

Decision D0272002 – Published in note form only

Re Portman Iron Ore Limited and Western Australian Government Railways Commission
[2002] WAICmr 27

Date of Decision: 17 July 2002

Freedom of Information Act 1992; Schedule 1 clause 8(1)

The complainant sought access under the *Freedom of Information Act 1992* ('the FOI Act') to documents relating to the sale of the government's rail freight business, including documents relating to the disposal under the *Rail Freight Systems Act 2000* of standard gauge corridor land. The Western Australian Government Railways Commission ('the agency') identified a Sale of Business document ('the Sale Agreement'), which consisted of five volumes, as being the documents covered by the terms of the access application.

Before making its decision, the agency consulted with the Australian Railway Group ('ARG'), as representative of the third parties to the Sale Agreement. The third parties did not consent to the disclosure of the Sale Agreement, which contained several confidentiality clauses. Subsequently, the agency refused the complainant access to the Sale Agreement on the ground that it is exempt under clause 8(1) of Schedule 1 to the FOI Act.

The complainant lodged a complaint with the Information Commissioner seeking external review of the agency's decision. The Information Commissioner obtained the Sale Agreement from the agency and examined that document, including the confidentiality clauses. The Information Commissioner decided that the confidentiality clauses in the Sale Agreement were binding on the agency and that the agency was obliged to keep confidential the terms of the sale of the rail freight business and information relating to the disposal of the standard gauge corridor land.

The Information Commissioner decided that disclosure of the five volumes of the Sale Agreement would amount to a breach of confidence for which the third parties could obtain a legal remedy against the agency for breaching its contractual duty under the Sale Agreement. Therefore, the Information Commissioner decided that the Sale Agreement was exempt under clause 8(1).

Although the complainant submitted that there were various public interest factors which favoured the disclosure of the Sale Agreement, the exemption in clause 8(1) is not limited by a public interest test, and the Information Commissioner decided that the question did not arise for her consideration.

The Information Commissioner confirmed the agency's decision.