

Edwards and Western Power

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

**File Ref: F1341998
Decision Ref: D0131999**

Participants:

**Warren Charles Edwards and Mary Rose
Edwards**
Complainants

- and -

**Electricity Corporation
trading as
Western Power Corporation**
Respondent

DECISION AND REASONS FOR DECISION

FREEDOM OF INFORMATION – refusal of access – valuation reports and other documents relating to compensation for land – clause 4 – commercial or business information of a person – whether appropriately claimed in respect of commercial information of an agency – clause 10(3) – information having a commercial value – meaning of “commercial value” – whether any commercial value could reasonably be expected to be diminished or destroyed by disclosure – clause 10(4) whether the documents contain information relating to the commercial affairs of the agency – meaning of “commercial” – whether the commercial affairs of the agency could reasonably be expected to be adversely affected by disclosure – clause 6 – deliberative processes – advice and opinion obtained in the course and for the purpose of the deliberative processes of the agency – whether disclosure would be contrary to the public interest – clause 8(2) – confidential communications – confidential information obtained in confidence – whether disclosure could reasonably be expected to prejudice the future supply to the agency of information of that kind – information provided by public officers in the course of their professional duties – valuations provided by private valuers – clause 3 – personal information – personal information about individuals other than the access applicant – signatures, names and other information concerning third parties – s.26 – sufficiency of the agency’s searches.

Freedom of Information Act 1992 (WA) ss.26, 30; Schedule 1 clauses 3(1), 3(3), 3(4), 4(2), 4(3), 4(4), 6(1), 8(2), 10(3), 10(4).

Freedom of Information Regulations 1993 (WA) reg.9

State Energy Commission Act 1979 (WA) s.46.

Interpretation Act 1984(WA)

Electricity Corporation Act 1994 (WA) ss.4(1), 28, 29, 31(1), 34(1), 43, 66.

Public Sector Management Act 1994 (WA) ss.5, 6

Land Administration Act 1997 (WA)

Re Slater and State Housing Commission of Western Australia [1996] WAICmr 13

Re Cannon and Australian Quality Egg Farms Limited (1994) 1 QAR 491

Re Jones and Shire of Swan [1994] WAICmr 6

Re Read and Public Service Commission [1994] WAICmr 1

Re Ayton and Police Force of Western Australia [1998] WAICmr 15

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

Ministry for Planning v Collins (1996) 93 LGERA 69

Re Collins and Ministry for Planning [1996] WAICmr 39

DECISION

The decision of the agency is varied. The matter referred to in paragraphs 96-99 of my reasons for this decision and previously identified to the agency is exempt under clause 3(1) of Schedule 1 to the *Freedom of Information Act 1992*. The disputed documents are not otherwise exempt.

B.KEIGHLEY-GERARDY
INFORMATION COMMISSIONER

26 May 1999

REASONS FOR DECISION

BACKGROUND

1. This is an application for external review by the Information Commissioner arising out of a decision by the Electricity Corporation trading as Western Power Corporation ('the agency') to refuse Mr and Mrs Edwards ('the complainants') access to certain documents requested by them under the *Freedom of Information Act 1992* ('the FOI Act').
2. On 1 January 1995, the State Energy Commission of Western Australia (SECWA) was replaced by two separate bodies, one of which is the agency. The complainants are the registered proprietors of Part Lots 23 and 24 Coalfields Highway, Roelands, having purchased the land on 4 August 1988. Subsequently, SECWA contacted the complainants because SECWA needed to have access to their land to construct new transmission lines.
3. On 16 January 1990, SECWA served the complainants with a notice of entry under s.46 of the *State Energy Commission Act 1979* for the purpose of conducting a survey of the line route for the proposed transmission line. Since service of that notice, SECWA, and now the agency, have been negotiating with the complainants over suitable compensation for the easement of land required for the transmission line. The question of the amount of compensation remains unresolved and the parties are unable to agree on the amount of compensation payable.
4. By letter dated 18 May 1998, the complainants' solicitors lodged an application with the agency seeking access under the FOI Act to documents described as :

"All valuations, reports, documents, letters, plans, correspondence, notes, file notes, writings, working papers, technical data and submissions and drafts thereof relating to Parts Lots 23 and 24 Coalfields Highway, Roelands from 1 January 1985 until the date of this request".
5. By letter dated 1 July 1998, the agency granted the complainants access to copies of some of the requested documents. The agency also provided the complainants with a schedule of documents to which access was refused and specified the exemption clauses claimed in respect of those documents.
6. On 8 July 1998, the complainants applied for internal review of the agency's decision. By letter dated 13 August 1998, the internal reviewer in the agency varied the initial decision on access by giving access to edited copies of 2 more documents, but otherwise confirmed the initial decision to refuse access to the balance of the documents listed on the schedule.
7. By letter dated 17 September 1998, the complainants lodged a complaint with the Information Commissioner seeking external review of the agency's decision.

REVIEW BY THE INFORMATION COMMISSIONER

8. I obtained the disputed documents from the agency. Inquiries were made to determine whether it was possible to resolve this complaint by conciliation between the parties. However, the agency informed me that it would not release any more information to the complainants and maintained its claims for exemption in respect of all the documents.
9. The complainants informed me that they were satisfied with the access provided in respect of some documents (folios 32 and 38-40) and did not wish to pursue access to the matter deleted from those documents. The complainants also reduced the scope of their initial request and informed me that they did not require access to any parts of the documents not directly related to their property, or to those documents consisting of quotations for valuation services. I have identified the matter that is outside the scope of the complainants' request to the agency and I do not propose to deal with it as part of this complaint.
10. I do not consider that the notices of decision issued by the agency in the first instance and following internal review comply with the statutory requirements of s.30 of the FOI Act. In my view, neither document contains reasons to justify the agency's refusal of access on the basis of the exemptions claimed. The agency's decision-makers appear to me to have merely quoted various exemption clauses without giving any thoughts to the statutory requirements to establish the various claims for exemption. After considering the material before me, on 8 March 1999, I informed the parties in writing of my preliminary view of this complaint, including my reasons. It was my preliminary view that the agency had not established that its decision to refuse access was justified.
11. On 1 April 1999, I received a written submission from the agency containing further reasons for its decision to refuse access. A copy of the agency's submission, with editing, was provided to the complainant. The complainants provided a further submission in response to my preliminary view, and in response to the agency's further and better reasons.

THE DISPUTED DOCUMENTS

12. There are 8 documents or parts of documents remaining in dispute between the parties. The disputed documents are described below.

