary view on 30 October 1995. On 9 November 1995, the agency received part 3 of my preliminary view and part 4 was provided to the agency on 29 November 1995. As I did not receive responses from the agency by the due dates, I was unable to provide the complainant with any indication of the precise nature of the documents or matters in dispute between the parties until 29 November 1995. On that date the complainant was sent a revised schedule of disputed documents and my preliminary view and reasons for that view, concerning those documents.
14. It was my preliminary view that some of the documents on the schedule were exempt under clause 7; some may be exempt under clause 4(3); some may not be exempt at all; but that the majority of the disputed documents appeared to be exempt under clause 6 of Schedule 1 to the FOI Act. In respect of the agency's refusal of access based upon s.31 of the FOI Act, it was also my preliminary view that if documents of a type described in the access application existed in the agency, then those documents would be exempt under clause 1 or clause 2 of Schedule 1 to the FOI Act.
15. The complainant immediately responded to my preliminary view. The complainant claimed that the schedule did not disclose all of the documents in dispute and that it had not been given sufficient time in which to prepare a response to my preliminary view. Further, the complainant disputed my right to consider the applicability of any exemption not claimed by the agency. It was the view of the complainant that the function of the Information Commissioner is limited to deciding the claims for exemption made by the agency and does not include substituting my views for those of the agency by introducing new exemptions as a justification for refusing access. Finally, the complainant stated that it would endeavour to provide a more detailed submission in response to my preliminary view. However, no further submissions have been received from the complainant.

### **Preliminary Issues**

16. I reject the complainant's view of the function of the Information Commissioner which is not in accordance with the provisions of the FOI Act. The role and function of the Information Commissioner is not to merely adjudicate upon the matters in dispute between the parties, such as in an adversarial system applied by the courts. In *Austen v Secretary, Attorney-General's Department* (1986) 10 ALD 169, the Full Federal Court considered the nature of the role and functions of the Commonwealth Administrative Appeals Tribunal ('the AAT') when considering an appeal against a decision of the AAT that certain documents were exempt under the Commonwealth FOI Act. In *Austen's* case one of the grounds of the appeal was that the AAT determined that two documents were exempt under a section of the Commonwealth FOI Act not relied upon by the agency (s.41). In respect of that submission, the Full Federal Court said, at page 173:

*“Notwithstanding that no submission appears to have been put to the Tribunal, in respect of these documents, under s.41, the Tribunal was clothed by s.58(1) with the powers of the agency whose decision it was reviewing, and was expressly empowered by that provision to decide any matter in relation to the request that, under the Act, could have been decided by the agency.”*

17. Section 58 of the Commonwealth FOI Act sets out the powers of the AAT in reviewing decisions of agencies under that Act. That statutory provision is the Commonwealth equivalent of s.76(1) of the FOI Act. In my view, under the Information Commissioner model of FOI dispute resolution, the Information Commissioner “stands in the shoes” of the original decision-maker in an agency and is empowered by s.76(1) of the FOI Act, to review any decision made by an agency and to decide any matter in relation to an access application that could have been decided by the agency. Further, the Information Commissioner may make such investigations and inquiries as the Commissioner thinks fit (s.70(1)), and may determine the procedure for investigating and dealing with complaints (s.70(4)).
18. Notwithstanding the concerns of the complainant about the length of time it was given to provide submissions for my consideration, I am satisfied that the complainant has been given a reasonable opportunity to respond to my preliminary view. In particular, the complainant was given an opportunity to reconsider its position in respect of those disputed documents which, in my preliminary view, were exempt under clauses 6 and 7, and also to identify any public interest factors which it claimed tilted the balance in favour of disclosure of any of those documents. However, except for letters containing the complainant’s response to my preliminary view, which also raised the concerns outlined, I received no further submissions from the complainant.
19. The complainant also claimed that certain documents which it believed the agency should have received from the Department of Minerals and Energy (DOME) should have appeared on the agency’s schedule of documents, but did not do so. It was also the complainant’s view that the agency was obliged to transfer part of its access application to DOME and had not done so. Further, it was the view of the complainant that the Information Commissioner is also obliged to refer its complaint to DOME, because the agency had not done so in the first instance.
20. If the agency did not hold the documents requested by the complainant, but knew, or had reasonable grounds to believe that those documents were held by DOME then, pursuant to s.15(1) of the FOI Act, the agency was required to transfer part or all of the complainant’s access application to DOME. Pursuant to s.15(2) of the FOI Act, if the agency holds copies of the requested documents, but those documents originated with or were received from DOME and the documents are more closely related to the functions of DOME, the agency may have chosen to transfer the access application, or part of it, to DOME. The agency is not required or obliged to do so, and in this instance, the agency chose to deal with the access application itself.

