

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

**File Ref: F2004220
Decision Ref: D0102005**

Participants:

West Australian Newspapers Ltd
Complainant

- and -

Western Power Corporation
Respondent

DECISION AND REASONS FOR DECISION

FREEDOM OF INFORMATION – refusal of access – documents relating to power supplies in Western Australia – clause 10(1) - whether substantial adverse effect on financial or property affairs of State or agency - clause 10(3) - whether information has commercial value to an agency - clause 10(4) - whether disclosure of information concerning the commercial affairs of an agency - whether adverse effect on commercial affairs - clause 6(1) - deliberative processes - whether disclosure contrary to public interest - clause 4(3) - information about business, professional, commercial or financial affairs of a person - whether disclosure could reasonably be expected to have an adverse effect on those affairs or prejudice the future supply of information - clause 3(1) - personal information.

Freedom of Information Act 1992: sections 24, 30, 30(f), 102(1); Schedule 1, clauses 3(1), 4(3), 6(1), 10(1), 10(3), 10(4); Schedule 2, Glossary

Electricity Corporation Act 1994: sections 4(1) and 28

Interpretation Act 1984: section 5

Harris v Australian Broadcasting Corporation (1983) 78 FLR 236

Re Healy and Australian National University (Commonwealth Administrative Appeals Tribunal, 23 May 1995, unreported)

Re James and Australian National University (1984) 2 AAR 327

Manly v Ministry of Premier and Cabinet (1995) 14 WAR 550

Re Rogers and Water Corporation and Others [2004] WAICmr 8

Re Precious Metals Australia Ltd and Department of Minerals and Energy [1997] WAICmr 12

Re Jones and Jones and Town of Port Hedland [2000] WAICmr 23

Re Hoyts Multiplex Cinemas Pty Ltd and City of Gosnells and Another [1998] WAICmr 5

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

Re Kimberley Diamond Company NL and Department for Resources Development and Argyle Diamond Mines Pty Ltd [2000] WAICmr 51

DECISION

The decision of the agency is set aside. In substitution, I decide that the signatures in Documents 1, 2, 3 and 4 are exempt under clause 3(1) of Schedule 1 to the FOI Act but the documents are not otherwise exempt.

D A WOOKEY
A/INFORMATION COMMISSIONER

30 May 2005

REASONS FOR DECISION

1. This complaint arises from a decision made by Western Power Corporation ('the agency') to refuse West Australian Newspapers Limited ('the complainant') access to documents requested by it under the *Freedom of Information Act 1992* ('the FOI Act').

BACKGROUND

2. The agency is a corporatised utility, established under section 4(1) of the *Electricity Corporation Act 1994* ('the EC Act') on 1 January 1995. On that date, the former State Energy Commission of Western Australia was split into separate gas and electricity utilities. In 2000, section 4 of the EC Act was amended to change the agency's name to Western Power Corporation. The agency is an agent of the Crown but it is not part of the Public Service.
3. The agency's functions are described in section 28 of the EC Act, which provides, insofar as is relevant, as follows:

“(1) The functions of the corporation are –

- (a) to generate, acquire, exchange, transport, distribute, market and otherwise supply electricity;*
- (b) to undertake, maintain and operate any works, system, facilities, apparatus or equipment required for any purpose referred to in paragraph (a);*

...

(2) It is also a function of the corporation –

- (a) to use or exploit its fixed assets for profit so long as the proper performance of its functions under subsection (1)(a) and (b) is not affected;*
- (b) to do anything that the corporation determines to be conducive or incidental to the performance of a function referred to in subsection (1)”.*

4. The agency is one of a number of energy providers operating in Western Australia, albeit the principal energy supplier. The agency's Annual Report for 2003/2004 ('the Annual Report') says that the agency:
 - is the leading energy company in Western Australia - owning four major power stations and 24 smaller power stations with a total generating capacity of 3,500 Megawatts ("MW");
 - owns about 56% of electricity generation capacity in the State with the remaining 44% owned by private industry; and

- has assets of \$4.59 billion; an annual revenue of about \$1.77 billion; and had a net profit after tax for the year to 30 June 2004 of \$241.6 million.
5. With regard to power generation, the Annual Report notes, among other things, that:
- The agency's major generating plant is coal-fired - accounting for up to 70% of its generating fuel. Other fuels are gas, distillate, fuel oil, hydro and wind. Pages 37-43 of the Annual Report list all of the generating plants with details of their associated fuel, capacity and energy generated for 2003/04, and facts and figures concerning the electricity generated for 2002/03 and 2003/04, together with the fuel consumption used for generation in the categories 'coal', 'distillate and other fuels' and 'gas'.
 - An agreement has been signed that secures the supply of 700 petajoules of natural gas from the North West Shelf Gas Project over a period of up to 20 years.
 - The agency has developed a stand-by fuel agreement with Wesfarmers and Alinta which allows for the provision of up to 45 terajoules of stand-by gas supply to maintain reliable power supplies during periods of unusually high demand. Exercising that agreement gives the agency the equivalent of 200MW of gas capacity during times of gas constraint.
 - Efficiency has been increased by overhaul work at Muja Power Station in Collie which adds an extra 50MW of non-gas fired generation and work at Kwinana Power Station will reinstate the ability to burn liquid fuels there, giving the agency another 120MW of capacity over that available with coal firing of Stage C units there.
 - The agency has a total capital program of \$418.6 million in 2004/2005, which includes \$274.6 million for transmission and distribution projects.
6. From other information in the public domain, I understand that most of the gas purchased by the agency for electricity generation is supplied from the North West Shelf Gas Project. The bulk of that gas is transported to the agency's power stations via the Dampier to Bunbury Natural Gas Pipeline ('DBNGP'). The DBNGP was purchased in 1998 by Epic Energy Pty Ltd ('Epic').
7. In mid-February 2004, due to a combination of high temperatures and operational factors, there was a power supply crisis in the south west of Western Australia which brought into focus the agency's vulnerability in periods of sustained high temperatures since the DBNGP had limited ability to deliver higher than usual quantities of gas over an extended period. The "Report of the Review Committee into Western Power Corporation's management of the power supply crisis of 16 to 18 February 2004" dated 30

April 2004 ('the Cronin Report') - which is accessible from the agency's website - states, at page 66:

"Looking at the issues from a longer-term perspective, the high reliance on interruptible gas (ie gas supplies that are not secure) from the DBNGP now regularly places Western Power in a vulnerable position whenever major works are required on the DBNGP and weather is either very hot or cold"

and, at page 88:

"...gas transport will continue to be a significant risk unless and until there is an increase in the gas transportation (pipeline) capacity."

