

Determinations

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

Applicant	Mr Tim Swaine
Agencies	Attorney-General's Department (AGD) Department of the Premier and Cabinet (DPC)
Ombudsman references	2015/08536 and 2015/09132
AGD reference	15/0954
DPC reference	DPC15/1620
Determinations	The determination of AGD is varied. The determination of DPC is varied.

REASONS

Applications for access

1. In 2012 and 2013, a General Code of Practice (**the General Code**) and a Late Night Trading Code of Practice (**the Late Night Code**) were established under section 11A of the *Liquor Licensing Act 1997* (**the LL Act**).¹ The LL Act required a review of these codes.² In December 2014, the Internal Consultancy Services Group (**ICSG; ICS Group**) was commissioned to undertake the review (**the ICSG review**), to ascertain whether the Codes had achieved their aims, and in particular whether the Late Night Code had 'reduced alcohol-related antisocial behaviour in the CBD in the early hours of the morning'.³ On 29 July 2015, a report detailing the outcomes of the ICSG review was laid before Parliament (**the ICSG report**).⁴
2. The applicant is the president of the Late Night Venue Association of SA Incorporated (**the Association; LNVA SA**). The Association is the representative body for South Australian businesses operating late night licensed venues, which it defines as 'premises that are permitted to trade beyond midnight'.⁵
3. By application under the *Freedom of Information Act 1991* (**the FOI Act**) the applicant requested access on behalf of the Association:

¹ *Liquor Licensing (General Code of Practice) Notice 2012* and *Liquor Licensing (Late Night Trading Code of Practice) Notice 2013*.

² *Liquor Licensing Act 1997*, section 11B.

³ Internal Consultancy Services Group, 'Review of Codes Established under the *Liquor Licensing Act 1997*: Late Night Code of Practice General Code of Practice', 30 April 2015, page 2.

⁴ Internal Consultancy Services Group, 'Review of Codes Established under the *Liquor Licensing Act 1997*: Late Night Code of Practice General Code of Practice', 30 April 2015.

⁵ Late Night Venue Association of SA Incorporated, *Submission to the SA Liquor Licensing Review, 29 January 2016*, available at: http://www.agd.sa.gov.au/sites/agd.sa.gov.au/files/documents/Liquor%20licensing/Submissions-%20Feb2016/43_Late%20Night%20Venue%20Association%20of%20SA%20Inc.pdf (accessed on 22 May 2016).

From AGD to:

- a copy of the OCSAR Report provided to the Internal Consultancy Services Group in relation to its review of the Codes established under the *Liquor Licensing Act 1997*, handed down on 30 April 2015
- a copy of the SA Police unit record data (raw and confidential) upon which OCSAR's report to the ICS Group was based.
- a copy of any correspondence (email, letters, facsimiles) between OCSAR and the ICS Group, or between OCSAR and SA Police, in relation to the review of the Codes
- a copy of any file notes of meetings, telephone conversations between OCSAR and ICS Group, or between OCSAR and SA Police, in relation to the review of the Codes.

From DPC to:

- a copy of the Office of Crime Statistics and Research report provided to the ICS Group in relation to its review of the Codes under the *LL Act*
- a copy of any SA Police unit record data (raw and confidential) provided to the ICS Group in relation to its review of the Codes under the *LL Act*
- a copy of any correspondence (email, letters, facsimiles) between the ICS Group and OCSAR, or between ICS Group and SA Police, in relation to the review of the Codes
- a copy of any file notes of meetings, telephone conversations between the ICS Group and OCSAR, or between the ICS Group and SA Police in relation to the review of the Codes.
- a copy of Adelaide Casino's written submission to the ICS Group in relation to its review of the Code.

Background

4. For ease of reference, the procedural steps relating to the application are set out in appendices 1 (AGD) and 2 (DPC).

Jurisdiction

5. These external reviews are within the jurisdiction of the Ombudsman as a relevant review authority under section 39 of the FOI Act.

Provisional determinations

6. I provided my tentative view about AGD and DPC's determinations to the parties, by my provisional determinations dated 24 November 2016. I informed the parties that subject to my receipt and consideration of submissions from the parties I proposed to vary the AGD's and DPC's determinations.
7. The applicant and AGD provided written submissions in response. DPC provided brief oral submissions in response.⁶ I have considered these submissions in my determinations. The Adelaide Casino advised that it did not intend to provide further submissions. To date, I have not received a response from SAPOL.

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.⁷

⁶ By email, DPC subsequently advised that it did not intend to provide further submissions, however.

⁷ *Freedom of Information Act 1991*, section 12.

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. AGD claims that the documents are exempt as Cabinet documents (clause 1(1)(e)); documents affecting the conduct of research (clause 8(1)); internal working documents (clause 9(1)); and documents containing confidential material (clause 13(1)(b))⁸. I understand that DPC also relies on these clauses to claim the documents are exempt. In addition, one of the interested parties appears to be claiming that document DPC13 contains information concerning its business affairs (clause 7(1)(c)) and confidential information (clauses 13(1)(a) and 13(1)(b))⁹.¹⁰ Another interested party relies on clauses 4(3), 6(1) and 9(1) with respect to some of the documents.
11. The relevant parts of these clauses provide:

Clauses 1(1)(e) and 1(2)

- (1) A document is an exempt document—
...
(e) if it contains matter the disclosure of which would disclose information concerning any deliberation or decision of Cabinet...
- (2) A document is not an exempt document by virtue of this clause—
(a) if it merely consists of factual or statistical material (including public opinion polling) that does not—
(i) disclose information concerning any deliberation or decision of Cabinet; or
(ii) relate directly to a contract or other commercial transaction that is still being negotiated; or
(ab) merely because it was attached to a document described in subclause (1); or
(b) if 20 years have passed since the end of the calendar year in which the document came into existence.

Clause 4(3)

A document is an exempt document if it is a document that was created by the former Bureau of Criminal Intelligence or has been created or is held by the State Intelligence Section of South Australia Police or any authority substituted for that body.

Clause 6(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).

Clause 7(1)(c)

- (1) A document is an exempt document—
...
(c) if it contains matter-
(i) consisting of information (other than trade secrets or information referred to in paragraph (b)) concerning the business, professional, commercial or financial affairs of any agency or any other person; and
(ii) the disclosure of which-

⁸ AGD have only claimed clause 13(1)(b).

⁹ The interested party claims that document DPC13 is 'confidential'. I therefore intend to consider clauses 13(1)(a) and 13(1)(b) with respect to that document.

¹⁰ I have a discretion to consider exemptions not relied upon by the agency: *Department of the Premier & Cabinet v Redford* (2005) 240 LSJS 171 [29].

- (A) could reasonably be expected to have an adverse effect on those affairs or to prejudice the future supply of such information to the Government or to an agency; and
- (B) would, on balance, be contrary to the public interest.

Clauses 8(1) and 8(2)

- (1) A document is an exempt document if it contains matter—
 - (a) that relates to the purpose or results of research (other than public opinion polling that does not relate directly to a contract or other commercial transaction that is still being negotiated), including research that is yet to be commenced or yet to be completed; and
 - (b) the disclosure of which—
 - (i) could reasonably be expected to have an adverse effect on the agency or other person by or on whose behalf the research is being, or is intended to be, carried out; and
 - (ii) would, on balance, be contrary to the public interest.
- (2) A document is not an exempt document by virtue of this clause merely because it contains matter concerning research that is being, or is intended to be, carried out by the agency or other person by or on whose behalf an application for access to the document is made.

Clause 9(1)

- (1) A document is an exempt document if it contains matter—
 - (a) that relates to—
 - (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 decision-making functions of the Government, a Minister or an agency; and
 - (b) would, on balance, be contrary to the public interest.

Clauses 13(1)(a) and 13(1)(b)

- (1) A document is an exempt document—
 - (a) if it contains matter the disclosure of which would found an action for breach of confidence; or
 - (b) if it contains matter obtained in confidence the disclosure of which—
 - (i) might reasonably be expected to prejudice the future supply of such information to the Government or to an agency; and
 - (ii) would, on balance, be contrary to the public interest.