Doc No.	Folio	Description	Disputed matter	Exemption Clause
		File No. 1/278/59 Vol.1		
1	7-10	<ul style="list-style-type: none"> • Folio 10 - Letter dated 18/3/92 from Valuer General's Office to agency 	<ul style="list-style-type: none"> • All except the 2nd and 3rd sentence of para 1 and all of para 2 	Clauses 4, 6, 8 & 10

		<ul style="list-style-type: none"> Folio 9 – Schedule of “Sales Evidence” relating to valuation. 	<ul style="list-style-type: none"> The headings and the 6th valuation entry relating to the complainants’ property 	
		<ul style="list-style-type: none"> Folios 7-8 – Valuation report dated 16/3/92, by Valuer General’s Office. 	<ul style="list-style-type: none"> Whole document 	
2	42-49	Valuation report dated 16 December 1994 plus attachments.	Whole document	Clauses 4, 6, 8 & 10
3	50A-50B	Handwritten agency calculation sheet, undated.	Whole document	Clauses 4 & 6
4	51	Handwritten “record of conversation” dated 23 January 1995 with Warren Edwards.	Whole document	Clause 6
5	62-63	Handwritten facsimile message dated 3 April 1995 to Valuer General’s Office, from Senior Property Officer.	<ul style="list-style-type: none"> All except the 1st two paragraphs of text relating to another property on folio 63. All of folio 62. 	Clauses 4, 6, 8 & 10
6	65-67	Letter dated 26 April 1995 from Valuer General’s Office, Bunbury to Senior Property Officer.	Whole document	Clauses 4, 6, 8 & 10
7	67A-67C	Letter dated 22 June 1995 from Valuer General’s Office, Bunbury to Senior Property Officer.	Whole document	Clauses 4, 6, 8 & 10
8	93-96	Handwritten “Chronology” 28 November 1989 to 10 November 1996. (Author unknown)	Whole document	Clauses 4, 6, 8 & 10

THE EXEMPTIONS

(a) Clause 4 – commercial or business information

13. The agency claims that all of the disputed documents, except one (Document 4), are exempt under clause 4(2) and clause 4(3) of Schedule 1 to the FOI Act. Clause 4 deals with the exempt nature of commercial or business information of “a person”. The definition of the word “person” in the *Interpretation Act 1984* makes it clear that the exemption in clause 4 applies to natural persons, as well as to a body corporate or unincorporate. However, the limit on exemption in clause 4(4) provides that matter is not exempt matter under those subclauses merely because its disclosure would reveal information about the business, professional, commercial or financial affairs of an agency.
14. Clause 10 deals with the exemption of certain commercial or business information of the State and its agencies. Subclauses (2), (3) and (4) of clause 10 are drafted in substantially similar terms to subclauses (1), (2) and (3) of clause 4, except that the former refer to agencies, whereas the latter refer to

“persons”. In my view, as a matter of statutory construction, the inclusion in Schedule 1 of the FOI Act of an exemption clause specifically directed at protecting the commercial or business information of State government agencies means that the appropriate exemption to be used by those agencies seeking to protect their commercial or business information is clause 10 rather than clause 4.

15. Although I accept that the agency is a “legal person”, given the inclusion of the clause 10 exemption I consider that clause 4 applies to documents containing information about the commercial or business information of any natural person, or any body or organisation, whether corporate or unincorporate, other than State government agencies. In my view, it is primarily intended to protect certain of the commercial or business affairs of private individuals and organisations having business dealing with Government.
16. Although some third parties are referred to by name in Documents 2, 4, 5 and 6, it does not appear to me that any of the information contained in those documents is information having a commercial value to any of those persons or relates to their business, commercial or financial affairs. The agency has identified no such information and made no submissions in that regard. Further, there is nothing before me to suggest that any of the adverse effects contemplated by clause 4(2)(b) or clause 4(3)(b) could reasonably be expected to follow from disclosure of those documents. In light of the foregoing, I do not consider that the agency has appropriately claimed clause 4 as a basis for a refusal of access. Accordingly, I find that the disputed matter is not exempt under clause 4.

(b) Clause 10 – The State’s financial or property affairs

17. The agency claims that 6 of the disputed documents (Documents 1,2,5,6,7 and 8) are exempt under clause 10 (3) and (4). Taking into account the claim for exemption made by the agency under clause 4(3) for Document 3, I have also considered whether that document is exempt under clause 10(4), the equivalent exemption for State government agencies. Clause 10, so far as is relevant, provides:

"10. The State’s financial or property affairs

Exemptions

(1)...

(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.”*

18. It is clear from the specific language of clause 10 that subclauses (3) and (4) are directed at protecting different kinds of information from disclosure under the FOI Act. Whilst an agency may claim, in the alternative, exemption for documents under more than one exemption clause or subclause, as a matter of construction, the same information cannot be exempt under more than one of subclauses (2), (3), and (4) of clause 10. An agency may argue on external review, as the agency has done on this occasion, that information is exempt under one of those provisions and put arguments in the alternative as to which is applicable.

Clause 10(3) – information that has a commercial value

19. Clause 10(3) is concerned with the protection of information which is not a trade secret but which has a "commercial value" to an agency. In order to establish an exemption under clause 10(3), the relevant information must have some commercial value, although, in my view, it is not a requirement of clause 10(3) that the commercial value be quantified or assessed. It must also be shown that disclosure could reasonably be expected to destroy or diminish the commercial value of the information in question. When the requirements of clause 10(3)(a) have been satisfied, the potential effects of disclosing that kind of information must then be assessed in accordance with the requirements of clause 10(3)(b).
20. In *Re Slater and State Housing Commission of Western Australia* [1996] WAICmr 13, I considered the meaning of the words "commercial value" in clause 10(3). In my view, information may have a "commercial value" if it is valuable for the purpose of carrying on the commercial activities of an agency. As I have previously stated, I consider that it is by reference to the context in which the information is used, or exists, that the question of whether it has a "commercial value" may be determined.