8. In October 2004, a receiver manager sold the DBNGP after an unfavourable access regulatory decision left Epic unable to meet debt repayments. The new owner is a consortium made up of Diversified Utility and Energy Trusts, Alcoa of Australia Ltd and Alinta.
9. By letter dated 19 August 2004, the complainant applied to the agency for access under the FOI Act to:

"All correspondence between Western Power chief executive Tony Ianello, Western Power chairman Neil Hamilton, former chief executive Stephen van der Mye and former chairman Malcolm Macpherson on the following issues:

 1. *Threats to power supplies in WA. This covers both past and future threats.*
 2. *The purchase of mobile generators.*
 3. *Plans to stockpile imported oil."*
10. On 7 October 2004, the agency's FOI Co-ordinator advised the complainant that it had identified four documents but denied access to them on the basis that they were exempt under clauses 4(3) and 6(1) of Schedule 1 to the FOI Act.
11. The complainant sought an internal review of the agency's decision on access. On 19 November 2004, Mr Mark Hands, General Counsel of the agency, notified the complainant that he had reviewed the four documents and confirmed the agency's decision to refuse access, although the agency then claimed that additional exemption provisions - clauses 3 and 10 - also applied.
12. On 30 November 2004, the complainant applied to the Information Commissioner for external review of that decision.

THE DISPUTED DOCUMENTS

13. The disputed documents are described in the agency's schedule of documents given to the complainant as follows:

- “1. *Submission to the Board of Directors titled ‘Epic, DBNGP Capacity and Generation’s Fuel Mix’ dated 23 July 2003 (in fact, the document comprises a one-page summary/cover sheet attaching a seven-page submission document);*
2. *Submission to the Board of Directors titled ‘Kwinana Stage C Oil Firing Reinstatement’ dated 15 October 2003 (a one-page summary/cover sheet attaching a two-page submission document);*
3. *Submission to the Board of Directors titled Kwinana and Muja A/B Retirement Deferral dated 15 October 2003 (a one-page summary/cover sheet attaching a five-page submission document);*
4. *Memorandum from Stephen Van der Mye to Board Members titled “Epic Energy Compressor Station 3 - Impact on Power Supplies”.*”

REVIEW BY THE A/INFORMATION COMMISSIONER

14. After my receipt of this complaint, the agency was required to produce to me a copy of its FOI file relating to the complainant’s access application and the originals of the disputed documents.
15. On 21 December 2004, following receipt of that material, my Legal Officer/Research and Investigations wrote to the agency, advising that there was insufficient information contained in the agency’s notices of decision to enable me to determine whether the agency’s decision to refuse the complainant access to the disputed documents was justified.
16. My Legal Officer/Research and Investigations also informed the agency that, in her view, the notices of decision to the complainant were deficient because they did not comply with the statutory requirements of section 30 of the FOI Act. The agency’s solicitors subsequently advised me that they disagree with that assertion, although without proffering any explanation as to why.
17. In my opinion, the agency’s notices of decision are deficient. They do not contain the details required by section 30 of the FOI Act to be provided to a complainant. In particular, neither of the agency’s notices gives the details required to be provided by section 30(f) of the FOI Act, which provides as follows:

“The notice that the agency gives the applicant under s.13(1)(b) has to give details, in relation to each decision, of -

(a) ...

...

(f) if the decision is to refuse access to a document - the reasons for the refusal and the findings on any material questions of fact underlying

those reasons, referring to the material on which those findings were based”.

18. If an agency fails to give an access applicant the information required by section 30, the agency has not discharged its statutory obligations under the FOI Act. Merely reciting the exemption provision as the basis of a claim for exemption, as the agency has done here, does not satisfy the requirements of that provision.
19. Under section 102(1) of the FOI Act, the onus is on the agency to establish that its decision is justified or that a decision adverse to another party should be made. The complainant is not required to establish that it is entitled to access the disputed documents; it is up to the agency to establish a case for exempting a document from disclosure.
20. An agency's obligation to provide applicants with a notice of decision that contains all of the information prescribed by section 30 is intended to ensure that the true basis of a decision is clearly explained to applicants. 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 or not to accept the decision as reasonable or to test the decision by way of complaint to the Information Commissioner.
21. As a result of the deficiencies in its notices of decision, the agency was invited to provide me with additional material in support of its claim for exemption. I received that additional information on 5 January 2005. At that point, the agency claimed that the disputed documents were exempt under one or more of clauses 3(1), 4(2), 6(1), 10(1) and 10(4) of Schedule 1 to the FOI Act. Specifically, the agency claimed that:
 - Documents 1, 3 and 4 contain certain information which is exempt under clause 4(2) of Schedule 1 to the FOI Act;
 - Documents 1, 2 and 3 are exempt under clause 6(1) of Schedule 1 to the FOI Act;
 - Documents 1, 3 and 4 are exempt under clause 10(1) of Schedule 1 to the FOI Act; and
 - Documents 1, 2, 3 and 4 are exempt under clause 10(4) of Schedule 1 to the FOI Act;
 - Document 4 contains certain information which is exempt under clause 3(1).
22. On 30 March 2005, I wrote to the parties setting out my preliminary view of this complaint. In that letter, I noted that the agency's submissions had confused clause 10(4) with clause 10(3) and, accordingly, I considered both of those exemption clauses. On the information then before me, my preliminary view was that the disputed documents were not exempt under clauses 4(2), 6(1), 10(1), 10(3) or 10(4), as claimed by the agency, but that the signatures that appear in Documents 1, 2, 3 and 4 are exempt under clause 3(1). At the same time, I invited the agency to provide me with further information and submissions in support of its claims. I also asked the agency to provide me

with material showing what information, if any, in the disputed documents, is in the public domain.