12. Section 20(4) provides that if it is practicable to give access to a copy of a document from which the exempt matter has been deleted, and it appears that the applicant would wish to be given access to such a copy, the agency must give the applicant access to a copy of the document to this limited extent.
13. Under section 48, the onus is on the agency to justify its determination 'in any proceedings'. This includes the external review process.
14. 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

15. AGD identified 43 documents, numbered 1 to 41, 10A¹¹ and 17A, within the scope of the application. By its original determination, AGD released documents 1 to 3 to the applicant in full.
16. DPC identified 31 documents¹² within the scope of the application. To date, none of these documents have been released to the applicant.
17. During a settlement conference facilitated by my Office, the applicant narrowed the scope of his applications for access to exclude information of a routine, administrative nature, for example about arranging meetings and staff availability (**the narrowed applications**).
18. In my view, the following documents or parts of the following documents are within the scope of the narrowed applications:

AGD: documents 4 to 11, 13, 14, 16 to 18, 22 to 24, 26 to 28, 31 to 33, 35, 36, 39, 41, 10A and 17A

DPC: documents or parts of documents 1 to 14, 16 to 21 and 23 to 31.¹³ The relevant parts of the documents I consider to be within the scope of the narrowed application are described below.

Issues in this review

19. It is for me to determine whether the agencies have justified their claims of exemption over the documents within the scope of the narrowed applications, or whether there is sufficient evidence before me from which I am able to be satisfied that all elements of the clauses relied on by the interested parties are established.¹⁴

Parties' submissions

AGD

20. AGD claims that documents 1 to 40, 10A and 17A are exempt as Cabinet documents and internal working documents, and that document 41 is exempt as a document affecting the conduct of research and as a document containing confidential material.
21. In its determination following internal review, AGD offered the following reasons:

Clause 1(1)(e)

Cabinet gave approval for the ... ICSG... to conduct the review of the Late Night Code. The documents ... contain drafts and correspondence in relation to the draft ICSG report. I am of the view that disclosure would disclose information concerning a decision of Cabinet.

Clause 9(1)

The documents ... are correspondence which contains the consultation and deliberation of public servants in the course of making a decision about the contents of the ICSG [sic] Report.

¹¹ By email dated 12 May 2016, AGD confirmed that document AGD10A is a duplicate of document AGD4.

¹² A number of these documents comprise multiple emails.

¹³ By email dated 31 May 2016, my Office advised DPC of my Office's assessment at the time and invited its response. To date, DPC has not disputed my Office's assessment. Based on the terms of the application for access, I have deliberately excluded internal AGD/DPC emails and emails between only AGD and DPC. I have since formed the view that some additional emails are also within the scope of the narrowed application.

¹⁴ *Re Pope and Queensland Health* (1994) 1 QAR 616, [17].

One factor in favour of public disclosure is the fact that the ICSG report has already been publicly released on 30 April 2015.

Factors against public disclosure include the documents being preliminary in nature and concerning matters that were not settled. Disclosure would impair AGD's decision-making process to a significant and substantial degree. Furthermore, disclosure of the documents do not fairly disclose the reasons for a decision subsequently taken and may be unfair to the decision-maker and may prejudice the integrity of the decision-making process.

On balance, disclosure is against the public interest because of the significant impairment to AGD's and the government's decision making process.

Clauses 8(1) and 13(1)(b)

Document 41 is a USB which contains SAPOL data received by the Office of Crime Statistics and Research (OCSAR), or information created by OCSAR based on SAPOL data. The data received from SAPOL is covered by a Memorandum of Understanding (MOU) between OCSAR and SAPOL. The data is confidential. The release of the data would breach the MOU and risk future provision of data from SAPOL to OCSAR.

Release of document 41 would be against the public interest because it would prejudice the ability of OCSAR to obtain such data in the future. This would negatively affect OCSAR's ability to conduct research into criminal justice for the government. This adverse effect outweighs ... [the applicant's] individual interest in obtaining the data.

22. AGD's original determination included further reasons relevant to its reliance on clauses 8(1) and 13(1)(b):

Document 41 ... contains data ... used to develop the OCSAR section to be included in the final ICSG [sic] report.

OCSAR receives raw data extracts from SA Police for the purpose of producing statistics and conducting research into crime and criminal justice issues...

The public interest in releasing the data includes meeting the objects of the [FOI] Act and providing an individual with documents of particular interest to them...

... [T]he public interest in OCSAR being able to conduct effective research on behalf of Government outweighs the interests of an individual who has a particular interest in the document.

23. In oral submissions to the applicant and one of my legal officers, AGD advised that the passage of time had not affected its claims of exemption.
24. AGD has provided two Cabinet submissions to my Office in support of its claims of exemption, dated 24 November 2014 (**the first Cabinet submission**)¹⁵ and 2 June 2015 (**the second Cabinet submission**).¹⁶ The first Cabinet submission was submitted for approval. The second Cabinet submission was submitted for noting.
25. AGD further advised that the MOU it relied upon had been in place since 2009. Based on the copy of the MOU provided to my Office it appears to have been executed in December 2007, however.
26. In response to a request from my Office, AGD declined to provide a copy of the MOU to the applicant because it was 'outside the scope of the FOI'.¹⁷
27. My Office subsequently wrote to AGD in the following terms, and sought AGD's response if it disagreed with my Office's views:

¹⁵ This was received by my Office on 24 November 2015.

¹⁶ The was received by my Office on 23 May 2016.

¹⁷ Emails from AGD to my Office dated 23 May, 24 May and 26 May 2016.

... the MOU does not appear to be an exempt document or contain exempt matter.

This being so, there does not appear to be any limitation to ... [me] referring to its contents in the reasons for ... [my] determination.¹⁸

28. AGD conceded that there did 'not appear to be any limitation on ... [me] referring to the MOU in ... [my] determination'.¹⁹
29. The MOU between SAPOL and OCSAR contains a number of provisions detailing the 'procedures to be adhered to for the provision of unit record data by SAPOL to OCSAR'. They include the following:

Information exchange for PIMS data pertaining to offences recorded and apprehensions

...
5. OCSAR will ensure that only nominated OCSAR staff, or other persons nominated by SAPOL, will have access to the monthly and refreshed extracts. The nominated OCSAR staff are the Database Manager and the Assistant Database Manager. [OCSAR's access to information SAPOL's General Enquiry Information System (GEIS) in JIS and BEAMS is similarly limited.]

...
14. Information provided to OCSAR or that is accessed by the Database Manager, OCSAR, is confidential. OCSAR will not release any information that may identify, or could assist in identifying, any person(s) whose records are contained in the monthly and refreshed extracts ... Both OCSAR and SAPOL will be cognisant of the sensitivities involved in publishing small area data.

...
Confidentiality

28. Information provided to OCSAR or that is accessed by the Database Manager, OCSAR, is confidential. OCSAR will not release any information that may identify, or could assist in identifying, any person(s) whose records are contained in the monthly and refreshed extracts or that have been accessed by the Database Manager, OCSAR using the SAPOL GEIS or BEAMS data. Whilst this does not necessarily preclude the publication of tables containing small cell numbers, both OCSAR and SAPOL will be cognisant of the sensitivities involved in publishing small area data.

...
Management

...
35. The agencies acknowledge that this is an administrative arrangement between administrative units or instrumentalities of the Crown in right of the State of South Australia, and is not intended to create legal relations.