21. There is material before me to indicate that the agency consulted with DOME, but chose to deal with the complainant's access application in accordance with the provisions of s.15(2). I do not find any fault with that decision. Further, on 20 September 1994, the agency informed DOME that it had received the complainant's access application, provided a copy of the application to DOME, and notified that agency that there may be a need to contact DOME officers regarding access to certain records, including records of meetings, correspondence and other documents. Two of my officers have examined the documents to which the complainant has been granted access and have provided me with sample copies of several of those documents. That material clearly indicates that the agency decided to grant the complainant access to copies of relevant documents including records of meetings with DOME officers and correspondence received by the agency from DOME, but that those documents, along with many others, have not been collected by the complainant. In my view, if the complainant was serious about exercising its rights under the FOI Act, and about ensuring that the agency adhered to its obligations, the complainant would have collected the documents to which it has been granted access. Had it done so, the complainant might be better able to identify the precise documents of DOME which the complainant believes are in the possession of the agency and to which it seeks access.
22. On 8 December 1995, I received advice from the agency that it no longer sought to deny the complainant access to some of the disputed documents on the schedule. However, the agency maintains its claims for exemption under clauses 4(3), 6(1) and 7 for the remaining documents and parts of documents. After receiving that advice, my office provided the complainant with a revised schedule, that identified the documents or parts of documents remaining in dispute between the parties. Apart from its initial response to my preliminary view, which was received on 29 November 1995, I did not receive any further submissions from the complainant by the due date. Therefore, the matters for my determination in this instance concern the exempt status or otherwise of the documents described in the schedule provided to the complainant by my office, and the decision of the agency to refuse the complainant access by relying upon the provisions of s.31 of the FOI Act.

## **THE DISPUTED DOCUMENTS**

23. I am satisfied that the schedule of documents prepared by my office and provided to the complainant, identifies and describes the nature and type of documents in dispute. That schedule identifies the disputed documents retrieved from the agency's official record-keeping system as well as a number of documents held by various officers of the agency, including the Chief Executive Officer, in their personal filing systems, which documents are clearly within the ambit of the complainant's access application.



24. The disputed documents consist of routine departmental records including, *inter alia*, records of meetings between officers of the agency and various third parties; discussions with the Minister for Resources Development; meetings and discussions with officers of the Crown Solicitor's Office; requests for and copies of legal advice; letters from the agency to various third parties and correspondence received by the agency; and drafts of an agreement. Each of the documents remaining in dispute between the parties are listed and described on a schedule attached to this decision. That schedule also records my decision with respect to each document or part of a document described thereon.

### **INFORMATION AS TO THE EXISTENCE OF CERTAIN DOCUMENTS**

25. In its notice of decision dated 6 December 1994, without confirming or denying the existence or non-existence of any documents containing matter would be exempt under clauses 1, 2 or 5 of Schedule 1 to the FOI Act, the agency informed the complainant that:

*“...the Department, in its role of negotiating on behalf of the State, acts under authority of Cabinet with a view to the final State Agreement with the proponent, in this case Mineralogy Pty Ltd and any joint venturers, being approved by Cabinet and ratified by Parliament.*

*It is also apparent that the activity of negotiating a State Agreement involves numerous documents whose disclosure would reveal the deliberations or decisions of Cabinet either generally or particularly as a record of a Cabinet decision. In addition, the process of finalising a State Agreement involves not only the Department and the proponent but necessarily involves the canvassing of policy options and recommendations with other Government agencies for possible submission to Cabinet.*

*In this same context, documents involving communication between Ministers, documents prepared to brief a Minister, draft Cabinet submissions and documents subject to consultations amongst Ministers relating to the making of the government decision in regard to the State Agreement are essential parts of arriving at a final State Agreement which the Premier may sign on behalf of the state and present to Parliament for ratification. Similarly with parts of documents which come into this category.”*

26. Although the advice from the agency quoted in paragraph 25 above did not specifically refer to the provisions of s.31 of the FOI Act, it is apparent to me that the agency was refusing access under that section of the FOI Act. Section 31 provides:

*“Information as to existence of certain documents*

31. (1) *Nothing in this Act requires the agency to give information as to the existence or non-existence of a document containing matter that would be exempt matter under clause 1, 2 or 5 of Schedule 1.*

(2) *If the access application relates to a document that includes, or would if it existed include, exempt matter of a kind referred to in subsection (1), the agency may give written notice to the applicant that the agency neither confirms nor denies the existence, as a document of the agency, of such a document but that, assuming the existence of such a document, it would be an exempt document and, where such a notice is given-*

*(a) section 30 applies as if the decision to give such a notice were a decision referred to in that section; and*

*(b) for the purposes of this Act, the decision is to be regarded as a refusal of access to the document because the document would, if it existed, be an exempt document.”*

27. An agency’s reliance upon s.31, (and its equivalent in other FOI legislation), is not without difficulties for both the external review authority and for complainants. The legislative history of the need for and use of provisions like s.31 in the FOI Act was discussed by the Information Commissioner in Queensland (‘the Commissioner’) in his decision in *Re EST and Department of Family Services and Aboriginal and Islander Affairs* (30 June 1995, unreported), at paragraphs 11 and 12. Further, as the Commissioner identified in paragraphs 13 and 14 of that decision, the discretion to use the “neither confirm nor deny” response arises in two situations providing certain preconditions are satisfied. The first situation is when a document requested by an access applicant actually exists in an agency and the precondition to the use of s.31 is that the documents contains matter that is exempt under clauses 1, 2 or 5 of Schedule 1 to the FOI Act.