23. In response, on 15 April 2005, the agency provided me with 195 documents in relation to information in the disputed documents that is publicly available, together with a 9-page submission in support of its claims for exemption. In those submissions the agency claimed that the disputed documents were exempt in full under clauses 6(1), 10(1), 10(3) and “10(4)(b)” and that Documents 1, 3 and 4 are exempt in part under clause 4(2).
24. Following the receipt of that information and those submissions, my Legal Officer advised the agency that some of the information contained in the 195 documents forwarded to this office appeared to be also contained in Document 4. Thereafter, the agency gave the complainant access to an edited copy of Document 4, from which paragraphs 2 and 3, the last sentence in paragraph 6 on page 1, and the signature on page 2 were deleted.
25. I also contacted certain third parties referred to in the disputed documents and invited them to be joined as parties to this complaint and to provide me with submissions as to whether the information claimed to be exempt under clause 4(2) was exempt. Only one of those third parties provided me with submissions and none sought to be joined as a party to the complaint.
26. On 4 May 2005, the agency advised me that it withdrew its claim for exemption under clause 4(2) in relation to the disputed information in Documents 1, 3 and 4 and substituted a new claim for exemption under clause 4(3).

THE EXEMPTIONS

(a) **Clause 10 - The State’s financial or property affairs**

27. The agency now claims that Documents 1, 3 and part of Document 4 are exempt under clause 10(1) and that Documents 1, 2, 3 and part of Document 4 are exempt under both clause 10(3) and clause “10(4)(b)” of Schedule 1 to the FOI Act.
28. Clause 10, insofar as it is relevant, provides as follows:

“10. The State’s financial or property affairs

Exemptions

- (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.*
- (2) ...

- (3) *Matter is exempt matter if its disclosure -*
- (a) *would reveal information (other than trade secrets) that has a commercial value to an agency; and*
 - (b) *could reasonably be expected to destroy or diminish that commercial value.*
- (4) *Matter is exempt matter if its disclosure -*
- (a) *would reveal information (other than trade secrets or information referred to in subclause (3)) concerning the commercial affairs of an agency; and*
 - (b) *could reasonably be expected to have an adverse effect on those affairs.*
- (5) ...

Limit on exemptions

- (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.”*

29. Clause 10 of Schedule 1 to the FOI Act reflects the commercial reality that State and local governments are increasingly engaged in commercial activities. Clause 10 is intended to ensure that the commercial and business affairs of government agencies - conducted by those agencies for and on behalf of the Western Australian public - are not jeopardised by the disclosure of documents under the FOI Act, unless there is an overriding public interest that requires such disclosure.
30. The specific language of clauses 10(1), 10(3) and 10(4) makes it clear that those subclauses are directed at protecting different kinds of information from disclosure under the FOI Act. Whilst an agency may claim exemption for the disputed documents, or parts of those documents, under more than one subclause of clause 10, as a matter of construction the same information cannot be exempt under more than one of those subclauses.
31. In addition, clause 10(4) consists of two parts and the requirements of both paragraphs (a) and (b) of clause 10(4) must be satisfied in order to establish a *prima facie* claim for exemption. Accordingly, I have taken the agency’s claim that Documents 1, 2, 3 and part of Document 4 are exempt under “clause 10(4)(b)” to be a claim for exemption under clause 10(4) *in toto*, as paragraph (b) of clause 10(4) does not, on its own, provide an exemption.

The complainant’s submission

32. The complainant submits that the disclosure of the disputed documents would be in the public interest. The complainant notes that, after the power crisis

suffered by the State in February 2004, the agency has been under significant pressure to ensure power supplies for the high demand summer period and embarked on a major advertising campaign to keep the public informed about its actions to ensure power supply continuity during this time. The complainant says that the agency has also undertaken measures to avoid a repeat crisis, such as purchasing mobile generators and stockpiling oil at taxpayers' expense.

33. The complainant states that the disputed documents will show what measures are being taken by the agency to ensure power supply continuity and submits that this is a matter of significant public interest, given that the supply of electricity is a basic essential service provided by the agency.

Clause 10(1)

34. The agency claims that Documents 1, 3 and paragraphs 2, 3 and the second sentence in paragraph 6 on page 1 ('the disputed information') of Document 4 are exempt under clause 10(1). To establish an exemption under clause 10(1), the agency must show that the disclosure of the disputed information could reasonably be expected to result in a "*substantial adverse effect*" on the financial or property affairs of the State or an agency. The requirement that the adverse effect must be 'substantial' is an indication of the degree of gravity that must exist before a *prima facie* exemption is established: *Harris v Australian Broadcasting Corporation* (1983) 78 FLR 236.
35. In the context of clause 10(1), I accept that 'substantial' is best understood as meaning 'serious' or 'significant': see *Re Healy and Australian National University* (Commonwealth Administrative Appeals Tribunal, 23 May 1995, unreported); *Re James and Australian National University* (1984) 2 AAR 327 at 341.

The agency's submissions

36. Following the request by my office - on the receipt of this complaint - for further information from the agency in support of its claims for exemption, the agency submitted that Documents 1, 3 and 4 contain, in their entirety, "*information the disclosure of which could reasonably be expected to have a substantial adverse effect on the financial affairs of WPC and would reveal information that has a commercial value to WPC and the disclosure of which would diminish that value.*"
37. In view of the agency's disclosure of an edited copy of Document 4 to the complainant, I understand its submissions now relate only to the disputed information in Document 4.
38. The agency further submits that the disclosure of Documents 1, 3 and 4 would not, on balance, be in the public interest because such disclosure "... *may dissuade Third Parties from entering into commercial negotiations and agreements with WPC, which could in turn impact on WPC's profitability.*"

39. In response to my preliminary view, conveyed to the parties in my letter dated 30 March 2005, the agency made the following submissions:

- The information in Document 1 relates to access and expansion of pipeline capacity generally and by third parties. It contains detailed information about the cost base of the agency's power and the constraints that the agency faces in relation to fuel supply. This information directly relates to the agency's profitability in that the cost base of its power is affected by the expansion of pipeline capacity and the profit that it receives from supplying that power is dependent upon its cost base.
- The disclosure of Document 1 could reasonably be expected to have a substantial adverse effect on the agency's profitability. Fuel suppliers, knowing the agency's current cost base of electricity and its vulnerability to fuel supply constraints, will be able to charge significantly more than if they had not been in possession of this information. In turn, the cost base of the agency's electricity would rise and its profitability would decrease.
- Document 3 relates to expansion of pipeline capacity generally and alternative plant and fuel strategies that the agency has to mitigate the shortage of pipeline capacity. That document contains specific information about the constraints on the agency's gas supply and the alternative costs associated with operating power stations. This information directly relates to the agency's profitability in that the cost base of its power is affected by the constraints on gas supply and the costs of alternative fuel, the costs of maintaining and operating plant due for retirement and the profit that it receives from supplying that power is dependent upon its cost base.
- The disclosure of Document 3 could reasonably be expected to have a substantial adverse effect on the agency's profitability. Fuel suppliers, knowing the agency's current cost base of electricity, and its vulnerability to fuel supply constraints, will be able to charge significantly more than they would had they not been in possession of this information. Additionally, plant suppliers knowing the extent of work that may need to be carried out on plant to keep it running and the importance of this work to keep the lights on, will charge more to supply their services. In turn, the cost base of the agency's electricity would rise and its profitability would decrease.
- Document 4 relates to limitations of gas supplies to the agency which, in turn, impacts on power supplies. It specifically contains information about failures and problems with a specific compressor station. This directly relates to the agency's profitability in that the price that alternative fuel suppliers will charge the agency will be affected by those suppliers' knowledge of the limitations to the agency's gas supplies and perception that the agency will encounter similar failures of this compressor station in the future. Higher prices of alternative