30. In response to my provisional determination, AGD advised that it had no further submissions to make regarding document AGD41, or related information within other documents under review. That said, AGD reiterated its view that providing access to other information within the documents was not, on balance, in the public interest for the following reasons:
- '[t]he relevant documents are all clearly preparatory to the release and publication of the ICSG report'
 - releasing the relevant documents:
 - ... would not fairly disclose the reasons for decisions subsequently made, and may instead raise unfair questions as to the integrity of the decision-making process surrounding the documents' creation, and the preparation and publication of the ICSG Report. The relevant documents ... are an incomplete reflection of those processes, and would not ... allow a member of the public a reasonably informed opportunity to interpret and assess the findings in the ICSG Report, or future proposed legislative changes in this area.

¹⁸ Email from my Office to the agency dated 24 May 2016.

¹⁹ Email from AGD to my Office dated 26 May 2016.

The public release of the relevant documents in these circumstances may have the potential to inhibit frankness and candour in future pre-decisional communications between public officers.

- given the Anderson Report, 'and the passage of time since the ICSG report, ... the internal working documents that resulted in the production of the ICSG Report are no longer of ongoing relevance or general interest to the public'.

31. In addition, AGD made submissions rejecting any possible suggestion arising from my provisional determination 'that any document associated with a Cabinet Note (as opposed to a full Cabinet submission) would generally be incapable of falling within the exemption under clause 1(1)(e)...'. AGD provided the following submissions on this point:

... A Cabinet Note generates a decision of the Cabinet, and is as capable of generating deliberation within the Cabinet, as a full Cabinet Submission. In order for the principle of collective responsibility of Cabinet to be maintained, any document associated with the Cabinet process needs to be considered in light of the particular circumstances surrounding its creation and purpose, and the use to which it or the information it contains was put as part of that Cabinet process, irrespective of the form employed.

DPC

32. DPC is deemed to have refused access to the documents. DPC has advised that it relies on the same exemption clauses claimed by AGD.²⁰ In saying this, DPC explained that although the ICSG was hosted within DPC, DPC was acting on behalf of AGD.
33. The ICSG is no longer in existence. DPC is therefore dealing with archived documents, including emails, that the ICSG has saved in Word document format. Some of the emails refer to attachments. The attachments do not form part of the Word document. In response to a request from my Office for the attachments, DPC advised that because of the way the ICSG saved the emails and associated documents, it is impossible to ascertain which documents represent the correct attachments to the emails in question (for example, because there are often multiple drafts).²¹ DPC further advised that some ICSG staff members are no longer employed by the South Australian public service, and others have transferred to different agencies. As such, there is no-one within DPC with the requisite knowledge needed to identify the correct attachments to emails, and it is not possible for DPC to search email in-boxes of the relevant ICSG staff members.
34. During a telephone conversation on 6 December 2016, in response to my provisional determinations and comments made by one of my legal officers, a DPC officer confirmed that DPC has been unable to identify attachments to some of the relevant documents among additional documents held by DPC. As a consequence, DPC has been unable to determine whether any of the additional documents are, in fact, within the scope of the narrowed application for access (specifically, the third dot-point).

The applicant

35. The applicant has sought a review of DPC's deemed refusal of access to documents.
36. When applying for internal review of AGD's original determination, the applicant sought a review of all of the documents to which he had been refused access. He disputed both that the emails claimed exempt 'contain information concerning any deliberation or decision of Cabinet', and that he should be refused access to document AGD41.

²⁰ This occurred during a telephone discussion between one of my legal officers and an agency officer of 26 April 2016.

²¹ This occurred during a telephone discussion between one of my legal officers and an officer of DPC of 27 June 2016.

37. In oral submissions to the agencies and one of my legal officers, the applicant advised that he was primarily interested in three issues:
1. interactions about setting up the terms of reference (what OCSAR were looking at and providing)
 2. interactions with SAPOL
 3. the 'comprehensive' report provided by OCSAR to ICSG (referred to on page 119 of the ICSG Report)

Along with:

4. the Adelaide Casino submission.
38. In addition, the applicant expressed reservations about the ICSG review, and possibly its outcomes. He advised that the completion of the ICSG review would not affect his views about accessing documents within the scope of the narrowed applications.
39. I have also had regard to the Association's *Submission to the SA Liquor Licensing Review (the Association's submission)*. At page 7 of the Association's submission, the summary of its position includes the following:

The LNVA SA is supportive of evidence-based late night liquor licensing initiatives which provide tangible community benefits in terms of patron safety in and around licensed premises and alcohol harm minimisation.

The LNVA SA does not support unproven initiatives which have detrimental economic or social impacts on late night venue licensees or the Adelaide night time economy, particularly initiatives which are arguably discriminatory as between Adelaide licensed premises.

One such unproven initiative is the Lockout... [At page 4 of the submission, the Association notes that 'the Lockout does not apply to the Adelaide Casino.'²²

40. In response to my provisional determinations, the applicant submitted that 'DPC has not conducted sufficient searches for documents within the scope of the narrowed application' and should be required to:
- 'conduct further searches of, or make further enquiries in relation to, [all of] the common places that agencies should search to locate documents ... including but not limited to the email accounts of former ICSG staff members; and
 - contact ICSG's Lead Analyst 'who may have relevant information'.
41. In support of his position, the applicant provided the following:

Documents:

- a copy of State Records of South Australia, *Freedom of Information and Sufficiency of Search - Guideline* (version 3, November 2016), with specific reference to the 'common places' listed at item 2.1
- the LinkedIn²³ profile of ICSG's Lead Analyst

Submissions:

- '[i]t is unclear whether DPC has searched all of the "common places" ...'
- 'It appears some former ICSG staff members remain employed by the South Australian public service. In particular ... the ICSG's Lead Analyst...'
- he does not accept that:

²² Late Night Venue Association of SA Incorporated, *Submission to the SA Liquor Licensing Review*, 29 January 2016, available at: http://www.agd.sa.gov.au/sites/agd.sa.gov.au/files/documents/Liquor%20licensing/Submissions-%20Feb2016/43_Late%20Night%20Venue%20Association%20of%20SA%20Inc.pdf (accessed on 22 May 2016).

²³ <https://www.linkedin.com/in/Julian-zytnik-a42a3180> (accessed on 28 November 2016).

- ‘... because there is no-one currently within DPC with the requisite knowledge needed to identify the correct attachments to emails, no further searches or enquiries should be conducted...’
- ‘... it is not possible for DPC to search email in-boxes of the relevant staff members. Email accounts are a “common place”... DPC has an obligation to recover and/or retrieve the email accounts of the former ICSG members and to search those accounts’
- to accept DPC’s submissions ‘would lead to the absurd result that, in order to avoid producing documents ... all an agency would need to do is disband, keep inadequate records and/or terminate its staff. Surely, this was never intended by Parliament.’

Interested parties

Adelaide Casino

42. DPC consulted with the Adelaide Casino about document DPC13.²⁴
43. By email dated 23 October 2015, with reference to its 'reporting obligation through the Independent Gaming Authority', the Adelaide Casino expressed a 'preference' for the document not to be released at that stage. The Adelaide Casino explained that it did 'not want to provide any comment or insight into the Casino's gaming operations ...'
44. DPC advised my Office that it subsequently asked the Adelaide Casino to elaborate on these submissions. Following this, it appeared to DPC that the Adelaide Casino was claiming that document DPC13 was exempt as a document affecting its business affairs, and was confidential, and its disclosure would stop them from providing such information in the future.
45. The Adelaide Casino advised that it did not wish to make a submission in response to my provisional determinations.

SA Police

46. AGD consulted with the South Australia Police about document AGD41 and 'any other document referencing the SAPOL data'.
47. SA Police submitted that such information should be refused. SA Police provided the following submissions in support of its position:

Raw data fields contain information that has never been in the public domain for sound reasons of citizen-based privacy, and policing operational necessity when effectively deploying SAPOL resources. This enables us to best respond to evolving community needs and issues, and work with other law enforcement agencies on issues of state and national significance.

- The raw unit data identifies individual police reports of circumstances surrounding alleged offences. They cover victims and/or alleged offenders prior to their formal process through the criminal justice system.
- The raw unit data fields identify highly personal information such as the exact address of the offence, victim age and gender, language, employment status, Indigenous status, marital status, their relationship to the offender, any referrals to health or other social support agencies. They identify any illicit drug details, behavioural details for offending characteristics (modus operandi) and the identifying number of the arresting officer.