28. The second situation is that a document requested by an access applicant does not exist but would, if it existed, contain exempt matter under clauses 1, 2 or 5. Although the specific difficulties with the “neither confirm nor deny” response did not arise in the matter of *Re Est*, where the relevant section of the Queensland FOI Act is s.35, they have arisen in the matter before me. I am, therefore, indebted to the Commissioner for his analysis of the practical difficulties in that regard, and for the possible solutions to the problems which he identified in his decision. I consider his comments worthwhile repeating in the context of the matters before me. The Commissioner said, at paragraph 16:

*“The potential for misuse of the s.35 “neither confirm nor deny” response having been recognised in the legislative history, it is regrettable that the Information Commissioner, as the independent external review authority under the FOI Act, was not conferred with specific power to determine*

*whether a s.35 response has been appropriately employed by an agency or Minister. In the interests of fairness to applicants, I consider that the Information Commissioner should be given power to determine, after hearing in private from the respondent agency or Minister, that it would be more appropriate to acknowledge that a requested document exists, and that its exempt status should be decided on the merits with the opportunity for meaningful input from the applicant, in preference to persisting with a s.35 response...If the Information Commissioner is satisfied that no harm could be caused by disclosure of the existence of a requested document (even allowing that it may ultimately be found to be an exempt document) or where the existence of a requested document has become a matter of public record, or there is otherwise overwhelming evidence (accessible to the applicant) that points to the existence of a requested document, it is consistent with the objects of the FOI Act, and would make for fairer review...(allowing for more meaningful participation by the applicant), if the Information Commissioner were empowered to decide to inform the applicant of the existence of a requested document, and proceed with the review to determine whether the document contains exempt matter. To achieve this position, however, legislative amendments would be required.”*

29. I concur with those comments and with the Commissioner’s observations that an applicant’s opportunity to participate in the external review process when s.31 is invoked, is limited to making submissions on what he or she knows or believes about the documents to which access has been sought. In my view, the FOI Act as it presently stands, only works satisfactorily when the “neither confirm nor deny” response is correctly used by a Minister or an agency, and not in circumstances where a document which exists, does not contain matter that is exempt under clauses 1, 2 or 5, or where a document which does not exist, would not, if it did exist, contain matter that would be exempt under clause 1, 2 or 5 of Schedule 1 to the FOI Act.
30. However, faced with the agency’s reliance upon s.31 to neither confirm nor deny the existence of documents requested by the complainant but, assuming the existence of such documents, the documents would in any case be exempt under clause 1, 2 or 5, and taking into account the constraints placed upon me by virtue of s.74(1)(b) of the FOI Act, I am of the view that any document that may be created by the agency in the course of performing its functions of negotiating State Agreements would, assuming the existence of such a document, be an exempt document under clause 1 or 2 of Schedule 1 to the FOI Act.
31. Therefore, I confirm the agency’s decision, in accordance with s.31 of the FOI Act, without giving information as to the existence or non-existence of documents of the kind requested by the complainant, to refuse access on the basis that, assuming the existence of such a document or documents, the document or documents would be exempt documents under either clause 1 or clause 2 of Schedule 1 to the FOI Act.

## THE EXEMPTIONS

### (a) Clause 7 - Legal professional privilege

32. Initially, the agency claimed 35 documents were exempt under clause 7 of Schedule 1 to the FOI Act. After receiving my preliminary view, the agency granted the complainant full access to 4 of those documents and part access to 7 others. The agency claims the remaining 31 documents, and parts of documents, are exempt under clause 7 of Schedule 1 to the FOI Act. Clause 7 provides:

*"Legal professional privilege*

*Exemption*

- (1) *Matter is exempt matter if it would be privileged from production in legal proceedings on the ground of legal professional privilege.*

*Limit on exemption*

- (2) *Matter that appears in an internal manual of an agency is not exempt matter under subclause (1)."*

33. The nature and scope of legal professional privilege at common law has been the subject of consideration by the High Court in a number of cases. Most recently, I discussed the principle and application of legal professional privilege in my decision in *Re Clements and Graylands Hospital* (9 November 1995, unreported), at paragraphs 5-8.
34. Legal professional privilege applies to, *inter alia*, any communication between a client and his or her professional legal adviser acting in a professional capacity and with a view to obtaining or giving legal advice or assistance. A claim for privilege is not limited in the case of such communications, to communications which have been made for the purpose of existing or contemplated litigation: *Trade Practices Commission v Sterling* (1979) 36 FLR 244.
35. I have examined the documents for which an exemption under clause 7 is claimed. Most of those documents are confidential communications between the agency and the Crown Solicitor's Office ('the CSO') concerning the drafting of a proposed Agreement between the State of Western Australia and the complainant. Others concern matters of a legal nature about the agency and its dealings with the complainant. I am satisfied from my own examination of those documents, and from my consideration of all of the material before me, that those documents were created for the sole purpose of giving and receiving of legal advice concerning the contents of that draft Agreement and giving and receiving legal advice about related matters.

36. Some of the documents consist of notes of meetings attended by various officers of the agency and a solicitor from the CSO. The documents record the substance of the matters discussed at those meetings, including action in relation to aspects of the agency's future dealings with the complainant. Taking into account the contents of those documents and other material before me, I am satisfied that parts of the documents that record such discussions contain legal advice to the agency provided by the solicitor present at those meetings. Therefore, I am satisfied that parts of those documents would be privileged from production in legal proceedings on the ground of legal professional privilege.
37. Accordingly, I am satisfied that the whole of 26 documents for which exemption under clause 7 is claimed by the agency, would be privileged from production in legal proceedings on the ground of legal professional privilege. I am also satisfied that parts of 3 others, namely, the last 2 paragraphs in Document 85 (DRD File S1232/92, File H1); the second sentence in the second paragraph in Document 94 (DRD File S1232/92, File H2); and folios 183 and 185 in Document 29 (Richard Elsey's Drop Files, File T) would also be privileged from production in legal proceedings on the ground of legal professional privilege. Therefore, for the reasons given, I find that the 26 documents and parts of 3 others are exempt under clause 7 of Schedule 1 to the FOI Act. The documents or parts of documents which are exempt under clause 7 are identified in the schedule attached to this decision.
38. However, in respect of the remaining documents and parts of documents for which exemption is claimed under clause 7, I am not satisfied that those documents are exempt under clause 7. In particular, Document 35 (DRD File 652/93v3, File C); the remaining parts of Document 85 described above; and folios 385 and 386 in Document 47 (DRD file S1232/92, File H2) are not confidential communications between a solicitor and client for the purpose of seeking or giving legal advice. In my view, Document 35, folios 385 and 386 in Document 47, and the remaining parts of Document 85 are not exempt under clause 7. However, the agency also claims that Document 35; the remaining parts of Document 85; and folios 385 and 386 in Document 47 are exempt under clause 6(1). Accordingly, I have considered those claims in paragraphs 39-53 below.