sources of fuel will increase the cost base of the agency's electricity and the profit that it receives from supplying that power is dependent upon its cost base.

- The disclosure of Document 4 could reasonably be expected to have a substantial adverse effect on the agency's profitability. Fuel suppliers, knowing the agency's limitations of gas supplies, will be able to charge significantly more than they would had they not been in possession of this information. In turn, the cost base of the agency's electricity would rise and its profitability would decrease.

Consideration

40. I have examined Documents 1 and 3, and the disputed information in Document 4, and considered the agency's submissions. From that examination, I accept that those documents contain information concerning the financial and property affairs of the agency. However, the agency has provided me with incomplete findings on the material questions of fact underlying its reasons for relying on clause 10(1). In my letter to the parties of 30 March 2005, I noted that the agency had made no attempt to explain how or in what way its profitability would be affected or how the agency estimated that the adverse effect claimed would be 'substantial', in line with the onus it bears under section 102(1) of the FOI Act.
41. The agency has now explained how it claims its profitability would be affected (as set out in my consideration of the agency's claims under clauses 10(3) and 10(4)) but has still not explained how or on what basis it estimated that the claimed adverse effect would be 'substantial'.
42. For example, I understand that the agency had a net after tax profit of \$241.6 million for the year to 30 June 2004. However, the agency has provided me with no information on, among other things, how much of this profit is generated from its electricity sales and what the estimated increase in its cost base might be as a result of the disclosure of the disputed information and how that would impact on its overall profit.
43. As I have previously advised the agency, in my letter of 30 March 2005, pursuant to section 102(1) of the FOI Act, it bears the onus of establishing that its decision was justified or that a decision adverse to the complainant should be made.
44. I refer to the comments of Owen J, in *Manly v Ministry of Premier and Cabinet* (1995) 14 WAR 550 at page 573, in relation to a claim for exemption under clause 4(3) of the FOI Act, when he expressed the nature of the onus the agency bears in the following way:

"How can the Commissioner, charged with the statutory responsibility to decide on the correctness or otherwise of a claim to exemption, decide the matter in the absence of some probative material against which to assess the conclusion of the original decision maker that he

or she had “real and substantial grounds for thinking that the production of the document could prejudice that supply” or that disclosure could have an adverse effect on business or financial affairs? In my opinion it is not sufficient for the original decision maker to proffer the view. It must be supported in some way. The support does not have to amount to proof on the balance of probabilities. Nonetheless, it must be persuasive in the sense that it is based on real and substantial grounds and must commend itself as the opinion of a reasonable decision maker.”

45. In the absence of any probative material from the agency in support of its claim that the disclosure of Documents 1 and 3 and the disputed information in Document 4 would have a ‘substantial’ adverse effect on the financial or property affairs of the agency or the State, I find that Documents 1 and 3 and the disputed information in Document 4 are not exempt under clause 10(1).

Clause 10(3)

46. The agency claims that Documents 1, 2, 3 and the disputed information in Document 4 are exempt under clause 10(3). Clause 10(3) protects information from disclosure if it has a commercial value to an agency, which value could reasonably be expected to be destroyed or diminished by disclosure.
47. In order to establish an exemption under clause 10(3), the matter for which a claim for exemption is made must be shown to have a commercial value, although I agree with the former Information Commissioner (‘the former Commissioner’) that it is not necessary that the commercial value be quantified or assessed: see *Re Rogers and Water Corporation and Others* [2004] WAICmr 8.
48. The former Commissioner consistently expressed the view that matter has a ‘commercial value’ to a person if it is valuable for the purpose of carrying on the commercial activities of any person or organisation and, further, that it is by reference to the context in which the information is used, or exists, that the question of whether or not particular information has a commercial value to a person may be determined: see, for example, *Re Precious Metals Australia Ltd and Department of Minerals and Energy* [1997] WAICmr 12 and *Re Jones and Jones and Town of Port Hedland* [2000] WAICmr 23.
49. In order to establish a *prima facie* claim for exemption under clause 10(3), the agency must satisfy the requirements of both paragraphs (a) and (b). If the requirements of both of those paragraphs are satisfied, the disputed documents will be exempt, subject to the application of the limit on exemption contained in clause 10(6).

The agency’s submissions

50. The agency made the following submissions in response to my letter to the parties of 30 March 2005:

- With regard to Documents 1, 3 and 4, the agency repeated its submissions made in relation to clause 10(1).
- The agency submits that Document 2 relates to capacity limitations of the gas pipeline and to capital expenditure proposals in this regard. It contains specific information about the amount of capital available, the amount of capital expenditure proposed and the limitations on the capacity of the gas pipeline.
- That information directly relates to the agency's profitability in that the price that fuel suppliers will charge the agency will be affected by those suppliers' knowledge of the limitations to the capacity of the pipeline. Higher prices of alternative sources of fuel will increase the cost base of the agency's electricity, and the profit that it receives from supplying that power is dependent upon its cost base. In addition, capital expenditure will increase the cost base of power to the agency. If fuel suppliers are aware of the agency's cost base, they will be able to charge more for fuel than they otherwise would had they not been in possession of that information. As the cost base of power rises, the agency's profitability decreases and electricity prices may increase.