21. The agency is the approved trading name of a body corporate called the Electricity Corporation established under s.4(1) of the *Electricity Corporation Act 1994*. The Electricity Corporation is an agent of the Crown, but it is not part of the Public Service. Neither its chief executive officer nor any member of staff is included in the Senior Executive Service provided for by the *Public Sector Management Act 1994* (ss5 and 6). Notwithstanding that, the Electricity Corporation, trading as Western Power Corporation, is clearly an “agency” as that term is defined in the FOI Act, being a body established for a public purpose under a written law.
22. The functions of the agency are set out in s.28 of the *Electricity Corporation Act 1994* and include, among other things, to generate, acquire, exchange, transport, distribute, market and otherwise supply electricity. The agency is empowered to acquire estates or interests in land for these purposes. I understand that the agency may negotiate a settlement price with affected land-owners, or it may compulsorily take land as required, pursuant to the provisions of the *Land Administration Act 1997*.
23. The agency informs me that the amount of compensation payable to a land-owner depends on the manner in which the land is acquired by the agency. If the land is not taken by agreement, the provisions of the *Land Administration Act 1997* apply and the date of first entry onto the land is the operative date for the calculation of compensation. If the land is acquired by agreement, the agency is not constrained by legislation and it may offer an amount of compensation based on, for example, current market values.

The agency’s submission

24. The agency submits that it is often difficult to determine the point at which its acquisition of land by negotiation is no longer a possibility and that the possibility of a negotiated settlement persists until a final award or judgment fixing the amount to compensation is obtained. The agency claims that the provisions of the *Land Administration Act 1997* require it to make a final offer of compensation as part of any formal resumption process. At this stage, no final offer has been made and the agency claims that it is still negotiating with a view to compensating the complainants for the easement over their land by agreement.
25. Against that background, I have summarised the agency’s submission concerning the commercial value of the disputed documents as follows:
 - The agency is primarily a commercial organisation. Due to the date of the valuation reports, their commercial value is limited to “[g]eneral appraisal of the corporation and its officers; and [u]se in negotiations for an easement procured by negotiation”.
 - The acquisition of land for the business purposes of the agency and the production of valuation reports are an inextricable part of the agency’s business.

- The valuation reports contain professional expert opinion. The valuation reports were not created by the agency, but were obtained from a third party for a price and purpose.
- The information contained in documents of this kind has some commercial value in that a price was paid for the valuation reports obtained from external consultants, and the agency's own officers' time spent on preparing instructions for obtaining the advice and assimilating it, once obtained, has value.
- Negotiations between the parties have not been expressly foreclosed. By virtue of the terms of the relevant land-acquisition laws, negotiation is never foreclosed.
- If the documents are disclosed in circumstances where there is no reciprocal disclosure by the complainants, then the information loses its value for the purpose of negotiations.

Consideration

26. I have considered the provisions of the *Electricity Corporation Act 1994*. It is clear to me that the agency is an agent of the Crown operating a utility created by the State and paid for by the State. Although the agency operates in a commercial environment where it enjoys a monopoly, by virtue of s.29 of the *Electricity Corporation Act 1994*, it must perform its functions in accordance with a strategic development plan and statement of corporate intent, as agreed with the Minister. In performing its functions, the agency has wide powers to enter land and to acquire land, subject to the payment of appropriate compensation.
27. As the agency has itself submitted, its primary function is to generate, acquire, exchange, transport, distribute, market and otherwise supply electricity. It appears to me, therefore, that the agency is in the business of producing and selling electricity. I accept that there are commercial aspects to the agency's business. Notwithstanding that, I am not persuaded that all of the disputed documents contain information of the kind referred to in clause 10(3). I accept the fact that the agency paid for the valuation reports. However, I do not consider that that fact alone means that those reports have a commercial value that could reasonably be expected to be destroyed or diminished if disclosed.
28. A similar claim was made to the Queensland Information Commissioner in *Re Cannon and Australian Quality Egg Farms Limited* (1994) 1 QAR 491. The Information Commissioner rejected such a claim as being too wide. He said, at paragraph 52:

“It could be argued on that basis that most, if not all, of the documents produced by a business will have a commercial value because resources were invested in their production, or money expended in their acquisition. This is surely too broad a proposition. At best, the fact that resources have been expended in producing information, or money has been expended in acquiring it, are facts that may be relevant to take into account in determining whether information has a commercial value for the purposes of s.45(1)(b) of the Queensland FOI Act.”

29. I agree with those comments. The mere fact that an agency acquires documents for a price is not sufficient to conclude that such documents have a commercial value to the agency concerned. In my view, any commercial value of such documents to an agency lies in their contents and, in this case, the use that the agency can make of the valuation information during negotiations. For example, valuation reports might establish useful parameters within which the agency can structure its negotiating strategies. The premature disclosure of a particular negotiation figure or valuations that set the negotiating range may frustrate an agency's attempts to reach a fair settlement in all the circumstances. Such a result could be to the detriment of the agency concerned where commercial considerations are a driving force. However, once an agency has made an offer of a specific amount based on a valuation report, or an offer that exceeds an amount in a valuation report, then it seems to me that generally there is unlikely to remain any commercial value in that information.
30. Document 1 is composed of a valuation report, sales evidence and a covering letter dated 18 March 1992. Document 2 is a compensation valuation report contained in a letter dated 16 December 1994 with attachments. They are more than 7 and 4 years old respectively. The valuation figures are clearly no longer current and the agency's own documents disclose that they have long since been superseded in the negotiations between the parties. Although those figures may once have had commercial value to the agency, the agency has not persuaded me that those figures now have any commercial value that could be diminished or destroyed by their disclosure.
31. That part of the covering letter (folio 10) included in Document 1 which is within the scope of the access application does not contain any reference to the valuation figures or the basis of their calculation and does not, in my opinion, contain any information that is capable of having a commercial value to the agency. The relevant matter on folio 9 of that document (sales evidence relating to the complainant's property) appears to me to be information available by search of public records.
32. Other than the compensation sums stated in the valuation report itself, the agency has not persuaded me that any of the information contained in that report could have had any commercial value to the agency which could be destroyed or diminished by its disclosure. Much of it is merely factual information available from public records and, if disclosed, would reveal only the factual basis on which the recommended compensation was calculated (but not the calculations themselves) which, it appears to me, would be more likely to assist in, rather than to hinder, negotiations by revealing the factual basis upon which the agency has proceeded and the general effects that such compensation is designed to cover. I consider that also to be the case in respect of Document 2.
33. If the amounts of the compensation assessments once had any commercial value to the agency in relation to its negotiations with the complainant, the agency has not persuaded me that they still have any commercial value, given their age and the stage that negotiations subsequently reached. Further, as is apparent from the documents themselves (in particular, Documents 4 and 8), an offer based on that report was made to the complainants by the agency and at least one of the

assessed amounts disclosed to the complainants by the agency. If that figure once had a commercial value to the agency dependent on its secrecy, it cannot now be said to have such a value, having been so disclosed. Much of the other information contained in that document is factual and some of that is publicly available or, at the least, well known to the complainant. The agency has not discharged the onus it bears of persuading me that any of the information contained in that document has a commercial value to the agency, nor that any commercial value it may have could reasonably be expected to be diminished or destroyed by disclosure of the document.