**(b) Clause 6 - Deliberative process**

39. The agency also claims that Document 35; the remaining parts of Document 85; and folios 385 and 386 in Document 47 are exempt under clause 6(1). In addition to those documents, the agency claims that 25 other documents are exempt under clause 6 of Schedule 1 to the FOI Act. Clause 6 provides:

**"6. *Deliberative processes***

***Exemptions***

*(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."*

40. I have discussed the meaning and purpose of the exemption in clause 6(1) in a number of my formal decisions, initially in *Re Read and Public Service Commission* (16 February 1994, unreported), at paragraphs 12-26, and most recently in *Re Coastal Waters Alliance of Western Australia Incorporated and Department of Environmental Protection and Cockburn Cement Limited* (28 September 1995, unreported), at paragraphs 22-37. As I have done previously, I repeat my comments and views on the application of this exemption.
41. To establish an exemption under clause 6, the agency must satisfy the requirements of both paragraphs (a) and (b) of that exemption. If the disputed documents contain matter of a type described in paragraph (a), then it is necessary to consider the requirements of paragraph (b), that is, whether disclosure of the documents would, on balance, be contrary to the public interest. Although the exemption in clause 6 is potentially extremely broad there is ample guidance in my previous decisions, and from decisions in other FOI jurisdictions, about the kind of matter the disclosure of which would, on balance, be contrary to the public interest.
42. The case that is most often cited as authority for the meaning of the phrase "deliberative processes" is *Re Waterford and Department of the Treasury (No 2)* (1984) 5 ALD 588. In that case, the Commonwealth Administrative Appeals Tribunal said, at paragraphs 58-60:

*"58. As a matter of ordinary English the expression 'deliberative processes' appears to us to be wide enough to include any of the processes of deliberation or consideration involved in the functions of an agency. "Deliberation" means "the action of deliberating; careful consideration with a view to decision": see the Shorter Oxford English Dictionary. The action of deliberating, in common understanding, involves the weighing up or evaluation of the competing arguments or considerations that may have a bearing upon one's course of action. In short, the deliberative processes involved in the functions of an agency are its thinking processes - the processes of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action. Deliberations on policy matters undoubtedly come within this broad*

*description. Only to the extent that a document may disclose matter in the nature of or relating to deliberative processes does s.36(1)(a) come into play...*

*59. It by no means follows, therefore, that every document on a departmental file will fall into this category...Furthermore, however imprecise the dividing line may first appear in some cases, documents disclosing deliberative processes must, in our view, be distinguished from documents dealing with the purely procedural or administrative processes involved in the functions of the agency...*

*60. It is documents containing opinion, advice, recommendations etc. relating to the internal processes of deliberation that are potentially shielded from disclosure...Out of that broad class of documents, exemption under s.36 only attaches to those documents the disclosure of which is 'contrary to the public interest'..."*

43. In my view, the statement from *Re Waterford* quoted above provides ample guidance for agencies on the application of the exemption in clause 6 of the FOI Act. I consider that the exemption in clause 6 is designed to protect the "thinking processes" of an agency so that the integrity of those processes, especially in circumstances where deliberations have not concluded, is not jeopardised by the premature disclosure of documents containing opinion, advice, recommendation or 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. However, once the deliberative process is complete, in my view, different considerations may apply.

### **The agency's submission**

44. The agency informed me that the State Government has, since 1952, entered into major resource development Agreements embracing a broad spectrum of mineral and energy products. The Agreements specify rights and obligations of both the Government and developer and allow for the normal laws of the State to be varied to meet the specific needs of a particular project. The principal type of Agreement used in Western Australia are Ratified Agreement Acts, which means that they are scheduled to, incorporated or appear in an Act of Parliament.
45. A developer's interaction with the State Government is channelled through a co-ordinating Minister, currently the Minister for Resources Development. The agency acts as a focal point of contact for the developer and other Government agencies, such as the Environmental Protection Authority, the Department of Conservation and Land Management and the like. The agency liaises with other agencies on all relevant matters and co-ordinates and consolidates a Government response to matters to be contained within an Agreement. I was also informed that the following steps are followed in the establishment of a State Agreement:
- Concept prefeasibility (preliminary discussions with the agency).