²⁴ It was numbered as document 9 in the email from DPC to the Adelaide Casino dated 14 October 2015, however.

- Much of this information is not directly related to the alleged offence but is useful for, and is used as, policing intelligence and links to other offending or criminal activity.
- The raw unit data fields also contain the names of targeted special Police Operations that may or may not necessarily be public, working on sensitive issues such as illicit drug use and manufacture and supply; and also Operations run by Licensing Enforcement Branch (LEB) for intelligence purposes. For example, it is possible from the raw unit data to readily identify individual licensed premises and police activity concerning those premises involved in past or current offending.

Raw unit data is therefore a key component of police activity and provision of this information to any external person/agency/stakeholder outside of law enforcement bodies would have a negative impact on police operations.

48. On 8 November 2016 DPC advised my Office that it had consulted SA Police about a number of documents on 8 October 2015. Most of the document numbers used during the consultation process differ from the numbers DPC ascribed to the documents provided to my Office. Accordingly, I will detail both numbers below, along with a brief summary of SAPOL's response dated 5 November 2015:

SA Police document number	Ombudsman SA document number	SAPOL's views
3	Part of DPC3 (heading, attendees and three additional lines of text)	Full release
5	DPC9 - email dated 4 February 2016 (timed 8:28am) - email dated 3 February 2015 (timed 4:18pm) - emails dated 29 January 2015 (timed 4:55pm; 4:54pm)	Partial release - contact telephone numbers and email addresses exempt under clause 6(1)
7	DPC11 - emails dated 26 February 2015 (timed 1:17pm; 12:50pm)	Exempt - 'State Intelligence Information' under clause 4(3)
8	DPC12	Exempt - 'State Intelligence Information' under clause 4(3)
10	DPC14 - emails dated 3 March 2015 (timed 10:34am; 10:05am) DPC15 - email dated 23 February 2015 (timed 2:11pm - this email is outside the scope of the narrowed application) DPC16 - emails dated 23 February 2015 (timed 2:20pm; 2:18pm - this email is outside the scope of the narrowed application) - email dated 20 February 2015 (timed 3:23pm) - email dated 19 February 2015 (timed 1:59pm)	Full release
11	DPC17	No objections to release of the information relating to SA Police

12	<p>DPC19 - emails dated 5 March 2015 (timed 2:30pm; 2:59pm; 2:39pm; 14:29)</p> <p>DPC20 - email dated 5 March 2015 (timed 10:58am)</p> <p>DPC21 - email dated 4 March 2015 (timed 3:45pm²⁵) - email dated 27 February 2015 (timed 7:08pm²⁶)</p> <p>DPC11 - emails dated 26 February 2015 (timed 1:17pm; 12:50pm)</p> <p>DPC9 - email dated 3 February 2015 (timed 4:18pm) - emails dated 29 January 2015 (timed 4:55pm; 4:54pm)</p>	<p>Partial release</p> <ul style="list-style-type: none"> - contact telephone numbers and email addresses exempt under clause 6(1), for example in email dated 29 January 2015, timed 4:55pm (part of DPC9) - five pages exempt as 'State Intelligence Information' and 'opinion, advice and recommendation' under clauses 4(3) and 9(1), namely: <ul style="list-style-type: none"> o from the third paragraph to the end of the email dated 27 February 2015 (timed 7:08pm) (part of DPC21) o emails dated 26 February 2015, timed 1:17pm; 12:50pm (DPC11) o email dated 3 February 2015, timed 4:18pm (part of DPC9) (I note SA Police claim that the exemption ends with this email, which appears on the fifth page after the information that appears in the first dot-point above. This appears to be inconsistent with SA Police's views regarding the version of this document that appears in SA Police document 5, however.)
13	<p>DPC19 - email dated 5 March 2015 (timed 14:29)</p> <p>DPC21 - email dated 5 March 2015 (timed 11:21am) - email dated 4 March 2015 (timed 15:44)</p>	<p>Partial release</p> <ul style="list-style-type: none"> - contact telephone numbers and email addresses exempt under clause 6(1)
14	Outside the scope of the narrowed application	
15	DPC23	Full release
16	DPC18 - email dated 26 March 2015, (timed 2:23pm) (albeit in a different format)	Exempt - 'opinion, advice and recommendation' under clause 9(1)
17	DPC25	'This is NOT A SAPOL DOCUMENT'
21	<p>DPC28 - emails dated 1 May 2015 (timed 3:50pm; 11:00am; 10:24am) - email dated 29 April 2015 (timed 4:31pm) - emails dated 27 April 2015 (timed 3:54pm; 3:20pm; 12:47pm; 12:05pm)</p>	<p>Partial release</p> <ul style="list-style-type: none"> - contact telephone numbers and email addresses exempt under clause 6(1) - substance of the email dated 29 April 2015, timed 4:31pm exempt as 'opinion, advice and recommendation' under clause 9(1)
22	<p>DPC29 - email dated 1 May 2015 (timed 3:10pm)</p> <p>DPC30 - email dated 24 April 2015 (timed 4:21pm)</p>	'No opinion as this is not a SAPOL document'

²⁵ The version of this email provided to SA Police is timed 3:45pm, whereas the version that appears in document DPC21 is timed 3:44pm. This email is a duplicate of document AGD26, which is timed 3:45pm.

²⁶ This email is a duplicate of document AGD27.

23	DPC31 - emails dated 7 May 2015 (timed 3:40pm; 2:36pm; 11:21am; 10:45am) - emails dated 6 May 2015 (timed 3:54pm; 3:40pm; 11:41am)	Exempt - 'opinion, advice and recommendation' under clause 9(1), if it is not Cabinet in confidence.
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49. By email dated 24 November 2016, in accordance with section 39(10) of the FOI Act, I consulted SA Police about documents numbered AGD7, AGD8, AGD18, AGD23, AGD26, AGD27 and AGD28, and documents or parts of documents numbered DPC11, DPC12, DPC16, DPC17, DPC18, DPC19, DPC21, DPC23, DPC26, DPC28, and DPC31.
50. To date, SA Police has not provided a response to my provisional determinations.

Consideration

Sufficiency of search - DPC

51. DPC's inability to identify attachments to emails saved in Word document format raises questions about the sufficiency of its searches.
52. It is my role to consider, on the evidence provided to me, whether there are reasonable grounds to believe that any additional documents within the scope of the narrowed application exist and are held by DPC. If so, I must then consider whether DPC's searches to locate such documents have been reasonable in the circumstances.²⁷
53. The FOI Act does not prescribe the manner in which questions concerning the sufficiency of the agency's searches to locate documents within the scope of an access application are to be resolved.
54. The District Court has stated that a search for documents must be 'reasonable and sufficient'.²⁸
55. The Queensland Information Commissioner considers that a two-stage test is warranted:
- a) whether there are reasonable grounds to believe that the requested documents exist and are documents of the agency...; and if so,
 - b) whether the search efforts made by the agency to locate such documents have been reasonable in all the circumstance of a particular case.²⁹
56. This approach was considered and followed in a decision of the New South Wales Administrative Decisions Tribunal.³⁰ In that decision, Judge O'Connor said that when an applicant contends that an agency has failed to perform a sufficient search, the applicant must first put some credible material or submissions before the tribunal to satisfy it that there is an arguable case that documents of the kind requested exist.

²⁷ *Akritidis v Police Commissioner* [1998] SADC 291 (Unreported, South Australian District Court, Judge Robertson, 23 April 1999), 20; *Shepherd v Department of Housing, Local Government & Planning* (1994) 1 QAR 464 [19], followed in *Cianfrano v Director General, Department of Commerce and Anor (No 2)* [2006] NSWADT 195 [69]. This decision is available via <http://www.austlii.edu.au> as at December 2014. Note, however, that the citation refers to *Cainfrano*.