34. Document 5 is a different kind of document. I can find no mention of a compensation figure in Document 5, nor is there any information in that document that appears to me to have a commercial value. Further, the agency has not identified to me any specific information of that kind in Document 5. It is my view that Document 5 does not meet the initial test for exemption based on clause 10(3)(a).
35. The compensation assessment figures in Documents 6 and 7 are now approximately 4 years old. For similar reasons to those given in respect of Documents 1 and 2, I am not persuaded that any of the information contained in those documents has any current commercial value to the agency nor, therefore, that any diminution or destruction of commercial value could reasonably be expected to follow from their disclosure.
36. Document 8 is a chronology of events commencing with an entry for 28 November 1989 and concluding with an entry for 24 January 1995. In respect of that document, the agency merely repeats its submissions made in respect of Document 1. Document 1 and Document 8 are entirely different in nature. In two entries on Document 8, compensation assessment figures are mentioned. For the reasons given in respect of such figures in Documents 1, 2, 6 and 7, I am not persuaded that that information has any commercial value to the agency that could be diminished or destroyed by its disclosure. The agency has not explained to me how any of the other information contained in that document could have any commercial value to the agency, nor is that apparent on the face of the document itself. A number of the entries merely note communications with the complainant, Mr Edwards, himself. Accordingly, I am not persuaded that any of the information contained in that document – other than the compensation assessment figures which may have once had a commercial value to the agency – ever had a commercial value to the agency, nor that any of it now has any commercial value to the agency.
37. Therefore, for the reasons given, the agency has not persuaded me that the disputed documents contain any information that has a commercial value now to the agency. Accordingly, I find that those documents are not exempt under clause 10(3) of Schedule 1 to the FOI Act.

Clause 10(4) – information concerning the commercial affairs of an agency

38. The agency claims, in the alternative, that the disputed documents, except Document 3 and Document 4, are exempt under clause 10(4). However, as the agency has claimed exemption under clause 4(3) for Document 3 on the basis that it contains information relating to the commercial affairs of the agency, which affairs could reasonably be expected to be adversely affected by its disclosure, I have also considered whether that document might be exempt under clause 10(4).
39. The exemption provided by clause 10(4) is more general in its terms than that provided by clause 10(3). It is directed at protecting from adverse effects certain of the activities of an agency so that the commercial position of State agencies and instrumentalities will not be undermined by accountability requirements under FOI. However, unlike FOI legislation in other jurisdictions, in which the term "business, professional, commercial or financial affairs" appears in the equivalent exemption provisions, the exemption in subclause 10(4) is concerned only with information relating to the commercial affairs of an agency. Nevertheless, it is my view that the commercial affairs of an agency may also include its business and financial affairs, although not necessarily so.
40. The agency argues that the disputed matter contains information concerning the commercial affairs of the agency because, in order to carry out its principal function of supplying electricity, the agency must build and extend its supply system and, it is submitted, that requires the purchase or acquisition of land. The agency contends that the purchase or acquisition of land and interests in land is directly related to the other functions of the agency and related to its commercial affairs, as are the terms and price upon which the land is taken. The agency submits that the fact that acquiring land is not the principal function of the agency, does not mean that the acquisition is not a vital part of the commercial affairs of the agency because, without land for its works, the agency has no business and cannot supply electricity to any of its customers.
41. The Concise Oxford Dictionary of Current English, 8th Edition, defines "commercial" as meaning "*of, engaged in, or concerned with, commerce*" and "commerce" as meaning "*financial transactions, esp. the buying and selling of merchandise, on a large scale*". In *Re Slater*, at paragraph 30, I said:

"... the mere fact that there are commercial aspects to the agency's operations is not sufficient, in my view, to conclude that a document acquired to assist the agency in making commercial decisions necessarily contains information "concerning the commercial affairs of the agency". Whether a particular document is one that concerns the commercial affairs of the agency depends on a proper characterisation of the contents of the document. A business plan, for example, may be a document that contains information falling within the description of clause 10(4)(a)."

42. The acquisition of land or an interest in land by the agency is subject to the provisions of the *Land Administration Act 1997* if the matter of compensation cannot be resolved by negotiation. That Act prescribes how compensation is to be determined. I understand that such calculations are made in accordance with a simple formula that is not, as far as I am aware, a secret formula, nor should it be.
43. I accept that the agency operates in a commercial manner with a view to making a profit. In order to carry out its main function, certain ancillary matters, including the conduct of negotiations relating to compensation payable to landowners, need to be dealt with from time to time. However, the agency does not appear to me to be in the business of acquiring land. Rather, the agency is in the business of producing and providing electricity.
44. In my view, the fact that the agency enters into negotiations over compensation does not necessarily mean that all documents generated during the negotiation process will relate to the commercial affairs of the agency. It depends on the contents of the particular documents concerned. In this case, as I have explained before, the disputed documents relate to outstanding compensation issues. If the disputed documents related, for example, to negotiations involving a significant contract for the provision of electricity, and the agency were in competition in the market place with other electricity providers, then the documents concerned could be seen more clearly to relate to the commercial affairs of the agency.
45. In any event, even if the information contained in the disputed parts of the documents could be said to be information concerning the commercial affairs of the agency, in order to establish an exemption under clause 10(4), an agency must also demonstrate that disclosure of the matter in question could reasonably be expected to have an adverse effect on those affairs. One adverse effect on its affairs that the agency has suggested is that disclosure of professional valuation opinions prepared for the purposes of “without prejudice” negotiations is likely to lead to a reluctance of professional persons to provide information of that kind to the agency in the future. The agency submits that the valuation reports were not prepared for the purpose of disclosure and that, if disclosed, the information could be used for other purposes, including a formal determination of compensation, that it was not prepared to address. The agency further contends that the author of such a document “...is likely to be called to give expert evidence in those proceedings when he or she could expect to be embarrassed by having to justify his evidence in the light of the information in the document disclosed, prepared for a different purpose.”
46. The agency also contends that disclosure of information of the type contained in the documents is likely to prejudice negotiations for settlement to the extent that the valuation is a market valuation prepared at a date which has been overtaken, and does not take account of all matters that the agency subsequently acknowledged to be relevant to compensation. The agency contends that disclosure is likely, therefore, to result only in confusion and mistrust.

