

Determination

External review - section 39 *Freedom of Information Act 1991*

Applicant	Mr Tim Swaine
Agency	City of Adelaide
Ombudsman reference	2017/05525
Agency reference	ADEL149470
Determination	The determination of the agency is varied.

REASONS

Application for access

1. By application under the *Freedom of Information Act 1991* (the **FOI Act**) the applicant requested access from the agency to:
 1. Copies of all documents (i.e. emails, letters, notes of meeting) evidencing or recording Adelaide City Council's assessment of Royal Croquet Club 2017 against the Park Lands Community Land Management Plan, the Adelaide Park Lands Management Strategy and the Site Criteria or Criteria for Use for Pinky Flat under the Adelaide Parklands Events Management Plan 2016-2020.
 2. Copies of all documents (i.e. emails, letters, notes of meeting) evidencing or recording discussions between Adelaide City Council and The Social Creative in relation to the liquor licensing arrangements for Royal Croquet Club 2017.
 3. Copies of all documents (i.e. emails, letters, notes of meeting) evidencing or recording discussions between Adelaide City Council and Consumer and Business Services in relation to the liquor licensing arrangements for Royal Croquet Club 2017.
 4. A copy of the Safety and Emergency Plan for Royal Croquet Club 2017.
 5. A copy of the Risk Assessment and Management Plan for Royal Croquet Club 2017.
 6. Copies of all documents (i.e. emails, letters, notes of meeting) evidencing or recording meetings held after the commencement of Royal Croquet Club 2017 on 16 February 2017 between Adelaide City Council, South Australia Police, The Social Creative and/or Consumer and Business Services in relation to safety issues and/or the supervision and management of Royal Croquet Club 2017.
 7. Copies of any agreement or contract to which Adelaide City Council is a party evidencing or recording the \$2.4million joint venture between Adelaide City Council, the State Government, Australian Trade Alliance and The Social Creative in relation to the Royal Adelaide Club at the Qingdao International Beer Festival held in Shandong in 2016.
 8. Copies of all documents (i.e. emails, letters, notes of meeting) evidencing or recording the total amount contributed by the Adelaide City Council to the \$2.4million joint venture between Adelaide City Council, the State Government, Australian Trade Alliance and The Social Creative in relation to the Royal Adelaide Club at the Qingdao International Beer Festival held in Shandong in 2016.

9. Copies of all documents (i.e. emails, letters, notes of meeting) evidencing or recording any expression of interest by The Social Creative for a long term lease/licence (i.e. more than one year) of the Adelaide park lands in relation to the Royal Croquet Club.

Background

2. For ease of reference, the procedural steps relating to the application are set out in the appendix.

Jurisdiction

3. This external review is within the jurisdiction of the Ombudsman as a relevant review authority under section 39 of the FOI Act.

Provisional determination

4. I provided my tentative view about the agency's determination to the parties, by my provisional determination dated 19 October 2017. I informed the parties that subject to my receipt and consideration of submissions from the parties I proposed to vary the agency's determination.
5. By email dated 23 October 2017, the applicant advised he did not intend to provide submissions in response to the provisional determination.
6. To date, neither the agency nor the interested party have provided submissions in response either.
7. In light of this, I have proceeded to a final determination in the same terms as the provisional determination.

Relevant law

8. A person has a legally enforceable right to be given access to an agency's documents in accordance with the FOI Act.¹
9. The FOI Act provides that upon receipt of an access application, an agency may make a determination to refuse access where the documents are 'exempt'. Schedule 1 lists various exemption clauses which may be claimed by an agency as a basis for refusing access.
10. Clause 4(2)(a)(vi), 4(2)(b) and 6(1) of Schedule 1 of the FOI Act are relevant to my external review. They provide:

4—Documents affecting law enforcement and public safety

- (2) A document is an exempt document if it contains matter the disclosure of which—
 - (a) could reasonably be expected—
 - ...
 - (vi) to prejudice any system or procedure for the protection of persons or property;
 - ...
 - and
 - (b) would, on balance, be contrary to the public interest.

¹ *Freedom of Information Act 1991*, section 12.

6—Documents affecting personal affairs

- (1) A document is an exempt document if it contains matter the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead).
11. Under section 48, the onus is on the agency to justify its determination 'in any proceedings'. This includes the external review process.
 12. Section 39(11) provides that the Ombudsman may confirm, vary or reverse the agency's determination in an external review, based on the circumstances existing at the time of review.

Documents in issue

13. The agency identified nine documents as falling within the scope of the application.
14. In its initial notice of determination the agency did not provide sufficient details with regards to the documents and exemption clauses relied upon.
15. Following internal review this was corrected and the determination indicated that documents A, F, G and H were partially exempt on the basis of clause 4(2). Document F was also determined to be partially exempt on the basis of clause 6(1).
16. The agency determined that the remaining documents (B, C, D, E and I) could be released in full; however, contact details of agency staff were regarded as being outside of scope. As a result, direct telephone numbers, mobile telephone numbers, facsimile numbers and direct email addresses were redacted.
17. On 12 October 2017 I contacted the applicant to ascertain whether he sought access to contact details and wished for my office to review this aspect of the agency's determination. The applicant advised that although he did not agree with the agency's view in this regard, he did not wish to pursue access to any information concerning personal details of the sort referred to above.
18. Accordingly, redactions to direct email addresses, facsimile numbers, direct telephone numbers and mobile telephone numbers (including those redacted from Document F on the basis of clause 6(1)) are excluded from my review and will remain redacted.
19. Given clause 6(1) was not applied to any other information concerning personal affairs, there is no need for me to review the applicability of this clause.