²⁸ *Akritidis v Police Commissioner* [1998] SADC 291 (Unreported, South Australian District Court, Judge Robertson, 23 April 1999), 20.

²⁹ *Shepherd v Department of Housing, Local Government & Planning* (1994) 1 QAR 464 [19].

³⁰ *Cianfrano v Director General, Department of Commerce and Anor (No 2)* [2006] NSWADT 195.

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57. Adopting the two-stage test preferred by the Queensland Information Commissioner, the first step for me to consider is whether there are reasonable grounds to believe that any additional documents within the scope of the narrowed application exist and are held by DPC.
58. Based on the evidence currently before me, I consider that it is probable that the agency holds additional documents within the scope of the narrowed application, in the form of attachments to emails. In saying this, I have had particular regard to the terms of the narrowed application, and the third dot-point in particular, along with the documents provided to date. I have also had regard to DPC's submissions. On 27 June 2016, in response to a request from my Office for various missing attachments, DPC advised that it holds documents in addition to those provided to my Office, including multiple drafts of some documents. At the same time, DPC advised of its inability to identify the attachments to some of the documents under review (from among the additional documents; for example, it was unclear which version of a document was attached to some of the documents under review). As a result, DPC has been unable to assess which additional documents are within the scope of the third dot-point of the narrowed application for access. DPC reiterated this submission on 6 December 2016. I accept DPC's submissions in this regard.
59. The second step requires me to consider whether the search efforts made by DPC to locate documents within the scope of the narrowed application have been reasonable in all the circumstances of the case. Having regard to DPC's submissions above, I consider it likely that DPC has located additional documents within the scope of the application for access. Arguably, therefore, this step has been satisfied. That said, given the peculiarities of this matter, I also intend to consider whether DPC's efforts to identify the correct attachments to some of the documents under review have been reasonable in the circumstances.
60. The applicant has submitted that DPC should be required 'to recover and/or retrieve the email accounts of the former ICSG members and to search those accounts'. The FOI Act is silent as to whether an agency is required to undertake searches of backup systems when processing FOI applications. However, section 4(1) of the FOI Act defines a document as including anything in which information is stored or from which information may be reproduced. Section 12 of the FOI Act provides that a person has a legally enforceable right to be given access to an agency's documents and section 4(4) of the FOI Act provides that an agency is taken to hold a document if the agency has an immediate right of access to a document.
61. The legislation of several interstate jurisdictions specifically addresses the issue of searching backup systems. The *Right to Information Act 2009* (Qld) provides that an access application, however it is expressed, does not require an agency to search for the documents from a backup system.³¹ However, an agency is not prevented from doing so.³²
62. The *Freedom of Information Act 1982* (Cth) requires an agency to take 'all reasonable steps' to find requested documents before refusing access to them on the basis that they cannot be found or do not exist.³³ Guidelines issued by the Australian Information Commissioner indicate that if an agency is aware its backup system merely duplicates documents which are easily retrievable from the main records system, a search of the backup system would be unnecessary.³⁴ However, if an agency is aware the backup system may contain relevant documents not otherwise available or if the applicant

³¹ *Right to Information Act 2009* (QLD), s 29(1).

³² *Right to Information Act 2009* (QLD), s 29(2).

³³ *Freedom of Information Act 1982* (Cth), s 24A.

³⁴ Office of the Australian Information Commissioner, *Guidelines issued by the Australian Information Commissioner under s 93A of the Freedom of Information Act 1982*, (revised October 2014), at [3.83].

clearly includes backup systems in the request, a search of the backup system may be required, provided it does not involve a substantial and unreasonable diversion of agency resources,³⁵ which includes a diversion from the agency's other operations.³⁶

63. In *'HL' and Department of Defence*³⁷ the applicant submitted that the agency in question should have been compelled to search all backup in order to find emails the applicant alleged might have existed but which had been deleted from the agency's email accounts. In that decision, the Australian Information Commissioner was satisfied that the agency had taken all reasonable steps to find documents and it would be 'beyond the limit assigned by reason' to require the agency to undertake complex and expensive searches of backup data, due to the following considerations:³⁸
- the applicant did not expressly include backup systems in the FOI request
 - the applicant only raised the issue of backup systems at the stage of the Information Commissioner's review
 - it was apparent that the agency's backup data would not contain emails of the dates the applicant was seeking on the basis that they would be outside the agency's document retention period
 - the agency undertook searches of its email accounts
 - the agency undertook further searches in an attempt to locate additional documents within scope of the request and successfully located further documents.
64. Although the applicant did not specifically request searches of the archived mailboxes of former ICSG employees, I consider this can be implied given that his applications for access postdate the ICSG report.
65. I note DPC's submissions about its inability to identify attachments to various emails due to the format in which they were saved, and the fact that relevant staff members are no longer employed by DPC. I have also borne in mind that the third dot-point of the narrowed application is limited to correspondence between the ICSG and either SA Police or OCSAR.³⁹
66. With a sense of disquiet, I consider DPC's efforts to identify the correct attachments to some of the documents under review have been reasonable in all the circumstances of the case. In saying this, I have considered the following:
- given the passage of time it is unlikely that ICSG's Lead Analyst or anyone else would be able to identify, from memory, the attachments missing from particular documents with sufficient accuracy to enable me to be satisfied that they are within the scope of the narrowed application
 - that DPC appears to have located the missing attachments, even if it cannot link them to particular documents under review
 - emails do not 'follow' an employee if they transfer to another agency
 - the limited chances of recovering missing attachments through restoration of archived ICSG staff members' accounts given that mailbox restorations only provide a snapshot of the particular mailbox at a particular point in time. Accordingly, a particular email would only be accessible if it was in the mailbox at the time the system backup was performed. If an email was permanently deleted before the system backup had been performed, it would not be recoverable
 - document AGD8 includes the attachment missing from documents DPC18 and DPC26.

³⁵ Office of the Australian Information Commissioner, *Guidelines issued by the Australian Information Commissioner under s 93A of the Freedom of Information Act 1982*, (revised October 2014), at [3.83].

³⁶ *Freedom of Information Act 1982* (Cth), s 24AA.

³⁷ *'HL' and Department of Defence* [2015] AICmr 73 (12 November 2015).

³⁸ *'HL' and Department of Defence* [2015] AICmr 73 (12 November 2015) at [12] - [14].

³⁹ An application could be framed to capture the additional documents, although the issue of identifying particular attachments would remain.

67. Accordingly, it is my view that the agency has conducted reasonable and sufficient searches for documents within the scope of the narrowed application.

Claims of exemption

68. The Late Night Code of Practice commenced operation on 1 October 2013, and was amended on 1 February 2016.⁴⁰ It applies to specified venues that trade after 12:00am, 2:00am and 3:00am. The Late Night Code of Practice prohibits licensees from admitting customers to their premises '[b]etween 3:01am and 7:00am or closing time (which ever [sic] is earlier)'.⁴¹ The Adelaide Casino is exempt from this section.⁴²
69. On 30 November 2015 Cabinet approved an independent review of the LL Act (**the Anderson review**) to 'assess the adequacy, effectiveness and relevance of the State's present liquor licensing regime and recommend what improvements can be made to the existing liquor licensing framework and the [LL] Act...' On 29 June 2016 the findings of the Anderson review were issued, along with 129 recommendations (**the Anderson report**).⁴³ The Anderson report references the ICSG report.
70. In September 2016 AGD issued its response to the Anderson Report.⁴⁴ Notably, it indicated that the Government accepts the Anderson Report's recommendation 14 (retention of the 'Lockout' provisions 'for a further two to three years to allow for their effect to be assessed over a longer term') and partially accepts recommendation 15 (a three hour break-in-trade⁴⁵).