51. The agency says that the disclosure of:

- Document 1 would allow its fuel suppliers to become aware of the agency's current cost base of electricity and the constraints on its fuel supply and so those suppliers would charge significantly more. This would cause the price of the agency's electricity to rise which, in turn, would cause a decrease in its profits.
- Document 2 - which relates to constraints on the agency's fuel supply and consequent capital expenditure - would reduce the agency's profits because its fuel suppliers would charge more and the additional cost of the capital expenditure "... will increase the cost base of power to the agency". Further, the decrease in the agency's profitability may cause an increase in the agency's electricity prices.
- Document 3 would reveal details about the agency's costs associated with operating power stations - including the costs of alternative fuels and the costs of maintaining and operating plant due for retirement - and its vulnerability to fuel supply constraints. This would enable its fuel suppliers to charge significantly more for their fuel and also charge more to supply their services, knowing the extent of work on the agency's plant that needed to be carried out, both of which would cause the cost base of the agency's electricity to rise and its profitability to decrease.
- Document 4 would reveal information concerning the limitations on gas supplies to the agency, which would mean that its fuel suppliers would charge more, the cost base of the agency's electricity would rise, and its profitability would decrease.

Consideration

52. As I understand it, the agency is claiming that Documents 1, 2, 3 and the disputed information in Document 4 concern:
- (a) the basis upon which the agency calculates the cost of its electricity for sale; and
 - (b) the constraints that the agency faces in relation to fuel supplies.
53. I understand that the agency claims that that information has a commercial value to the agency and its disclosure would impact adversely on its profitability by decreasing the agency's profits realised from the sale of electricity. However, the agency has not identified the specific material in the disputed documents which is information of a kind described in (a) and (b) above.
54. Having considered the information before me, I accept that the agency operates within a commercial environment and is in competition with other energy providers.
55. I accept that information which sets out the agency's current cost base of electricity; the way in which it calculates that cost; its costs for operating power stations; and its capital expenditure may have a commercial value to the agency.
56. However, I note that details of the agency's costs and capital expenditure are set out in the Annual Report and pages 37-42 of that document provide detailed facts and figures about the agency's use of fuels and fuel consumption.
57. I also note that the agency refers to its 'current cost base' as set out in the disputed documents. However, that information is now some 20 months old and since then I understand that the agency has long-term contracts in place for gas and some fuel constraints have now eased. It also seems to me that much of the information concerning fuel costs in the disputed documents relates to hypothetical scenarios and could not be said to relate to the agency's current cost base. Further, I do not consider that capital expenditure approved by the agency's Board of Directors ('the Board') in October 2003 could reasonably be expected to have the claimed detrimental effect on the agency's current profitability.
58. The agency has made no attempt to identify the relevant matter in the disputed documents, or explain to me how the disclosure of that information would have the effect claimed, but primarily relies on its assertion that such would be the case. I refer again to the comments of Owen J in *Manly's* case, cited in paragraph 44 above. On the information before me, I consider that, even if Documents 1, 2 and 3 and the disputed information in Document 4 can be said to contain information having a commercial value to the agency (and I am not sure that they can), I do not consider that the agency has established that the

disclosure of the disputed documents and information could reasonably be expected to destroy or diminish any commercial value it may have.

59. With regard to the agency's claim that information about the constraints that the agency faces in relation to fuel supplies is information that has a commercial value, I accept that such information may have a commercial value where that information is not generally known and where competitors would be placed in a better position in the context of commercial negotiations if they possessed such information.
60. However, having examined Documents 1, 2, 3, the disputed information in Document 4, and the information which is public information provided to me by the agency, it appears to me that the constraints on fuel supplies alluded to in the disputed documents - although the agency has not identified the relevant matter to me - is information that is already public information.
61. For example, information on that issue in the disputed documents is referred to in the Annual Report; the Cronin Report; the Generation Status Review documents for the years 2003 and 2004 prepared by the agency's Networks Business Unit; and documents such as, for example, Documents 18, 23, 24, 34, 40, 43, 56, 61, 85, 90, 91 and 162 on the schedule entitled "Information in the Public Domain" ('the public information schedule'), copies of which were given to me by the agency.
62. I also understand from documents in the public information schedule that the situation with regard to fuel constraints has been, and is being, addressed and that the situation has moved on from the relevant period of July - October 2003.
63. In my view, if that information is already within the public domain, then its commercial value could not be further diminished by disclosure: see *Re Hoyts Multiplex Cinemas Pty Ltd and City of Gosnells and Another* [1998] WAICmr 5 at paragraph 15.
64. In light of the above, I find that Documents 1, 2, 3 and the disputed information in Document 4 are not exempt under clause 10(3).

Clause 10(4)

65. The exemption in clause 10(4) is directed at protecting the commercial affairs of the State or an agency from adverse effects so that the competitive positions of those bodies are not undermined. Although the term "commercial affairs" is not defined, I consider that the commercial affairs of an agency may also include its business and financial affairs.
66. In order to establish a claim for exemption under clause 10(4), the agency must show that the disputed documents contain information about the commercial affairs of an agency (not necessarily the agency) and also that disclosure of that information could reasonably be expected to have an adverse effect on those affairs.

The agency's submissions

67. The agency, in response to my letter of 30 March 2005, submits that its commercial affairs would be adversely affected by the disclosure of Documents 1, 2, 3 and the disputed information in Document 4 because:
- (a) fuel suppliers, knowing the cost base (which includes, *inter alia*, capital expenditure and costs of operation of plants) and vulnerabilities of the agency's electricity supply, would be able to charge more for fuel and, as a result, the agency may be required to charge the public more for electricity as the cost base per unit increases;
 - (b) the agency will not retain the commercial advantage that it has when attempting to negotiate for lower fuel prices if the supplier is aware of the vulnerabilities of the agency's electricity supply, specifically the source and cost of fuel supplies - the result being that the agency will not be able to be competitive; and
 - (c) third parties will be dissuaded from entering into commercial negotiations and agreement with the agency if they believe that failures in their ability to supply fuel will become public information, and that will, in turn, impact on the agency's profitability.

Consideration

68. Although the agency claims that Documents 1, 2, 3 and the disputed information in Document 4 are exempt under clause 10(4)(b) both paragraphs (a) and (b) of that provision must be satisfied before a *prima facie* claim for exemption is established.
69. Having inspected the disputed documents and information, I am satisfied that their disclosure would reveal information concerning the agency's commercial affairs. Consequently, I am satisfied that the requirements of clause 10(4)(a) have been satisfied.
70. However, for the same reasons given in respect of the agency's claim under clause 10(3), I do not accept that the information in the disputed documents concerning the agency's costs or the vulnerabilities of the agency's electricity supply would affect the agency's profitability because its competitors would charge more for fuel or that it would be less competitive in its negotiations for fuel. For example, it seems to me that the disputed information in Document 4 is both out of date and in the public domain (see, for example, pages 37-39 of the Annual Report and page 15 of the 2003 Generation Status Review).
71. Nor do I accept the agency's claim that third parties will be dissuaded from entering into commercial negotiations and agreements with the agency if any failure to supply fuel becomes public information. It is clear to me from documents listed in the public information schedule that such failures are commonly referred to in the media and that does not appear, to date, to have

prevented third parties from entering into agreements with the agency to supply fuel.