- The agency informs the Minister of acceptability of the concept.
  - Minister takes the concept to Cabinet for discussion and authorisation.
  - Cabinet authorises the agency to co-ordinate and negotiate with all relevant parties the terms and conditions for a proposed draft Agreement.
  - Timeframe and processes are agreed with all agencies and the proponent.
  - Agreement is negotiated for submission to Cabinet for consideration and endorsement to proceed to Parliament for ratification.
  - Agreement is signed by the State and the proponent.
  - Agreement Act Bill is debated by Parliament and ratified.
46. I am satisfied, from my own examination of the disputed documents and from the material provided to me by the agency that explains the role and function of the agency, that the remaining disputed documents, and parts of documents, contain information of the type described in paragraph (a) of sub-clause 6(1). That is, I am satisfied that the documents contain opinion, advice, and recommendation that has been obtained, prepared or recorded in the course of, or for the purposes of, the deliberative processes of the agency, namely the process of negotiating an Agreement. I am also satisfied that those documents record certain consultations and deliberations that have taken place in the course of, or for the purpose of that deliberative process. Accordingly, those documents satisfy the requirements of paragraph (a) of sub-clause 6(1) of Schedule 1 to the FOI Act.
47. In relation to paragraph (b) of that sub-clause, from the material provided to me by the agency, it appears that negotiations with the complainant have been ongoing for over 2 years and have not yet been finalised. Those negotiations, I am informed, are at an extremely sensitive stage with key points remaining unresolved. Although the agency did not identify a specific public interest which, in its view, tipped the balance against disclosure, I consider the agency's submission to be directed at maintaining the integrity of its deliberative processes.

### **The complainant's submission**

48. Although the agency bears the onus under s.102(1) of the FOI Act of establishing that its reliance upon clause 6 was justified, in its initial response to my preliminary view, the complainant submitted that it was in the public interest for the documents to be disclosed for the following reasons, which I have summarised:
- (i) It constitutes a great injustice if third parties are providing erroneous material or information to a Government agency, designed to damage a member of the public and if the Government acts upon such information without providing the party the opportunity to respond or to even be aware of the allegations against them;
  - (ii) It is important for the agency to be seen not to favour one client over another;



- (iii) There is an overwhelming public interest in a person being able to exercise his or her rights of access, particularly when the requested documents contain information in which the applicant has an interest; and
- (iv) There is an overwhelming public interest in ensuring that agencies do not act upon erroneous or incorrect information provided to the agency which is designed to damage the commercial interests of a party.

### **Analysis of claims**

- 49. I recognise that there is a public interest in preserving the integrity of the deliberative processes of an agency or the Government by ensuring that all relevant information is before the agency to facilitate informed decision-making and for that process to occur unhindered. I consider that public interest to be particularly important when the deliberations are at the highest level of an agency or the Government, and even more so when those deliberations have not been finalised.
- 50. I also recognise that there is a public interest in the agency being able to conduct high level, commercial negotiations on behalf of the State without being required to disclose to the other party to those negotiations, the processes by which the agency reached its negotiating position. This is particularly important whilst negotiations are current and where it may be disadvantageous to the State to disclose documents that may reveal options that may still be under consideration.
- 51. Balanced against those public interests, I recognise that there is a public interest in the complainant being able to exercise its right of access under the FOI Act. I also consider that there is a public interest in ensuring that agencies do not act upon incorrect information when making decisions that affect members of the public. However, there is no material before me to suggest that that has occurred. In fact, there is material to suggest that the agency has taken steps to satisfy itself about the bona fides of all of the parties with whom it has been negotiating.
- 52. In balancing the competing interests, it is my view that the public interest in ensuring the integrity of the deliberative processes of the agency at the critical stage which those negotiations have reached in this instance, outweighs any other public interest. Therefore, I find that the majority of the disputed documents, and parts of the disputed documents for which the agency claims exemption under clause 6(1), are exempt under clause 6(1) of Schedule 1 to the FOI Act. In particular, I find that 24 documents are exempt under clause 6(1) and Document 35 (DRD File 652/93v3, File C); the remaining parts of Document 85 described in paragraph 36 above; and folios 385 and 386 in Document 47 (DRD file S1232/92, File H2), are also exempt under clause 6(1) of Schedule 1 to the FOI Act.

53. In respect of the remaining document which the agency claims is exempt under clause 6(1), namely, Document 10 (folios 15-16 in agency file number RO652/93v4, File D on the schedule), the agency is prepared to grant the complainant access to an edited copy of that document. However, the agency gave no reason for its decision to deny the complainant access to the remaining parts of that document. I have examined that document and considered the material before me. Document 10 is an internal memorandum dated 27 July 1994, from the Director, North and Inland division of the agency to the Chief Executive Officer of the agency. In my view, it is a routine internal communication such as one would expect from time to time between officers of an agency. I am satisfied that the matter proposed to be deleted by the agency is matter of a type described in paragraph (a) of clause 6(1). However, I do not consider that matter, nor the document itself, to be critical to the agency's deliberative processes and no submissions were provided by the agency to persuade me that the disclosure of that information would, on balance, be contrary to the public interest. In my view, the public interest in the complainant being able to exercise his rights of access with respect to that document, outweighs the public interest in its non-disclosure. Therefore, I find that Document 10 is not exempt under clause 6(1) of Schedule 1 to the FOI Act, nor is that document exempt for any reason.

#### **Clause 4(3) - Commercial and business information**

54. The agency claims that a number of the disputed documents, in addition to being exempt under other clauses, are also exempt under clause 4(1) or 4(3) of Schedule 1 to the FOI Act. However, as I have concluded that all except one of those documents which the agency claims are exempt under either clause 4(1) or clause 4(3), are exempt under clause 6(1), I need not consider the agency's claim for exemption under clause 4(1) or 4(3) in respect of those documents. However, as the agency claims that paragraph 5 in Document 22 (folios 107-109 in agency file number 652/93v3, File C on the schedule) is exempt under clause 4(3) of Schedule 1 to the FOI Act and that paragraph is not, in my view, exempt under clause 6(1), I am required to consider the agency's claims in respect of that document. Clause 4, so far as is relevant, provides:

#### ***"4. Commercial or business information***

##### ***Exemptions***

*(1)...*

*(2)...*

*(3) Matter is exempt matter if its disclosure-*

*(a) would reveal information (other 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.*