47. I do not accept that disclosure of valuation reports prepared by professional people, who are in the business of providing such reports for remuneration, could reasonably be expected to result in any reluctance on the part of those professional people to produce such reports in the future. That argument has been raised before me previously and rejected: see *Re Jones and Shire of Swan* [1994] WAICmr 6.
48. The contention that disclosure of the reports is likely to result in their authors being required to give evidence in proceedings is mere speculation which is supported by nothing before me. Further, I do not accept the contention that such an author, if called, “...*could expect to be embarrassed by having to justify his evidence in the light of the information in the document disclosed prepared for a different purpose.*” The disclaimer commonly appearing at the conclusion of such reports makes it clear that the author does not intend the report to be relied upon by any person other than the person for whom it was prepared, for any purpose other than the purpose for which it was prepared. If, as the agency speculates, it were sought to use or rely upon the information contained in the document for some purpose other than the purpose for which it was prepared, then I would not have thought that it would be difficult or embarrassing for the author of the document to explain why it could not be used or relied upon for that other purpose.
49. I am not persuaded by the agency’s argument that disclosure is only likely to result in confusion and mistrust and to prejudice negotiations for settlement because the valuations were prepared in respect of a date “which has been overtaken” and do not take account of matters since acknowledged by the agency to be relevant to compensation. It is quite apparent from the face of the documents themselves – and I am quite sure the complainants are capable of recognising – that the valuations are as at dates some time in the past. It is also apparent from the face of the documents the factual basis on which those valuations were made and the factors taken into account by their authors.
50. Clearly, given their age and if, as the agency submits, other relevant factors have since been identified and taken into account, they are not directly relevant to any negotiations that might take place now or in the future. Their disclosure might, however, give the complainants some understanding of the processes undertaken by the agency in such matters and the basis on which earlier offers were made. Finally, as I have said, the documents clearly do not contain current valuation assessments. They would not, if disclosed, reveal any current negotiating range that may be under consideration by the agency. For those reasons, I do not accept that disclosure of Documents 1, 2, 6 or 7 could reasonably be expected to have any of the adverse effects claimed by the agency nor any other adverse effect on the commercial affairs of the agency.
51. I have also considered whether Document 3 might be exempt under clause 10(4). That document contains various handwritten calculations. Although the document is undated, the latest date referred to in it is May 1995. Even if those calculations can be said to be information concerning the commercial affairs of the agency, I am not persuaded that disclosure of those figures, now considerably out of date, could have any adverse effect on those affairs. They

have clearly since been superseded and, even if there were to be any further negotiation between the parties, would reveal nothing of the agency's current negotiation range.

52. Document 5 and Document 8 are not valuation documents but routine administrative documents relating to the compensation claims of the complainants. In respect of each of those documents, the agency has merely stated that it repeats its submissions in respect of Document 1. Documents 5 and 8 are quite different in nature and content to Document 1. I accept that the information contained in them may concern the commercial affairs of the agency in the broadest sense. No compensation assessment figures are mentioned in Document 5. Some such figures are mentioned in Document 8. However, those figures are between 4 and 7 years old and, for the reasons I have given in respect of the figures in Documents 1 and 2, I do not consider that their disclosure could reasonably be expected to have any adverse effect on the commercial affairs of the agency.
53. In respect of the other information contained in those two documents, the agency has provided no evidence and made no submissions in support of its claim that disclosure of that information could reasonably be expected to have an adverse effect on its commercial affairs. Having inspected the contents of the documents themselves, I am not persuaded that their disclosure could reasonably be expected to have any such effect.
54. Therefore, I am not persuaded that disclosure of the disputed documents could reasonably be expected to result in any adverse effects on the agency's commercial affairs. Accordingly, I find that the disputed documents are not exempt under clause 10(4) of Schedule 1 to the FOI Act.

(c) Clause 6 – Deliberative processes

55. The agency also claims that the disputed documents are exempt under clause 6(1) of Schedule 1 to the FOI Act. Clause 6(1) 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.*”

56. There are two parts to this exemption. To establish that the disputed matter is exempt under clause 6(1) an agency must satisfy the requirements of both paragraphs (a) and (b). Only when paragraph (a) of the exemption is satisfied is it necessary, in my view, to consider paragraph (b) and whether disclosure of the disputed matter would, on balance, be contrary to the public interest. In the case of this exemption, the complainants are not required to demonstrate that disclosure of deliberative process matter would be in the public interest; they are entitled to access unless the agency can establish that disclosure of the particular deliberative process matter would be contrary to the public interest.
57. I have discussed the purpose of the exemption in clause 6(1) and the meaning of the phrase “deliberative processes” in a number of formal decisions, initially in *Re Read and Public Service Commission* [1994] WAICmr 1 and most recently in *Re Ayton and Police Force of Western Australia* [1998] WAICmr 15. I agree with the view taken by the Commonwealth Administrative Appeals Tribunal in *Re Waterford and Department of Treasury (No 2)* (1984) 5 ALD 588, that the deliberative processes involved in the functions 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 course of action: see also the comments of Templeman J in *Ministry for Planning v Collins* (1996) 93 LGERA 69 at 72.
58. I also agree with the Tribunal’s view that:

It by no means follows, therefore, that every document on a departmental file will fall into this category...Furthermore, however imprecise the dividing line first may appear to be 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 an agency...

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”...”

Clause 6(1)(a)

59. In my view, a substantial portion of the disputed matter consists of professional opinions as to the appropriate amount of compensation to be paid for the complainants’ land. Some of the disputed matter records certain deliberations and consultations that have taken place in the course of the agency deciding the appropriate amount to be offered to the complainants.
60. In my opinion, the process of determining the price to be paid by way of compensation for land lawfully entered into by the agency is a deliberative process of the agency (see *Re Jones and Shire of Swan* [1994] WAICmr 6). I am satisfied that the valuation reports (Documents 1 and 2) and the supplements

to those reports (Documents 6 and 7) were prepared for the agency in the course of, and for the purpose of, that deliberative process.

61. Document 3 contains some information that may be characterised as opinion, based on calculations, recorded in the course of and for the purpose of the deliberative process of determining the compensation payable. That document also records some internal opinions and deliberations that occurred in the course of, although perhaps not directly for the purpose of, the determination of the compensation question. Documents 4, 5 and 8 contain some information revealing consultations that have taken place and opinion recorded in the course of the agency's deliberative process.
62. Therefore, I am satisfied that some of the information in the disputed documents is matter of the kind described in paragraph (a) of clause 6(1). However, the exemption will only apply if it can be shown that disclosure would, on balance, be contrary to the public interest.