72. Accordingly, I consider that the agency has failed to establish that its decision to refuse access to the disputed documents and information under clause 10(4) is justified and I find that Documents 1, 2, 3 and the disputed information in Document 4 are not exempt under clause 10(4).
73. Since I have found that the agency's claims under clauses 10(1), 10(3) and 10(4) are not justified, I do not need to consider whether the disclosure of the disputed documents would, on balance, be in the public interest, pursuant to clause 10(6).

(b) Clause 6 - Deliberative processes

74. The agency claims that Documents 1, 2 and 3 are exempt in full under clause 6(1) of Schedule 1 to the FOI Act. Clause 6, insofar as it is relevant, 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 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.*

Limits on exemptions

- (2) ...
- (2) *Matter that is merely factual or statistical is not exempt matter under subclause (1).*
- (3) ...
- (4) ...”.
75. The deliberative processes of an agency are its ‘thinking processes’, the process of reflection for example on the wisdom and expediency of a proposal, a particular decision or a course of action: see *Re Waterford and Department of the Treasury (No. 2)* (1984) 5 ALD 588.

76. In order to establish a *prima facie* claim for exemption under clause 6(1), the requirements of both paragraphs (a) and (b) of clause 6(1) must be satisfied by the agency. If both paragraphs (a) and (b) are satisfied, the disputed documents will be exempt, subject to the application of the limits on exemption set out in clauses 6(2) to 6(4).
77. In the case of the exemption in clause 6(1), the complainant is not required to demonstrate that disclosure of the disputed documents would, on balance, be in the public interest. The complainant is entitled to access unless the agency establishes that disclosure of the disputed documents would, on balance, be contrary to the public interest.

The complainant's submission

78. The complainant's submission with respect to clause 6(1) is the same as that made in respect of clause 10.

The agency's submission

79. The agency submits that:
- Document 1 is exempt because it contains information that would reveal the agency's deliberation that took place in the course of, or for the purpose of, its deliberative process concerning access to, and expansion of, pipeline capacity;
 - Document 2 is exempt because it contains information that would reveal the agency's deliberation which took place in the course of, or for the purpose of, its deliberative process concerning capacity limitations and capital expenditure proposals in that regard; and
 - Document 3 is exempt because it contains information that would reveal the agency's deliberation which took place in the course of, or for the purpose of, its deliberative process concerning the expansion of pipeline capacity.
80. The agency also submits that, although Documents 1, 2 and 3 are dated from July to October 2003, the deliberations they contain are, in essence, continuing. The agency says: "*The matters contained in Documents 1, 2 and 3 are being continuously deliberated by WPC in order to ensure that demands for electricity are met*" and that those deliberations are an extension and continuation of the deliberations in the disputed documents.
81. In response to the complainant's claim that disclosure of the disputed documents is in the public interest because it will show the measures that the agency is taking to ensure power supply continuity, the agency submits that it recognises that that issue is a matter of public interest and says that it has made certain information on that point available to the public, noting the documents listed in the public information schedule.

82. However, the agency submits that, while the disclosure of that information ensures that the public is aware of the measures that the agency is taking with regard to the future supply of electricity, it does not provide the public with the detailed information - specifically the cost of fuel, amount of capital and other expenditure, and the vulnerabilities to future fuel supply - contained in Documents 1, 2 and 3.
83. The agency submits that the detriment to the public interest if Documents 1, 2 and 3 are disclosed includes the following:
- (a) fuel suppliers, knowing the cost base (which includes, *inter alia*, capital expenditure and costs of operation of plants) and vulnerabilities of the agency's electricity supply, would be able to charge more for fuel, as a result of which the agency may be required to charge the public more for electricity as the cost base per unit increases;
 - (b) as the cost of fuel increases, the agency's profitability may be reduced and, therefore, the public will obtain less return from its enterprise;
 - (c) the agency will not retain the commercial advantage that it has when attempting to negotiate for lower fuel prices if the supplier is aware of the vulnerabilities of the agency's electricity supply - specifically the source and cost of fuel supplies - with the result that the cost of electricity to the public would be higher or not be reduced;
 - (d) competition will be reduced because competitors of the agency, knowing the cost base and vulnerabilities of the agency's electricity supply, will be in a position to price their electricity at, or marginally below, the agency's price, rather than at the lowest price that they would be prepared to charge otherwise, resulting in the public's paying more for electricity; and
 - (e) third parties will be dissuaded from entering into commercial negotiations and agreement with the agency if they believe that perceived failures in their ability to supply fuel will become public information, which will, in turn, impact on the agency's profitability.

Consideration

84. I have examined Documents 1, 2 and 3. I accept that their disclosure would reveal advice, opinion and recommendations obtained in the course of, and for the purpose of, the Board's process of deliberation relating to proposals to ensure that demand could be met, in light of the then pipeline capacity limitations and the Board's process of deliberation as to whether or not to approve capital expenditure proposals for that purpose.
85. Consequently, I am satisfied that the requirements of paragraph (a) of clause 6(1) are met.