Clause 1(1)(e)

71. With the exception of document AGD41, AGD claims that all of the documents are exempt as Cabinet documents (clause 1(1)(e)).⁴⁶ DPC also relies on this clause with respect to its documents.⁴⁷
72. The agencies rely on the first and second Cabinet submissions.
73. Whether or not releasing the document would disclose information concerning any deliberation or decision of Cabinet is a question of fact to be decided in light of all the circumstances.⁴⁸
74. The fact that a document pre-dates Cabinet meetings does not preclude the application of clause 1(1)(e). The NSW Administrative Decisions Tribunal considered the mirror provision in the *Freedom of Information Act 1989 (NSW)* in *McGuirk v Director General, The Cabinet Office*.⁴⁹ In affirming the original decision to grant an exemption for the release of certain documents, Judicial Member Montgomery commented that:

[In] my view it is possible that a document that pre-dates a Cabinet meeting could still contain information that is 'relevant to' or 'concerns' the deliberative or decision-making process.... To the extent that any document is so central to a Cabinet meeting that it shapes the course of, or outcome of, any deliberations of Cabinet, the disclosure of its

⁴⁰ *Late Night Trading Code of Practice* under the *Liquor Licensing Act 1997*, Part 1, section 2.

⁴¹ *Late Night Trading Code of Practice* under the *Liquor Licensing Act 1997*, Part 5, section 16.

⁴² *Late Night Trading Code of Practice* under the *Liquor Licensing Act 1997*, Part 5.

⁴³ Hon Timothy R Anderson QC, 'Review of the South Australian *Liquor Licensing Act 1997*', 29 June 2016 (accessed via <http://www.agd.sa.gov.au/initiatives/review-of-sa-liquor-laws> on 24 October 2016).

⁴⁴ Attorney-General's Department, 'South Australian Liquor Licensing Report - Response to the report: Independent Review Into *Liquor Licencing [sic] Act 1997*', September 2016 (accessed via <http://www.agd.sa.gov.au/initiatives/review-of-sa-liquor-laws> on 24 October 2016).

⁴⁵ The Anderson report recommended a three hour break-in-trade between 3:00am and 9:00am, whereas the Government has expressed a preference for a break-in-trade between 3:00am and 8:00am.

⁴⁶ This is based on AGD's determination following internal review dated 9 October 2015.

⁴⁷ Discussion between one of my legal officers and an agency officer of 26 April 2016.

⁴⁸ *Anderson and Department of Special Minister of State No 2* (1986) 11 ALN N239, [27].

⁴⁹ *McGuirk v Director General, The Cabinet Office* [2007] NSWADT 9 at 37.

contents could reveal information concerning the process of deliberation or decision-making.

75. Most of the documents post-date the first Cabinet submission,⁵⁰ and all of the documents appear to pre-date the second Cabinet submission.
76. I have had regard to the contents of the first and second Cabinet submissions. I note that the first Cabinet submission was submitted for approval, and the second Cabinet submission was submitted for noting only. I accept that the first Cabinet submission necessitated Cabinet's deliberations and decision-making. I am not satisfied, however, that Cabinet was required to deliberate or make a decision about the second Cabinet submission. Accordingly, I do not think it adds to my consideration of the agency's claims under clause 1(1)(e). Put another way, if I am to be satisfied that any of the documents under review are exempt under clause 1(1)(e) it will be because they would disclose information concerning a deliberation or decision of Cabinet relating to the first Cabinet submission.
77. I have had regard to the contents of the documents claimed exempt under this clause, and the first Cabinet submission. With the exception of document DPC2, I am not satisfied that disclosure of the documents would disclose information concerning a deliberation or decision of Cabinet, or therefore that they are exempt under clause 1(1)(e). I will discuss the documents individually below.

Clause 4(3)

78. In order for a document to be exempt under clause 4(3) it must either:
- have been created by the former Bureau of Criminal Intelligence, the State Intelligence Section of SA Police, or any authority substituted for that body
- or
- be held by the State Intelligence Section of SA Police, or any authority substituted for that body.
79. SA Police claims that some of the documents represent 'State Intelligence Information'.

Clause 6(1)

80. The term 'personal affairs' is defined inclusively in section 4(1) of the FOI Act. The term has also been held to involve 'matters of private concern to an individual'⁵¹ and the 'composite collection of activities personal to the individual concerned'.⁵² The definition specifically excludes 'the personal affairs of a body corporate'.
81. In *Treglown v SA Police* the South Australian District Court said that when interpreting 'unreasonable' in clause 6, a decision maker needs:

... to consider not merely the content of the information which is sought to be disclosed, although in some circumstances that may be sufficient, but, as well, its relationship with other material known to the applicant, its level of sensitivity, the attitude of the person affected by the disclosure, the circumstances in which the information was originally obtained, whether it was already known to the applicant, the nature of the applicant's interest in it and any disclosed intentions with respect to its use.⁵³

⁵⁰ Documents DPC1 and DPC2 pre-date the first Cabinet submission.

⁵¹ *Commissioner of Police v District Court of New South Wales* (1993) 31 NSWLR 606, 625, citing *Re Williams and Registrar of Federal Court of Australia* (1985) 8 ALD 219 and *Young v Wicks* (1986) 13 FCR 85 at 88-89.

⁵² *Commissioner of Police v District Court of New South Wales* (1993) 31 NSWLR 606, 625.

⁵³ *Treglown v SA Police* (2011) 278 LSJS 231, [133], considering *Re Chandra and Minister for Immigration and Ethnic Affairs* (1984) 6 ALD N257, 259 and *Victoria Police v Marke* (2008) 23 VR 223, [18] and [106]-[103].

82. In addition, unreasonableness has ‘as its core, public interest considerations’.⁵⁴ Public interest considerations relevant to this matter are:
- fulfilling the objects of the FOI Act, including the preservation of personal privacy (the FOI Act generally does not restrict the use of information once it is released)
 - ensuring openness and accountability of the agency and its staff
 - individuals receiving fair treatment in accordance with the law, and having access to what is recorded about them.

Clause 7(1)(c)

83. ‘Business affairs’ has been held to mean activities carried out with the view to make a profit, and not just affairs derived from or to do with business. In *Stewart and Department of Transport* (1993) 1 QAR 227 at paragraph 103 the Queensland Information Commissioner’s commented:

For a matter to relate to ‘business affairs’ in the requisite sense, it should ordinarily, in my opinion, relate to the affairs of a business undertaking which is carried on in an organised way (whether full time or only intermittent) with the purpose of obtaining profits or gains (whether or not they actually be obtained).⁵⁵

84. The relevant provision under the former Queensland legislation⁵⁶ considered by the Information Commissioner mirrors clause 7(1)(c).
85. The courts in Victoria have also held that for the ‘business affairs’ exemption to apply, the information must relate to matters of business, commercial or financial nature, and ‘not merely be derived from a business or concerning it or have some connection with it’.⁵⁷
86. Regarding the phrase ‘could reasonably be expected to have an adverse effect’, the District Court has commented that:

We are in the field of predictive opinion. The question is whether there is a reasonable expectation of adverse effects... that is not fanciful, imaginary or contrived, but rather is reasonable, that is to say based on reason, namely ‘agreeable to reason: not irrational, absurd or ridiculous’...⁵⁸

87. It will be sufficient:

if any adverse effect is established... However, it must be something which can be properly categorised as an adverse effect and not something so de minimis [sic] that it would be properly regarded as inconsequential... It will be sufficient if the adverse effect is produced by that document in combination with other evidence which is before the Court on the appeal.⁵⁹

88. Clause 7(1)(c) also includes a public interest test.

Clause 8(1)

89. To succeed in claiming clause 8(1) as a basis for refusing access to a document, each of the following criteria must be satisfied:

⁵⁴ *Colakovski v Australian Telecommunications Corporation* (1991) 29 FCR 429, 438.

⁵⁵ *Stewart and Department of Transport* (1993) 1 QAR 227, [103].