*Limits on exemptions*

- (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) *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 the applicant.*
  - (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."*
55. In my view, the exemption in clause 4(3) is designed to protect the commercial and business information of third parties who have business dealings with government. Its purpose is to ensure the flow of vital business information concerning third parties to government is not diminished by the operation of the FOI Act and to ensure that those organisations and individuals who have dealings with government are not exposed to any unfair commercial disadvantage flowing from disclosure of information under the FOI Act. However, the limitation in sub-clause (7) is also an indication that the disclosure of third party commercial and business information may, on occasions, be in the public interest.
56. The agency bears the onus under s.102(1) of the FOI Act of establishing that its decision to deny access to paragraph 5 in that document, was justified. On the material before me, the agency has not satisfied its onus in that respect. The deleted matter discloses that a third party has business interests in a certain area of Western Australia. Whilst that information may comprise matter of a kind described in paragraph (a) of clause 4(3), I do not consider that information is the type of information which clause 4(3) is designed to protect. There is certainly nothing before me by way of explanation from the agency which would enable me to conclude otherwise.
57. However, even if the information in paragraph 5 is matter of a kind described in paragraph (a) of clause 4(3), the requirements of paragraph (b) of that clause must also be established before a *prima facie* claim for exemption under that clause arises. In this case, the agency simply cited the clause as a basis for its objection to disclosure but provided no material or reasons to support its position. I have examined Document 22 and it is over 12 months old. The matter contained in it may no longer be sensitive, if it ever was, and it may no longer be the third party's current position. Accordingly, as the agency did not provide me with any material to justify a claim for exemption under clause 4(3), and the information in paragraph 5 does not appear to me to be particularly

sensitive, I find that paragraph 5 in Document 22 is not exempt under clause 4(3) of Schedule 1 to the FOI Act.

### **Documents and matter outside the ambit of the access application**

58. Although the complainant's access application was drafted in extremely broad terms, some of the documents to which access has been granted also contain other matter that is outside the ambit of that application. That matter consists of information about other activities of the agency that is unrelated to the complainant's initial request in any way. Some documents consist of handwritten notes by officers of the agency. I have examined those documents and I find nothing in them that is within the scope of the access application.
59. One document (Document 34, folios 231-236 from File N (Peter Murphy's personal file)) appears to consist of extracts taken from a technical report that originated with a third party. I am also satisfied that that document contains no material relating to the scope of the complaint before me. Accordingly, I consider the agency's decision to provide access to edited copies of various disputed documents on the basis that the matter deleted from those documents is outside the ambit of the complainant's access application, to be correct. In respect of Document 34 described above, there being no information before me to the contrary, I also consider the agency's decision in respect of that document, to be correct.

### **CONCLUSION**

60. In summary, I find that many of the disputed documents are exempt under clause 7; many are exempt under clause 6; one complete document is outside the ambit of the access application; parts other documents to which edited access has been granted, are also outside the ambit of the access application; the matter deleted from one document is not exempt under clause 4(3); and one document which the agency claims is exempt under clause 6(1) is not so exempt nor is it exempt for any reason. Further, the decision of the agency to refuse access in accordance with s.31 of the FOI Act, is confirmed. The decision in respect of each of the disputed documents is recorded in the schedule attached to this decision.

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**SCHEDULE OF DISPUTED DOCUMENTS****DRD FILE: 652/93v1 FILE A**

<b>DOC.</b>	<b>FOLIOS</b>	<b>DESCRIPTION</b>	<b>DATE</b>	<b>DECISION</b>
16	32	File notes of meeting between Minister for Resources Development, agency and third parties on 28 September 1993.	13/10/93	Exempt under clause 6(1).
27	45-49	Letter from M Walker, Government of Western Australia, Official Representative - North Asia, to Dr D Kelly, Chief Executive Officer of the agency, marked "Confidential", with attachments.	01/11/93	Exempt under clause 6(1).
46	85	Copy of letter from Industrial Bank of Japan to Mr M Walker, Official Representative - North Asia.	29/11/93	Exempt under clause 6(1).
98	184	Record of resolutions of meeting with Minister for Resources Development.	19/01/94	The matter deleted from this document is outside the ambit of the access application.
110	206-207	Facsimile letter from Guangzhou Iron and Steel Corp Ltd to Minister for Resources Development	21/01/94	Exempt under clause 6(1).

**DRD FILE: 652/93v2 FILE B**

<b>DOC.</b>	<b>FOLIOS</b>	<b>DESCRIPTION</b>	<b>DATE</b>	<b>DECISION</b>
11	24	Record of resolutions from meeting with Minister for Resources Development.	Undated	The matter deleted from point 2 is exempt under clause 6(1). The other deleted matter is outside the ambit of the access application.

20	43	Record of resolutions from meeting with Minister for Resources Development.	17/02/94	The matter deleted from point 7 is exempt under clause 6(1). The other deleted matter is outside the ambit of the access application
22	45-46	File notes of meeting between agency and representatives of Krakatau Steel.	17/02/94	Exempt under clause 6(1).
41	133	File notes of telephone conversation with General Manager, Guangzhou Iron & Steel Corp Ltd.	16/02/94	Exempt under clause 6(1).
55	202-203	Facsimile message from Department of Minerals and Energy to agency	21/03/94	Exempt under clause 6(1).