86. With regard to whether the disclosure of Documents 1, 2 and 3 would be contrary to the public interest, I note that the recommendations contained in those documents were approved in July and October 2003, although the agency claims that its deliberations are ongoing because they are an extension and a continuation of its deliberations concerning the disputed documents.
87. In my view, it may be contrary to the public interest to prematurely disclose deliberative documents whilst deliberations in the agency are continuing, if there is material which establishes that such disclosure would adversely affect the decision-making processes or that disclosure would, for some other reason, be demonstrably contrary to the public interest. In either of those circumstances, I consider that the public interest is served by non-disclosure.
88. I do not accept the agency's submission that those specific deliberative processes are still ongoing, because the matters referred to in Documents 1, 2 and 3 have been evolving and changing, and because the recommendations arising from those deliberations have now been dealt with.
89. In my opinion:
- Document 1 was prepared in response to a specific potential issue and the need to develop a strategy in the event that that issue arose within a particular time-frame.
 - Document 2 was prepared for the Board's approval of a particular decision arising from its previous decision to undertake certain activities as part of its strategy approved in Document 1.
 - Document 3 was prepared for the Board's approval of two projects arising from its previous decision to undertake certain activities as part of its strategy approved in Document 1.
90. In my view, those are discrete deliberative processes although the second two arise from the agency's deliberations concerning Document 1.
91. I consider that much depends on the way that the term 'deliberative process' is characterised. In this case, the agency has characterised the relevant deliberative processes as being essentially on-going because, as I understand it, the question of, among other things, fuel supplies is ongoing. However, I regard the agency's deliberative processes as reflected in the disputed documents to be specific to the time and circumstances in which those documents were created and not intended to be open-ended. That the agency may presently be engaged in deliberating on similar issues in the current context does not, in my view, necessitate a conclusion that earlier deliberations are ongoing and not concluded. In my view, there is nothing before me to show that the former deliberations on the specific issues in the disputed documents are ongoing.

92. Consequently, I consider those particular deliberative processes to be concluded and I do not consider that those deliberative processes could be affected - adversely or otherwise - by disclosure.
93. Further, for the reasons I have given above, I do not accept the agency's claims that the disclosure of Documents 1, 2 or 3 would result in it being at a disadvantage in its negotiations with fuel suppliers; in fuel suppliers charging more for fuel, thus affecting the agency's profitability and causing it to charge the public more for electricity; or in third parties being dissuaded from entering into commercial negotiations and agreements with the agency.
94. Since I do not accept that the disclosure of the disputed documents would reveal the agency's current cost base or disclose how that cost base is calculated, and since I consider that any information referring to the vulnerabilities of the agency's electricity supply is already in the public domain, I am not persuaded that such disclosure would be advantageous to the agency's competitors and cause an increase in the price of the agency's electricity, as claimed by the agency.
95. In favour of access, I recognise that there is a general public interest in persons being able to obtain access to information held by the government and in the exercise of their rights of access under the FOI Act. I acknowledge that the agency has disclosed information in relation to those issues but that, of itself, is not enough to justify refusing further access. Since the introduction of the FOI Act, people are no longer entitled only to whatever information an agency chooses to disclose. In my opinion, much of the information in the disputed documents is already in the public domain. Provided that disclosure of none of the information in those documents would cause any demonstrable harm to the public interest, there is no reason why the public should not be aware of their contents in full.
96. I recognise that there is a strong public interest in agencies being accountable for their decision-making and in the public having access to information about those processes particularly where, as here, an essential public service is concerned. In the context of any government programme there is a public interest in ensuring that it operates efficiently and effectively and that public money is properly spent and accounted for. While the agency operates in a commercial environment, it is nonetheless a public utility funded by, and expending monies from, the public purse and it therefore remains and must be accountable to the public in a way that purely private, profit-driven enterprises are not.
97. I consider that there is a public interest in the public being able to scrutinise the operations of the agency and make its own judgment as to whether it is discharging its functions properly. I also consider that disclosure of the disputed documents would serve the public interest in keeping the community informed and in promoting the discussion of public affairs.
98. Therefore, in balancing the competing interests, on the material available to me, I am not persuaded that the disclosure of Documents 1, 2 and 3 would, on

balance, be contrary to the public interest and I find that Documents 1, 2 and 3 are not exempt under clause 6(1).

(c) **Clause 4(3) - Commercial or business information**

99. The agency also claims that certain information in Documents 1, 3 and 4 is exempt under clause 4(3) of Schedule 1 to the FOI Act. Clause 4, insofar as it is relevant, provides as follows:

“4. Commercial or business information

Exemptions

(1) ...

(2) ...

(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.*

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) ...

(6) ...

(7) *Matter is not exempt matter under subclause (3) if its disclosure would, on balance, be in the public interest.”*

100. Clause 4(3) is concerned with protecting from disclosure information about the business, professional, commercial and financial affairs of any person who has business dealings with government agencies. The word ‘person’ includes a public body, company or association or body of persons corporate or unincorporate: see section 5 of the *Interpretation Act 1984*. Protection is afforded in circumstances where disclosure could reasonably be expected to have an adverse effect on those business, professional, commercial or financial affairs or where disclosure could reasonably be expected to prejudice the future supply of that kind of information to the Government or to an agency.

101. I agree with the former Commissioner's stated view that the exemption in clause 4(3) recognises that the business of government is frequently mixed with that of the private sector and that such business dealings should not be adversely affected by the operation of the FOI Act: see *Re Kimberley Diamond Company NL and Department for Resources Development and Argyle Diamond Mines Pty Ltd* [2000] WAICmr 51. In my opinion, the exemption recognises that private organisations 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.
102. The exemption in clause 4(3) consists of two parts and the requirements of both parts (a) and (b) must be satisfied in order to establish a *prima facie* claim for exemption.

The agency's submission

103. In its letter to me of 15 April 2005 – in which, although the agency's submissions were made in respect of clause 4(2), I now understand that they were intended to apply to clause 4(3) – the agency submitted that the following information in Documents 1, 3 and 4 is exempt:

Document 1

- the signatures on page 1 of the coversheet and on page 7 of the submission document (that is, page 8 of Document 1);
- the paragraphs under the heading "Introduction" on page 1 of the submission document (page 2 of Document 1);
- paragraph 1 under the heading "Constraints ..." on page 2 of the submission document (page 3 of Document 1);
- paragraphs 1 and 2 on page 3 of the submission document (page 4 of Document 1); and
- paragraph 1 and the item numbered 1 on page 7 of the submission document (page 8 of Document 1).

Document 3

- the signatures on the coversheet and on page 5 of the submission document (page 6 of Document 3); and
- the information at the item numbered 1 on page 1 of the submission document (page 2 of Document 3) and the first paragraph on page 3 of the submission document (page 4 of Document 3).

Document 4

- paragraphs 2 and 3 and the last sentence in paragraph 6 on page 1; and
- the signature on page 2.

104. The agency submits that the disputed information in Documents 1, 3 and 4 refers to third parties and is exempt under clause 4(3) because its disclosure

would reveal information about the business, commercial and financial affairs of the third parties. The agency submits that - in the case of Document 1 - disclosure could be expected to have an adverse effect on the business, commercial or financial affairs of third parties and - in the case of Documents 1, 3 and 4 - could reasonably be expected to prejudice the future supply of information of that kind to the agency.