⁵⁶ Section 45(1)(c) of the *Freedom of Information Act 1992* (Qld)

⁵⁷ *Re Croom and Accident Compensation Commission* (1989) 3 VAR 441; The President’s view regarding the interpretation of ‘business affairs’ was upheld on appeal to the Full Court of the Supreme Court (*Accident Compensation Commission v Croom* [1991] 2 VR 322).

⁵⁸ *Ipex Info Tech v Dept of Info Tech Services* (1997) 192 LSJS 54, applying *Re Actors Equity Association of Australia* (1985) (No 2) 7 ALD 584 at 590.

⁵⁹ *Ipex Info Tech v Dept of Info Tech Services* (1997) 192 LSJS 54, 65.

- that matter in the document relates to the purpose or results of research (other than public opinion polling that does not relate directly to a contract or other commercial transaction that is still being negotiated)
- that disclosure of the matter could reasonably be expected to have an adverse effect on the agency or other person by or on whose behalf the research is being, or is intended to be, carried out
- that disclosure of the matter would, on balance, be contrary to the public interest.

Clause 9(1)

90. With the exception of document AGD41, AGD claims that all of the documents are exempt as internal working documents (clause 9(1)).⁶⁰ DPC also relies on this clause with respect to its documents.⁶¹
91. To justify a claim that a document is exempt pursuant to clause 9(1), it must be shown that it satisfies paragraphs (a) and (b) of clause 9(1).
92. The scope of clause 9(1)(a) is wide, particularly given the words 'that relates to'.
93. The 'opinion, advice or recommendation' must nevertheless have been obtained, or the 'consultation or deliberation' must have taken place, 'in the course of, or for the purpose of, the decision-making functions of the Government, a Minister or an agency'.
94. Having considered the contents of the documents claimed exempt under this clause, I am satisfied that they all contain matter that relates to:
- an opinion, advice or recommendation that has been prepared or recorded; or
 - a consultation or deliberation that has taken place, in the course of, or for the purpose of the ICSG's and the Government's decision-making functions.
95. Accordingly, I will confine my consideration of clause 9(1) below, to whether disclosure of the documents within the scope of the narrowed applications would, on balance, be contrary to the public interest.
96. With respect to the public interest, AGD's claims that the following are public interest factors against disclosure of the documents:
- the documents are 'preliminary in nature' and concern matters 'that were not settled', and do not 'fairly disclose the reasons' for subsequent decisions
 - disclosure would 'impair AGD's decision-making process to a significant and substantial degree'
 - disclosure 'may be unfair to the decision-maker' and 'prejudice the integrity of the decision-making process'.
97. I accept that the documents are 'preliminary in nature' and concern matters 'that were not settled'. I do not consider that these are factors contrary to disclosure, however. In saying this, with the exception of document AGD41, I note that the documents under review are either clearly dated or marked as a 'draft', thereby putting them into context. In addition, they include matters that inform the final ICSG report, which is publicly available. Given the passage of time, along with the publication of the ICSG and Anderson reports and AGD's response to the recommendations contained in the Anderson report, I fail to see how disclosure of the documents in question would impair AGD's 'decision-making process', or the integrity of that process.
98. I discuss the public interest test with respect to individual documents below.

⁶⁰ This is based on AGD's determination following internal review dated 9 October 2015.

⁶¹ Discussion between one of my legal officers and an agency officer of 26 April 2016.

Clause 13(1)(a)

99. To succeed in claiming clause 13(1)(a) as a basis for refusing access to a document it is necessary to demonstrate that the relevant document contains matter 'the disclosure of which would found an action for breach of confidence'. The obligation of confidence may be contractual or equitable. In addition, and 'would' should be read as 'could'.⁶²
100. An equitable obligation of confidence is a duty not to disclose information because the information was given and received in circumstances which would make it unconscionable for the confidant to disclose the information in a way the confider has not authorised. A number of criteria must be satisfied.⁶³
- the information must be capable of being identified with specificity
 - the information must have the necessary quality of confidence
 - the information must have been received in circumstances which import an obligation of confidence
 - there must be actual or threatened misuse of the information.
101. Information that is publicly available cannot, in my view, have the necessary quality of confidence.
102. For the exemption to apply, it may also be necessary for the confider to show '(at least for confidences reposed within government), that unauthorised use would be to the detriment of the' confider.⁶⁴ If detriment is an essential element, my view is that it is easily established.

Clause 13(1)(b)

103. To succeed in claiming clause 13(1)(b) as a basis for refusing access to a document, each of the following criteria must be satisfied:
- that matter in the document was 'received under an express or inferred understanding that [it] would be kept confidential'⁶⁵
 - that disclosure of the matter might reasonably be expected to prejudice the future supply of such information to the Government or an agency
 - that disclosure of the matter would, on balance, be contrary to the public interest.

AGD documents⁶⁶***Document AGD4 (also document AGD10A)***

104. Document AGD4 (also document AGD10A) comprises a 10-page draft section for inclusion in the ICSG report.
- *Public interest test - clause 9(1)(b)*
105. I have reviewed the document in conjunction with the ICSG report. It is clearly marked as a draft. I note that the majority of the information in document AGD4 appears in the ICSG report, either in the same or a similar format. Further and in any event, I am mindful that the draft was submitted for inclusion in the ICSG report. As such, it appears that SAPOL consented to publication of the figures and statistics in document AGD4, even if they did not ultimately appear in the ICSG report.

⁶² *Bray and Smith v WorkCover* (1994) 62 SASR 218 at 226 to 227.

⁶³ *Ekaton Corporation Pty Ltd v Chapman & Department of Health* [2010] SADC 150 (Unreported, Judge Brebner, 9 December 2010) at [38] affirming the test from *Corrs Pavey Whiting & Byrne v Collector of Customs (Vic)* (1987) 14 FCR 434 at 443.

⁶⁴ *Corrs Pavey Whiting & Byrne v Collector of Customs (Vic)* (1987) 14 FCR 434 at 443. See, however, *Trevorrow v State of South Australia* (2005) 94 SASR 44.

⁶⁵ See *Re Maher and Attorney General's Department* (1985) 7 ALD 731 at 737.

⁶⁶ My discussion regarding individual documents is premised on my findings above under the headings 'Clause 1(1)(e)' and 'Clause 9(1)'.

106. In considering whether or not disclosure of the document would, on balance, be contrary to the public interest I have had regard to the document's contents and the parties' submissions, along with the following factors:

In favour of disclosure:

- fulfilling the objects of the FOI Act, particularly the public interest in promoting openness and accountability
- facilitating more effective participation by members of the public in making and administration of laws and policies in the future (for example, when the 'lock out' laws are reviewed)
- the ongoing relevance of the information to the applicant and the Association
- the time that has elapsed since the document was created
- the conclusion of the ICSG and Anderson reviews, and publication of the ICSG report
- information in the document that is publicly available

Contrary to disclosure:

- objections to disclosure raised by AGD
- publication of the ICSG report.

107. In my view, the public interest in openness and accountability, facilitating public participation in the making and administration of laws and policies, along with the ongoing relevance of the information to the applicant and the Association, are persuasive factors in this matter, and outweigh the factors against disclosure. I consider it important for the applicant, and members of the public, to have the opportunity to interpret and assess the validity of the ICSG's findings, and to have input into relevant laws in the future. I am also mindful of the fact that the document is clearly marked as a draft.

- *Conclusion*

108. I am not satisfied that document AGD4 (also document AGD10A) is exempt under clauses 1(1)(e) or 9(1).

Document AGD5

109. Document AGD5 is an email dated 1 April 2015 (timed 16:17).

- *Public interest test - clause 9(1)(b)*

110. The document contains minimal information of a routine nature. It also refers to an attachment, but the attachment is considered separately as document AGD41.