**DRD FILE: 652/93v3 FILE C**

DOC.	FOLIOS	DESCRIPTION	DATE	DECISION
4	20	Internal memorandum to Director, North and Inland Division from Richard Elsey, Consultant.	07/04/94	Exempt under clause 6(1).
22	107-109	Internal memorandum to Dr J M Limerick from Richard Elsey, Consultant.	30/05/94	The matter deleted from this document (paragraph 5) is not exempt under clause 4(3).
47d	200-201	Facsimile message to Executive Director of the agency from BJ Zhuang.	07/06/94	Exempt under clause 6(1).

**DRD FILE: RO652/93v4 FILE D**

DOC.	FOLIOS	DESCRIPTION	DATE	DECISION
7	11	Record of resolutions from meeting with Minister for Resources Development.	22/06/94	The matter deleted from paragraph 6 is exempt under clause 6(1). The other deleted matter is outside the ambit of the access application.

**DRD FILE: S1232/92 FILE H1**

<b>DOC.</b>	<b>FOLIOS</b>	<b>DESCRIPTION</b>	<b>DATE</b>	<b>DECISION</b>
4	12-14	Copy of a letter from Statewide Tenement & Advisory Services P/L to Director General, Department of Mines.	12/02/91	Exempt under clause 6(1).
26	54	File notes of meeting with Itochu.	20/10/92	Exempt under clause 6(1).

**DRD FILE: S1232/92 FILE H2**

<b>DOC.</b>	<b>FOLIOS</b>	<b>DESCRIPTION</b>	<b>DATE</b>	<b>DECISION</b>
91	523-529	Internal memorandum from Director, Resource Industry Development Division to Chief Executive Officer.	27/07/93	Exempt under clause 6(1).

**PETER MURPHY'S PERSONAL FILE No. 4 FILE N**

<b>DOC</b>	<b>FOLIOS</b>	<b>DESCRIPTION</b>	<b>DATE</b>	<b>DECISION</b>
34	231-236	Extract from a report prepared by Kaiser Engineers & Midrex.	Undated	This document is outside the ambit of the access application.

**RICHARD ELSEY'S PERSONAL PAPERS No 3 FILE R**

<b>DOC</b>	<b>FOLIOS</b>	<b>DESCRIPTION</b>	<b>DATE</b>	<b>DECISION</b>
18	243	Hand-written notes of a meeting.	27/05/93	The matter deleted from this document is outside the ambit of the access application

**RICHARD ELSEY'S PERSONAL No 4 PAPERS FILE S**



DOC	FOLIO	DESCRIPTION	DATE	DECISION
8	31	Hand-written notes	24/02/94	The matter deleted from this document is exempt under clause 6(1).

<b>RICHARD ELSEY'S DROP</b>	<b>FILES FILE T</b>
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DOC	FOLIO	DESCRIPTION	DATE	DECISION
43	231	Page 8 of facsimile message from Austrade. Document appears to be a draft itinerary and meeting involving the Minister for Resources Development.	28/06/94	The matter deleted from this document is outside the ambit of the access application.
46	234-235	Copy of Document 47d, folios 200-201, File C.	07/06/94	Exempt under clause 6(1).

<b>FILE W</b>
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**FILE R0156/94 BURRUP PENINSULA - DRAFT LAND USE AND MANAGEMENT PLAN SUBMISSIONS**

**FILE R0823/93 MINERALS AND MINING TENEMENTS, APPLICATIONS**

**FILE R0703/93 LAND USE PLANNING DAMPIER ARCHIPELAGO**

**FILE 0905/93 ORGANISATIONS GOVERNMENT AUSTRADE AUSTRALIAN TRADE COMMISSION (DR WALTER ROSO)**

DOC	FOLIOS	DESCRIPTION	DATE	DECISION
7	10-12	Letter to an Aerospace Consultant from Chief Executive Officer of the agency.	14/02/94	The deleted matter is exempt under clause 6(1).
8	13	Letter from Department of Industry, Technology and Regional Development, Canberra to Executive Director of the agency.	01/03/94	The deleted matter is exempt under clause 6(1).
9	14	Copy of a facsimile letter from British Steel to Australian Trade Commission, London.	02/06/94	Exempt under clause 6(1).

**AGENCY FILE No 652/93v3 FILE C**

<b>DOC.</b>	<b>FOLIOS</b>	<b>DESCRIPTION</b>	<b>DATE</b>	<b>DECISION</b>
3	18-19	Internal memorandum from Director, North and Inland Division to Chief Executive Officer.	06/04/94	Exempt under clause 6(1).
7	41-43	Unsigned draft letter from Minister for Resources Development to complainant's solicitors.	No date	Exempt under clause 6(1).
23	110-111	Internal memorandum from Executive Director to Chief Executive Officer.	30/05/94	Exempt under clause 6(1).
45	190-192	Copy of Document 23, with hand-written annotations.	30/05/94	Exempt under clause 6(1)

**DRD FILE: RO652/93v4 FILE D**

<b>DOC.</b>	<b>FOLIOS</b>	<b>DESCRIPTION</b>	<b>DATE</b>	<b>DECISION</b>
10	15-16	Internal memorandum from Director, North and Inland division to Chief Executive Officer.	27/07/94	Not exempt.

**PETER MURPHY'S PERSONAL FILE No 4 FILE N**

<b>DOC</b>	<b>FOLIOS</b>	<b>DESCRIPTION</b>	<b>DATE</b>	<b>DECISION</b>
50	275-281	Hand written notes relating to specific pages of an unknown document.	Undated	Other than folio 275 to which access has been granted, the remaining folios are outside the ambit of the access application

**DRD FILE: 652/93v1 FILE A**

<b>DOC.</b>	<b>FOLIOS</b>	<b>DESCRIPTION</b>	<b>DATE</b>	<b>DECISION</b>
73	135-138	Facsimile cover sheet from Crown Solicitors Office (CSO) to agency, with draft letter to complainant including handwritten annotations.	23/12/93	Exempt under clause 7.