Clause 6(1)(b)

The agency's submission

63. The agency submits that disclosure of the disputed documents would be contrary to the public interest on a number of grounds as follows:
 - In negotiations for compensation, although a wide variety of advice is sought, that advice is used by the agency to formulate and revise its position, to make an offer, and then to negotiate for compensation.
 - Not all the advice given is taken and some is superseded by more detailed or up-to-date advice and opinions. Disclosure of this advice does not necessarily disclose the agency's basis for negotiation. It is only a small part of the deliberative process by which that basis was determined. Even a full disclosure of all documents on the file will not reveal that part of the deliberative process that was involved in the assimilation of those documents and evaluation of their respective worth.
 - The business of obtaining advice and opinions is ongoing while an FOI access application must necessarily be frozen in time at the time when it was made. Disclosure of information and documents available at one date is not necessarily indicative of the agency's current view. In fact it could be misleading. In this case it would be misleading, as the purpose of the advice is to obtain current market value at a date which is not relevant to the current date or the date of entry.
 - In the course of an offer and negotiation, the agency does usually set out the basis of any offer made to the claimant in some particularity and with more clarity than is to be found in the background materials and advice. That advice may be written or oral or a mixture of both. The agency's offer to the claimant is necessarily a synthesis of information and experience, not all of which can be recorded on the file as a document.

64. Further, the agency submits that negotiations proceed best when both parties have the same or a similar state of knowledge about the other's position. The agency submits that the complainants have refused an offer from the agency to pay for the cost of a second valuation. The agency claims that the complainants are under no obligation to disclose documents in their possession and that further disclosures by the agency will not achieve parity and are not in the public interest.

Public interest

65. I have consistently expressed the view that it would be contrary to the public interest to prematurely disclose documents while deliberations in an agency are continuing, if there is evidence that the disclosure of such documents would adversely affect the decision-making process, or that disclosure would, for some other reason, be contrary to the public interest. In either of those circumstances, I consider that the public interest is served by non-disclosure. I do not consider that it is in the public interest for any agency to conduct its business with the public effectively "looking over its shoulder" at all stages of its deliberations and speculating about what might be done and why. I consider that generally the public interest is best served by allowing deliberations to occur unhindered and with the benefit of access to all of the material available so that informed decisions may be made.
66. I consider that it would be contrary to the public interest to disclose documents whilst the deliberative process of determining appropriate compensation for land is continuing, if there is evidence that disclosure would adversely affect that process. An example might be in the circumstances previously identified where the premature disclosure of a settlement figure that an agency is prepared to offer, or a negotiation range that an agency is prepared to operate within, could put the agency at a disadvantage in the negotiating process.
67. In this case there seems to be some disagreement between the parties about the current state of negotiations. The agency claims that negotiations are continuing. The complainants claim that they have stalled. It appears to me that negotiations for compensation for taking by agreement have ceased. As I understand it, those negotiations are at an end and could not, therefore, be damaged by disclosure of these documents. Even if negotiations were still on foot, I am not persuaded, on the basis of the evidence currently before me, that disclosure of the disputed matter could have any serious effect on those negotiations, particularly since the disputed documents are between 2 and 7 years old and are clearly out of date. At least one offer has previously been made on the basis of one of the valuations and that valuation figure disclosed to the complainants.
68. The agency argues that the negotiations are not concluded because, even once the formal processes have commenced, negotiations to settle can still take place and are encouraged. That may well be the case, but it does not change the present position that negotiations have currently ceased pending the setting in motion of the more formal process for resolving the matter.

69. The agency submits that the date of first entry fixes the date for the calculation of compensation if the land is not taken by agreement but is taken by compulsory resumption, whereas the agency is not tied to that date when negotiating to take by agreement. The agency argues that, therefore, the valuation figure based on that date is still relevant to its negotiations with the complainants. However, the agency also indicates that, if the formal process for compulsory acquisition proceeds, there is discovery of documents relevant to the determination of the compensation amount. Therefore, it would seem to me that, if the figure contained in the documents remains the relevant figure, the agency will be required to disclose to the complainants the basis on which it was arrived at in any event.
70. The fact that such disclosure is required in the formal process suggests to me that it is of assistance, rather than detrimental, to negotiating and determining appropriate compensation, and I query the reasonableness of the agency requiring a claimant to embark on that formal, legal process before it will disclose that assessment. I am not persuaded by anything put before me by the agency that disclosure of that figure and its basis now, rather than later, could cause any harm to the public interest.
71. The agency seems to suggest that because the documents contain two different figures arrived at on different bases for different purposes (that is, taking by agreement as opposed to compulsory taking) disclosure of the documents will be misleading and cause confusion. I do not accept that submission. As I have said at paragraph 49 above, the bases on which the figures were arrived at is apparent from the documents themselves and there is nothing before me to suggest that the complainants and their representatives are not capable of understanding the different bases and purposes of the assessments.
72. The agency argues that, when one party has all or most of the background material that is relevant to the other's position but is under no similar duty of disclosure, the tendency is to try to exploit the perceived advantage and to protract or stall negotiations. The agency offers in support of that proposition the fact that, of 298 easements required for the works in question a total of 235 easements have been successfully negotiated, and that FOI access applications have been made in relation to the remaining 63 easements. The agency claims that not one FOI access application was made in respect of any of the easements that have been negotiated.
73. The issue of suitable compensation for the use of the complainants' land first arose in January 1990 and negotiations have not yet been successfully concluded. The complainants have not had access to "all or most of background material" relevant to the agency's position. The access application was made in May 1998. Clearly, the negotiations between the parties have been unsuccessful for reasons other than the complainants having access to the agency's information. The request for access follows unsuccessful negotiations and cannot, in my view, in the circumstances, be said to be a cause of the lack of success in the negotiations that preceded it. Clearly, in this case, the negotiations have already stalled. Disclosure of the documents could not,

therefore, cause them to stall but may have the effect of assisting in the successful conclusion of any future negotiations.