105. The agency advises that, save for the signatures, the disputed information was provided to the agency, or obtained by it, in the course of negotiations with third parties. The agency says that much of that information was obtained specifically in the course of negotiations for contracts with those third parties and on a confidential basis. Disclosure of the same would reveal information about the business, commercial and financial affairs of the third parties and could be expected to have an adverse effect on their affairs.
106. The agency submits that disclosure of the information identified in Documents 1, 3 and 4 would not, on balance, be in the public interest “*since disclosure of such information may dissuade Third Parties from entering into commercial negotiations and agreements with WPC, which could in turn impact on WPC’s profitability.*”

Consideration

107. For the reasons given below in relation to clause 3(1) of Schedule 1 to the FOI Act, I consider that the handwritten signatures in Documents 1, 2, 3 and 4 are exempt under that exemption clause.
108. Following my letter to the parties of 30 March 2005, the agency gave me the contact details of four third parties and I wrote to them inviting them to be joined as parties to this complaint or to provide me with information and submissions. Only one of those third parties responded. Although that third party did not ask to be joined as a party to this complaint, it made certain submissions to me.
109. The third party advised that it had written to the agency noting that “[a]s the “Document” is a submission to Western Power’s board, which we assume was generated within Western Power, [the third party] will need details of the information contained in the submission which may relate to [the third party].” The agency declined to provide a copy of the relevant document to the third party but gave some general details about the content of the information relating to the third party. In response to that, the third party advised the agency as follows:

“...management considers that ... the general information in that email does not appear to contain confidential information which [the third party] would require not to be disclosed...”,

but noted that, without viewing the document, it could not be fully informed.

110. If the agency's claim that the disputed information was provided to or obtained by it in the course of its negotiations with the third parties is correct, then I cannot see why it could not provide the relevant third party with the information upon which the disputed information was based. Its failure to do so did not assist the third party or the resolution of this matter.
111. Having examined the disputed information in Documents 1, 3 and 4, I accept that the following information relates to the business or commercial affairs of third parties:
- the paragraphs under the heading "Introduction" on page 2; and the item numbered 1 on page 8 of Document 1;
 - the information at the item numbered 1 on page 2 of Document 3; and
 - paragraph 2 on page 1 of Document 4.
112. However, I consider that the information in:
- paragraph 1 under the heading "Constraints ..." on page 3; paragraphs 1 and 2 on page 4; and paragraph 1 on page 8 of Document 1;
 - the first paragraph on page 4 of Document 3; and
 - paragraph 3 on page 1 of Document 4,
- relates primarily to the business or commercial affairs of the agency rather than to the business or commercial affairs of any third party.
113. In my view, only the information in the set of bullet points in paragraph 111 above is information about the business or commercial affairs of third parties, which satisfies the requirements of clause 4(3)(a).
114. With regard to clause 4(3)(b), the agency has made no attempt to explain how the disclosure of the disputed information in Documents 1, 3 and 4 could reasonably be expected to have an adverse effect on the business, commercial or financial affairs of any third party or how such disclosure could prejudice the future supply of information of that kind to the agency.
115. From the information before me, it appears to me that some of the information identified by the agency is in the public domain and/or out of date (for example, in Document 1 - the paragraphs under the heading "Introduction" on page 1 of the submission document (page 2 of Document 1); in Document 3 - the information at the item numbered 1 on page 1 of the submission document (page 2 of Document 3) and the first paragraph on page 3 of the submission document (page 4 of Document 3); and - in Document 4 - paragraphs 2 and 3 on page 1). In view of that, I do not consider that the further disclosure of that information could have the adverse effects claimed by the agency.

116. The agency has provided me with no evidence to support its claim that much of the disputed information was obtained in the course of negotiations for contracts with third parties and on a confidential basis. In the absence of any objections from the third parties, and any probative material from the agency in support of its claim for exemption, I do not consider that the agency has satisfied the requirements of clause 4(3) (b). Accordingly, I find that the disputed information in Documents 1, 3 and 4 is not exempt under clause 4(3).

(d) Clause 3(1) - personal information

117. Having examined the disputed documents, I consider that they contain some information that may be exempt under clause 3(1) of Schedule 1 to the FOI Act. Clause 3, insofar as it is relevant, provides:

“3. *Personal information*

Exemption

(1) *Matter is exempt matter if its disclosure would reveal personal information about an individual (whether living or dead).*

Limits on exemption

(2) ...

(3) *Matter is not exempt matter under subclause (1) merely because its disclosure would reveal, in relation to a person who is or has been an officer of an agency, prescribed details relating to –*

(a) *the person;*

(b) *the person’s position or functions as an officer; or*

(c) *things done by the person in the course of performing functions as an officer.*

(4) ...

(5) ...

(6) ...”

In the Glossary in Schedule 2 to the FOI Act, the term ‘personal information’ is defined to mean:

“...information or an opinion, whether true or not, and whether recorded in a material form or not, about an individual, whether living or dead -

(a) whose identity is apparent or can reasonably be ascertained from the information or opinion; or

(b) who can be identified by reference to an identification number or other identifying particular such as a fingerprint, retina print or body sample.”

118. The definition of ‘personal information’ makes it clear that any information or opinion about a person, from which that person can be identified, is exempt under clause 3(1).
119. In my view, the purpose of the exemption in clause 3(1) is to protect the privacy of individuals about whom information may be contained in documents held by State and local government agencies. The exemption in Clause 3(1) is subject to the limits on exemption set out in clauses 3(2)-3(6). In my view, only the limit in clause 3(2) is applicable in this case.

Consideration

120. I note that Documents 1, 2, 3 and 4 all contain information about certain officers of the agency, including their signatures. The former Commissioner found handwritten signatures are exempt under clause 3(1): see *Re Winterton and Policy Force of Western Australia* [1997] WAICmr 50. I agree with the former Commissioner’s decision in that regard. I consider that signatures are personal information of a kind that ought to be protected from disclosure under clause 3(1), other than by the author, in the interest of personal privacy. In my view, those signature are personal to the officers concerned and are not “prescribed details” as referred to in clause 3(3).
121. However, I consider that those signatures can be deleted from the disputed documents, pursuant to the provisions of s.24 of the FOI Act, and access given to the documents in edited form.
122. In my view, the remaining information concerning the officers of the agency in the disputed documents is information concerning things done by those persons in the course of performing their functions as an officer and, therefore, that information is not exempt, pursuant to clause 3(3).