Issues in this review

20. It is for me to determine whether the agency has justified its determination to partially refuse access to documents on the basis of clauses 4(2)(a)(vi) and 4(2)(b).

Consideration

Clause 4(2)(a)(vi) and (b)

21. When claiming clause 4(2)(a)(vi) and 4(2)(b) as bases for refusing access to a document, or part thereof, it must be established that the document contains information which, if disclosed, could reasonably be expected to prejudice systems or procedures for the protection of people or property. Additionally, disclosure of that information must be contrary to the public interest.
22. The phrase 'could reasonably be expected' requires that I make an objective judgment as to whether it is reasonable, as distinct from irrational, absurd or ridiculous, to expect that

disclosure could prejudice such systems or procedures.² The expectation must be based on reason and not be 'fanciful, far-fetched or speculative'.³

23. When considering the criteria of this clause, I have borne in mind that there is no ability under the FOI Act to set conditions on the publication of a released document. Therefore, information released to the applicant is to be treated as release to the world at large.
24. The agency determined that portions of information concerning security and emergency management within documents A, F, G and H were exempt.
25. The agency submitted that if information of this type were made available to the general public it could result in actions by third parties that might hinder the ability of security staff or emergency services to protect people attending events, or compromise security measures at the location. The agency submits that for this reason disclosure would be contrary to the public interest.
26. Accordingly, information such as evacuation points, emergency radio channels, emergency management zones, access areas for emergency services, situation-specific emergency procedures and event-specific security measures were redacted.
27. It is my view that the material redacted from document H lacks sufficient detail to create any risk of prejudicing systems and procedures through disclosure. Additionally, the material redacted from page 26 of document F and page 21 of document G does not reveal anything a reasonable person could not safely presume.⁴
28. In these instances it is not reasonable to expect that disclosure could prejudice any system or procedure for protecting people or property.
29. In contrast, the remaining material redacted from documents A, F and G does contain detailed and specific information which, if disclosed, could reasonably be expected to prejudice systems and procedures which exist to protect people or property.
30. I must now turn to consider whether disclosure of this material would be contrary to the public interest.
31. Assessing whether disclosure would be contrary to the public interest requires the balancing of public interest factors for and against disclosure.⁵ The material may only be regarded as exempt if disclosure would, on balance, be contrary to the public interest.
32. In *Sellars v South Australian Police*, the South Australian District Court observed that the FOI Act's objects and principles of administration favour disclosure and commented that fulfilling these principles was a relevant public interest consideration.⁶
33. Therefore, in this matter I consider the following factors to favour disclosure:
 - the public interest in fulfilling the objects of the FOI Act; particularly the public interest in promoting openness and accountability within government
 - the public interest in scrutiny of government decision-making, achieved in part through the public having access to and being able to compare assessment processes applied to expressions of interest.

² *Attorney-General's Department v Cockroft* [1986] FCA 35; (1986) 10 FCR, 180, 190.

³ *Searle Australia Pty Ltd v Public Interest Advocacy Centre* (1992) 36 FCR 111, 123; *Ipex Information Technology Pty Ltd v Department of Information Technology Services* [1997] SADC 3618; (1997) LSJS 54, 64; *Konieczka v South Australia Police* [2006] SADC 134 [14].

⁴ I have refrained from providing a more detailed description in accordance with section 39(15) of the *Freedom of Information Act 1997*.

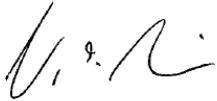
⁵ *Ipex Information Technology Group Pty Ltd v Department of Information Technology Services SA* (1997) 192 LSJS 54, 70.

⁶ [2012] SADC 9 [62].

34. Conversely, I consider the following factors to favour non-disclosure:
- the public interest in ensuring effective conduct of the functions of emergency services
 - the public interest in protecting public safety and security of assets when disclosure would create a risk of harm at future events.
35. I consider the factors weighing against disclosure to be most influential in the present circumstances.
36. Accordingly, it is my determination that clauses 4(2)(a)(vi) and 4(2)(b) are applicable to the remaining material identified by the agency.

Determination

37. In light of my views above, I vary the agency's determination.
38. The documents should be partially released to the applicant following redactions of telephone numbers, facsimile numbers, email addresses and information that is exempt on the basis of clauses 4(2)(a)(vi) and 4(2)(b).
39. For clarity, this does not include the material redacted from page 26 of document F, page 21 of document G, or either redaction to document H.



Wayne Lines
SA OMBUDSMAN

10 November 2017

APPENDIX

Procedural steps

Date	Event
15 March 2017	The agency received the FOI application dated 10 March 2017.
3 April 2017	The principal officer of the agency extended the period within which to deal with the application to 5 May 2017.
9 May 2017	The agency received an internal review application dated 9 May 2017 as it had not provided a determination by the extended due date.
10 May 2017	The agency determined the application.
	The applicant abandoned his internal review application dated 9 May 2017 following receipt of the agency's determination dated 10 May 2017.
11 May 2017	The agency received a second internal review application dated 11 May 2017, which sought review of the determination dated 10 May 2017.
24 May 2017	The agency varied the determination.
29 May 2017	The Ombudsman received the applicant's request for external review dated 29 May 2017.
6 June 2017	The Ombudsman advised the agency of the external review and requested submissions and documentation.
27 June 2017	The agency provided the Ombudsman with its submissions and documentation.
19 October 2017	The Ombudsman provided his provisional determination.
23 October 2017	The applicant advised that he did not intend to provide submissions in response to the provisional determination.
10 November 2017	The Ombudsman provided his final determination.