74. Whilst the agency operates in a commercial environment and on a commercial footing, it is not in the same position as a private enterprise. Its primary function is to provide an essential service to the people of the State and, in order to enable it to do that, it has resources and powers available to it that are not available to private enterprise, including the power to compulsorily acquire the land, or an interest in the land, of private citizens. Although the agency operates on a commercial footing with a view to generating a profit, that profit is for the State, not the private profit of individuals.
75. The agency cannot, in my view, as it appears to have done in its submissions to me, ignore the imbalance of power in negotiations between it and a private citizen or the public interest in it both exercising its powers in such situations fairly and in being seen to exercise them fairly so that people finding themselves in the position of the complainants can have confidence that they are being fairly dealt with by an agency of their democratically elected government.
76. I recognise that there is a public interest in government agencies dealing fairly with private citizens and being seen to deal fairly with such people so that the community can maintain its confidence in the fairness of such dealings. Further, in *Ministry for Planning v Collins* (the decision on appeal to the Supreme Court confirming my decision in *Re Collins and Ministry for Planning* [1996] WAICmr 39), Templeman J said at page 77:
- “I see no inconsistency between what the appellant describes as “the efficient management of public moneys” and acting fairly in its dealings with private citizens.”*
77. For a government agency to pay the least possible, if it is an unfair amount, for an interest in a private person’s land does not, in my view, amount to expending public monies wisely. Further, paying a fair amount for such an interest in land cannot be said to be expending public monies wastefully. As I said in *Re Collins* (at paragraph 29), there is a public interest in government agencies dealing fairly with private individuals in such matters. I acknowledge that the statutory procedures that govern the acquisition of private land for public purposes are designed to be fair and transparent, but the end result is the loss of private property. It seems to me therefore, that the procedures for negotiating compensation should also be fair and transparent.
78. I cannot see any inconsistency between the agency being accountable for its decision-making processes and operating on a commercial footing. In my view, there are indications in the *Electricity Corporation Act 1994* that, occasionally, commercial considerations must give way to wider public interests. Further, provisions in the legislation also suggest that the public of Western Australia, through the Minister and the government, retain a degree of control over the activities of the agency, in a way that would not occur if the agency were a wholly commercial and private business.

79. For example, the board of the agency is required to prepare and submit a strategic development plan to the Minister for his or her agreement (s.43); the Minister may give directions with respect to the performance of functions by the agency and the agency must give effect to any such directions (s.66); after consulting the with Public Sector Standards Commissioner, the board of the agency must prepare and issue minimum standards of merit, equity and probity for human resource management; the Public Sector Standards Commissioner may require reports to be submitted and the board of the agency must comply with any such request; the agency requires Ministerial approval to acquire a subsidiary (s.31(1)); the agency must consult with the Minister before major initiatives are entered into (s.34(1)). Those provisions, and others of the *Electricity Corporation Act 1994*, suggest to me that the agency's commercial interests are not always paramount. Whilst the agency is operated on a commercial footing, for the benefit of the State, it is nevertheless required to comply with certain public accountability requirements that do not apply to the private sector.
80. In my opinion, disclosure of information concerning the assessed value and the manner in which it was determined could result in the complainants being more amenable to any future offer by the agency. It would allow the complainants to assess for themselves whether the offer previously made was fairly based or not. Further, if the complainants were satisfied about the basis of the valuations and the fairness of previous offers they might be reassured, or if they are not at least the agency will be in a position to address and resolve any concerns they may have. Disclosure of the information relating to the values, particularly the methodology adopted to assess them, would give the complainants an understanding of the methodology and contribute to an understanding of the decision-making processes in the agency. In my view, it is in this way that objects of FOI legislation are achieved in the context of a matter such as this.
81. As I have said on previous occasions, disclosure of information that may facilitate the process of reaching agreement upon a fair price payable in compensation could not be contrary to the public interest. In my view, the public interest in the transparency of the compensation process outweighs the public interest, if indeed there is any, in the agency making a profit or "getting the best deal".
82. On balance, I am not persuaded that disclosure of the disputed documents could reasonably be expected to affect, for the worse, the process of determining a fair amount of compensation payable by the agency, or that disclosure would, for any other reason, be contrary to the public interest.
83. In this case, I consider that it is clearly in the public interest that the transactions of the agency be as transparent as possible. In weighing and balancing the competing public interests, I have given some weight to the fact that the documents are outdated and do not seem to contain any information about the agency's negotiating position that has not already been disclosed to the complainants. It seems to me that the agency should be able to move forward and finalise negotiations that have been continuing for several years, and even

to traverse old ground, without any detriment to its commercial affairs following from disclosure.

84. I am not persuaded by the agency's submissions that disclosure of any of the disputed documents, save for some matter that may be exempt under clause 3, would, on balance, be contrary to the public interest. In my view, the agency has not established a valid claim for exemption based on clause 6(1). Accordingly, I find that the disputed documents are not exempt under clause 6(1).

(d) Clause 8 – Confidential communications

85. The agency claims that all of the disputed documents, except two (Documents 3 and 4), are exempt under clause 8(2) of Schedule 1 to the FOI Act. Clause 8(2) provides:

“8. Confidential communications

Exemptions

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

(a) *would reveal information of a confidential nature obtained in confidence; and*

(b) *could reasonably be expected to prejudice the future supply of information of that kind to the Government or to an agency.*

86. There are two limbs to the exemption in clause 8(2). To establish a *prima facie* claim for exemption under that clause, the requirements of both paragraph (a) and paragraph (b) must be met. That is, it must be shown that the document would, if disclosed, reveal information of a confidential nature obtained in confidence, and also that disclosure could reasonably be expected to prejudice the future supply to the agency of information of the kind under consideration. If the requirements of paragraphs (a) and (b) are satisfied then the limit on exemption in clause 8(4) must be considered.

8(2)(a) - confidential information, obtained in confidence

87. Information is inherently confidential if it is not in the public domain. That is, it must be known only by a small number or limited class of persons. Information is obtained in confidence where the evidence establishes that the information was both given and received on the basis of either an express or implied understanding of confidence.
88. I accept that the information in the disputed documents may not be in the public domain, and some of it may have been given and received in confidence. However, some of it has clearly been disclosed to the complainants previously, as is apparent from the contents of Documents 4 and 8 themselves. In any

event, the exemption will only apply if the requirements of paragraph (b) can be established.