**DRD FILE: 652/93v2 FILE B**

DOC.	FOLIOS	DESCRIPTION	DATE	DECISION
43	135	Facsimile message from CSO to agency.	02/03/94	Exempt under clause 7.

**DRD FILE: 652/93v3 FILE C**

DOC.	FOLIOS	DESCRIPTION	DATE	DECISION
35	150	Notes of a meeting attended by representative from CSO and officers of the agency.	Undated	Exempt under clause 6(1).
40	174-176	Facsimile communication between CSO and the agency concerning contents of proposed agreement.	21/05/94	Exempt under clause 7.
44	181-189	Facsimile communication between CSO and agency concerning contents of proposed agreement.	25/05/94	Exempt under clause 7.

**DRD FILE: RO207/94v1 FILE E**

DOC.	FOLIOS	DESCRIPTION	DATE	DECISION
3	215-218	Letter from CSO to agency concerning contents of proposed agreement.	30/06/94	Exempt under clause 7.
<b>FILE NUMBER : RO207/94v2</b>				
14	446-448	Facsimile communication between CSO and agency concerning contents of proposed agreement.		Exempt under clause 7.

**DRD FILE: S1232/92 FILE H1**

DOC.	FOLIOS	DESCRIPTION	DATE	DECISION
70	192	Copy of letter to CSO from Department of State Development.	12/02/93	Exempt under clause 7.
71	193-195	Facsimile communication from CSO to Department of State Development.	12/02/93	Exempt under clause 7.
73	197	Letter from agency to CSO.	17/02/93	Exempt under clause 7.

85	234	File notes of meeting with CSO, including hand written comments.	03/03/93	The last 2 paragraphs are exempt under clause 7; rest of the document is exempt under clause 6(1).
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<b>DRD FILE: S1232/92</b>	<b>FILE H2</b>
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<b>DOC.</b>	<b>FOLIOS</b>	<b>DESCRIPTION</b>	<b>DATE</b>	<b>DECISION</b>
26	318	Letter to CSO from agency.	22/03/93	Exempt under clause 7.
27	324	Letter from CSO to agency.	02/04/93	Exempt under clause 7.
47	385-390	Facsimile message to CSO from agency, with attachments.	02/06/93	Folios 385-386 are exempt under clause 6(1); (complainant granted access to remaining folios ).
76	484	Facsimile message to CSO from agency.	23/06/93	Exempt under clause 7.
77	487	Facsimile message from CSO to agency	24/06/93	Exempt under clause 7.
79	489-491	Facsimile message from agency to CSO, including draft letter to complainant.	28/06/93	Exempt under clause 7.
93	532	Facsimile message from agency to CSO.	28/06/93	Exempt under clause 7.
94	534	Memorandum to Chief Executive Officer of the agency from Director, Resource Industry Development.	25/06/93	The second sentence in the second paragraph is exempt under clause 7.
96	536	Facsimile message from agency to CSO.	30/06/93	Exempt under clause 7.
97	538-540	Facsimile message from CSO to agency, including draft letter to complainant.	02/08/93	Exempt under clause 7.
98	541-544	Facsimile message from agency to CSO, including draft letter to complainant.	06/08/93	Exempt under clause 7.

99	546	Facsimile communication from CSO to agency.	09/08/93	Exempt under clause 7.
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<b>DR. KELLY'S PERSONAL FILE</b>	<b>FILE I</b>
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DOC	FOLIO	DESCRIPTION	DATE	DECISION
43	159-260	Draft Iron Ore Processing (Fortescue Magnetite) Agreement	Undated	Exempt under clause 7.

<b>EDDIE DELL'S PERSONAL FILE</b>	<b>FILE J</b>
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DOC	FOLIO	DESCRIPTION	DATE	DECISION
29	170-172	Facsimile message from agency to CSO	25/06/93	Exempt under clause 7.

<b>PETER MURPHY'S PERSONAL PAPERS No.1</b>	<b>FILE K</b>
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DOC	FOLIO	DESCRIPTION	DATE	DECISION
21	72-74	Facsimile message to CSO from agency. (Copy of document 29 on File J).	25/06/93	Exempt under clause 7.

<b>RICHARD ELSEY'S PERSONAL PAPERS No 3</b>	<b>FILE R</b>
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DOC	FOLIO	DESCRIPTION	DATE	DECISION
29	285	Hand-written notes of a meeting with CSO.	04/06/93	Exempt under clause 7.

<b>RICHARD ELSEY'S DROP FILES</b>	<b>FILE T</b>
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DOC	FOLIO	DESCRIPTION	DATE	DECISION
29	183-185	Facsimile message from agency to CSO, including copy of a letter from third party and draft reply to that letter from Minister for Resources Development.	3/02/94	Folios 183 and 185 are exempt under clause 7 (complainant granted access to folio 184).

<b>GARY PATERSON'S PERSONAL FILE No. 2 FILE V</b>
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<b>DOC</b>	<b>FOLIO</b>	<b>DESCRIPTION</b>	<b>DATE</b>	<b>DECISION</b>
48	217-228	Draft Agreement with hand-written annotations.	22/06/94	Exempt under clause 7.
49	229-239	Draft Agreement	22/06/94	Exempt under clause 7.
50	240-241	Letter from CSO to agency.	23/06/94	Exempt under clause 7.

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