8(2)(b) Prejudice to the future supply of that kind of information

89. Paragraph (b) is directed at the ability of agencies and the Government to obtain in the future the kind of information contained in the documents under review. It is not concerned with the question of whether the particular author or authors of a document would refuse to supply that kind of information to the agency in the future. Rather, the question is directed at the ability of the agency to obtain the relevant kind of information from the sources generally available to it. To answer that question, it is necessary to characterise the information in dispute.
90. Most of the disputed documents contain information provided by public officers in the course of their professional duties. Some has been provided by a private valuer who is in the business of providing valuation reports, and who is engaged and remunerated for that purpose. I do not accept that it can reasonably be expected that the ability of the agency to obtain such information in the future could be prejudiced by the disclosure of the documents. Public officers employed by the Valuer General clearly have a duty to provide valuation reports as required.
91. The agency submits that private valuers will be dissuaded from providing reports if it were to become known that those reports may be disclosed to another party. However, that claim is pure speculation on the part of the agency and is not supported by any probative material before me and, for the reasons given at paragraphs 47 and 48 above, I reject it.
92. Accordingly, on the information currently before me, I find that the disputed documents are not exempt under clause 8(2) of Schedule 1 to the FOI Act.

Are the disputed documents exempt for any other reason?

93. I am empowered to decide any matter in relation to the complainants' access application that could have been decided by the agency. As it appears to me that the disputed documents contain some personal information about third parties, I have considered whether any of the matter in the disputed documents might be exempt under clause 3.

(e) Clause 3 – Personal information

94. Clause 3 of Schedule 1 to the FOI Act, so far as 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).”

95. In the Glossary in the FOI Act, "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."*
96. In a number of my previous decisions, I have stated that the purpose of the exemption in clause 3 is to protect the privacy of third parties. Having examined the disputed documents, it appears to me that there is a small amount of personal information about third parties contained in several of those documents (Documents 1, 2, 4, 5, 6 and 7). That matter may be generally described as the signatures and names of third parties. I consider that matter to be, *prima facie*, exempt under clause 3(1) of Schedule 1 to the FOI Act.
97. The names of, and information concerning, third parties that are organisations rather than natural persons cannot be exempt matter under clause 3(1) because the definition of personal information only applies to individuals. Some of the information in the disputed documents identifies officers of the agency and the Valuer General's Office and merely refers to those persons in the context of performing their duties in the two agencies. That matter is subject to the limits on exemption in subclauses (3) and (4) of clause 3 and is not exempt under clause 3(1) as it comprises details prescribed by regulation 9 of the *Freedom of Information Regulations 1993*.
98. However, I consider the signatures of those people to be personal to them and not information of the type covered by the limit on exemption. In my view, all of the personal signatures appearing in the disputed documents fall within the definition of personal information and are potentially exempt matter. I do not consider that there is any public interest in the disclosure of personal signatures. Therefore, I find that the personal signatures are exempt under clause 3(1) of Schedule 1 to the FOI Act.
99. Other third parties who are not officers of agencies are also named in the documents and I consider that the documents contain some personal information, as defined in the FOI Act, about them. In my view that matter is, *prima facie*, exempt under clause 3(1) of Schedule 1 to the FOI Act.
100. The exemption in clause 3 is also limited by the "public interest test" contained in subclause (6), which provides that matter is not exempt under clause 3(1) if its disclosure would, on balance, be in the public interest. The application of that test involves identifying those public interest considerations that favour disclosure and those that favour non-disclosure, weighing them against each other and determining where the balance lies.

101. I consider there to be a strong public interest in maintaining individual privacy, a public interest that is also recognised and enshrined in the FOI Act by clause 3. That public interest, in my view, can only be displaced by a very strong countervailing public interest that requires the disclosure of personal information.
102. I also recognise that there is a public interest in the accountability of government agencies for their dealings on behalf of the State and their expenditure of public monies. However, I do not consider that particular public interest requires the disclosure of the personal information about third parties.
103. The complainants, through their solicitors, submit that they are pursuing a compensation claim against the agency and are attempting to uncover information that would assist in the pursuit of that claim. The complainants submit that they are in a position of disadvantage because they are unable to make meaningful submissions on the importance of information about third parties and therefore to persuade me that the balance lies in favour of disclosure of that kind of information.
104. I have some sympathy with that view. However, the function of the Information Commissioner is to consider the contents of disputed documents and to make a judgment as to whether, on balance, it would be in the public interest to disclose the information in question. I have previously acknowledged that there is a public interest in citizens being enabled to exercise their rights at law where facts establish a cause of action (see, for example, *Re Read and Public Service Commission* [1994] WAICmr 1 at paragraph 85), and I also recognise a public interest, as identified by the complainants in this instance, in the disclosure of information that would enable or assist people to exercise their legal rights. However, having inspected the contents of the disputed matter and considered the circumstances, I do not consider that public interest to require the disclosure of the personal information about third parties which is contained in the documents. In my view, therefore, the public interest in the complainants being able to exercise their right of access under the FOI Act (and to uncover material that will support their common law rights) does not outweigh the public interest in maintaining the privacy of the third parties in this instance.
105. Accordingly, I find that the personal information referred to in these reasons for decision (and which I have previously identified to the agency) is exempt under clause 3(1) of Schedule 1 to the FOI Act. I consider that it is practicable for the agency to delete that matter and to provide access to the documents in edited form.

The sufficiency of the agency's searches

106. In the course of dealing with this complaint, the complainants informed me that they were seeking access to evidence of the date of the actual physical entry onto the land and that information would not appear to be within the documents considered by me. The complainant's advised that this issue had been explored and resolved in relation to another complaint involving the agency and they sought a similar resolution in relation to this matter.

107. The previous complaint to which the complainant referred was resolved by way of conciliation after the agency provided information obtained from a private contractor. On that occasion, the agency was not able to identify any documents of the type sought. However, on the basis of the information obtained from the private contractor, the agency was able to establish the date on which gates were installed on a certain property. It appears the agency was fortunate that the private contractor was able to provide that information because that information could only be identified because of other specific work completed on that property. For the purpose of that matter, that information was sufficient in order to satisfy the access applicant's needs in relation to the date of entry onto the property.
108. My office made inquiries into this aspect of the complaint. Again, I was informed by the agency that it was unable to find such a document within its files. On this occasion, the agency was not able to identify the information through the private contractor. It appears that several hundred gates were installed by contractors into properties along the transmission line between Muja and Kwinana, but the agency did not receive any documents or information from the contractor concerning the entry onto the complainants' land. None of its documents contain such information.
109. Although I have the power under s.26(2) of the FOI Act to require an agency to conduct further searches for a document, in the circumstances I consider that further searches would be fruitless. The explanation from the agency appears to me to be reasonable and there is no evidence before me to suggest that the agency holds, or should hold, a document of the type requested by the complainants. The complainants' beliefs to the contrary, without more, are not sufficient grounds for me to require any further searches and I declined to exercise the power to require further searches be conducted.