111. In considering whether or not disclosure of the document would, on balance, be contrary to the public interest I have had regard to the document's contents and the parties' submissions, along with the following factors:

In favour of disclosure:

- fulfilling the objects of the FOI Act, particularly the public interest in promoting openness and accountability
- the ongoing relevance of the information to the applicant and the Association
- the time that has elapsed since the document was created
- the conclusion of the ICSG and Anderson reviews, and publication of the ICSG report

Contrary to disclosure:

- objections to disclosure raised by AGD
- publication of the ICSG report.

112. In my view, the public interest in openness and accountability and the ongoing relevance of the information to the applicant and the Association are persuasive factors in this matter, and outweigh the factors against disclosure.

- *Conclusion*

113. I am not satisfied that document AGD5 is exempt under clauses 1(1)(e) or 9(1).

Document AGD6

114. Document AGD6 is an email dated 1 April 2015 (timed 10:39).

- *Public interest test - clause 9(1)(b)*

115. The document contains minimal information.

116. In considering whether or not disclosure of the document would, on balance, be contrary to the public interest I have had regard to the document's contents and the parties' submissions, along with the following factors:

In favour of disclosure:

- fulfilling the objects of the FOI Act, particularly the public interest in promoting openness and accountability
- the ongoing relevance of the information to the applicant and the Association
- the time that has elapsed since the document was created
- the conclusion of the ICSG and Anderson reviews, and publication of the ICSG report

Contrary to disclosure:

- objections to disclosure raised by AGD and DPC
- publication of the ICSG report.

117. In my view, the public interest in openness and accountability and the ongoing relevance of the information to the applicant and the Association are persuasive factors in this matter, and outweigh the factors against disclosure.

- *Conclusion*

118. I am not satisfied that document AGD6 is exempt under clauses 1(1)(e) or 9(1).

Document AGD7

119. Document AGD7 is an email dated 1 April 2015 (timed 10:34am).

- *Confidential material*

120. The document contains minimal information. It includes a query and refers to a figure expressed as a proportion. The figure appears as the 10th and 11th words on the second line of the document. The figure does not appear to be replicated in the ICSG report or in documents AGD4 or DPC25.

121. Having regard to the MOU, I accept that the figure is exempt for the reasons set out in relation to document AGD41.

122. Accordingly, I am satisfied that document AGD7 is exempt under clause 13(1)(b).

- *Business affairs*

123. I will now consider whether the remainder of document AGD7, that is excluding the figure, is exempt.
124. I accept it is arguable that document AGD7 contains information concerning SA Police's business affairs within the meaning of clause 7(1)(c)(i). Accordingly, I will proceed on this basis.
125. I am not satisfied that disclosure of the remainder of the document could reasonably be expected to have an adverse effect on SA Police's affairs, or prejudice the future supply of such information to the Government or to an agency, as required by clause 7(1)(c)(ii)(A). In saying this, I have had particular regard to its contents and the MOU.

- *Public interest test - clauses 7(1)(c) and 9(1)(b)*

126. In considering whether or not disclosure of the remainder of the document would, on balance, be contrary to the public interest I have had regard to the document's contents, the MOU, and the parties' submissions, along with the following factors:

In favour of disclosure:

- fulfilling the objects of the FOI Act, particularly the public interest in promoting openness and accountability
- the ongoing relevance of the information to the applicant and the Association
- the time that has elapsed since the document was created
- the conclusion of the ICSG and Anderson reviews, and publication of the ICSG report

Contrary to disclosure:

- objections to disclosure raised by AGD and DPC
- publication of the ICSG report.

127. In my view, the public interest in openness and accountability and the ongoing relevance of the information to the applicant and the Association are persuasive factors in this matter, and outweigh the factors against disclosure.

- *Conclusion*

128. I am not satisfied that the remainder of document AGD7 is exempt under clauses 1(1)(e), 7(1)(c) or 9(1).
129. Although satisfied that document AGD7 is exempt under clause 13(1)(b), I consider that it would be practicable to release it after redacting the figure (namely the 10th and 11th words on the second line of the document) in accordance with section 20(4) of the FOI Act.

Document AGD8

130. Document AGD8 is an email dated 1 April 2015 (timed 10:28am) and an attachment.

- *Confidential material*

131. The email refers to a figure expressed as a proportion. The figure appears as the fourth and fifth words on the second line of the second paragraph of the email. The attachment includes a table, which contains figures and locations. The figure in the email and the table in the attachment do not appear to be replicated in the ICSG report or in documents AGD4 or DPC25.

132. Having regard to the MOU, I accept that the figure and table are exempt for the reasons set out in relation to document AGD41.

133. Accordingly, I am satisfied that document AGD8 is exempt under clause 13(1)(b).

- *Business affairs*

134. I will now consider whether the remainder of document AGD8, that is excluding the figure and table, is exempt.

135. I accept it is arguable that document AGD8 contains information concerning SA Police's business affairs within the meaning of clause 7(1)(c)(i). Accordingly, I will proceed on this basis.

136. I am not satisfied that disclosure of the remainder of the document could reasonably be expected to have an adverse effect on SA Police's affairs, or prejudice the future supply of such information to the Government or to an agency, as required by clause 7(1)(c)(ii)(A). In saying this, I have had particular regard to its contents and the MOU.

- *Public interest test - clauses 7(1)(c) and 9(1)(b)*

137. In considering whether or not disclosure of the remainder of the document would, on balance, be contrary to the public interest I have had regard to the document's contents, the MOU, and the parties' submissions, along with the following factors:

In favour of disclosure:

- fulfilling the objects of the FOI Act, particularly the public interest in promoting openness and accountability
- the ongoing relevance of the information to the applicant and the Association
- the time that has elapsed since the document was created
- the conclusion of the ICSG and Anderson reviews, and publication of the ICSG report

Contrary to disclosure:

- objections to disclosure raised by AGD and DPC
- publication of the ICSG report.

138. In my view, the public interest in openness and accountability and the ongoing relevance of the information to the applicant and the Association are persuasive factors in this matter, and outweigh the factors against disclosure.

- *Conclusion*

139. I am not satisfied that the remainder of document AGD8 is exempt under clauses 1(1)(e), 7(1)(c) or 9(1).

140. Although satisfied that document AGD8 is exempt under clause 13(1)(b), I consider that it would be practicable to release it after redacting the figure from the email (the fourth and fifth words on the second line of the second paragraph of the email) and the table from the attachment in accordance with section 20(4) of the FOI Act.

Documents AGD9 and AGD16

141. Document AGD9 is an email dated 29 April 2015 (timed 12:17). Document AGD16 is a duplicate of AGD9 (albeit timed 12:16).

- *Confidential material*
142. The substance of the email refers to four separate figures (excluding times), all expressed as numerals⁶⁷:
- the first figure - the third word on the third line of the first paragraph
 - the second figure - the second to last word on third line of the first paragraph and the fifth word on the fourth line of the first paragraph
 - the third figure - the sixth word on the first line of the second paragraph
 - the fourth figure - the second word on the second line of the second paragraph.
143. The first figure appears in the ICSG report. The second, third and fourth figures do not appear to be replicated in the ICSG report or in documents AGD4 or DPC25.
144. Having regard to the MOU, I accept that the second, third and fourth figures are exempt for the reasons set out in relation to document AGD41.
145. Accordingly, I am satisfied that documents AGD9 and AGD16 are exempt under clause 13(1)(b).
- *Public interest test - clause 9(1)(b)*
146. I will now consider whether the remainder of documents AGD9 and AGD16, that is excluding the second, third and fourth figures, are exempt.
147. In considering whether or not disclosure of the remainder of the documents would, on balance, be contrary to the public interest I have had regard to the documents' contents and the parties' submissions, along with the following factors:
- In favour of disclosure:*
- fulfilling the objects of the FOI Act, particularly the public interest in promoting openness and accountability
 - the ongoing relevance of the information to the applicant and the Association
 - the time that has elapsed since the documents were created
 - the conclusion of the ICSG and Anderson reviews, and publication of the ICSG report
- Contrary to disclosure:*
- objections to disclosure raised by AGD
 - publication of the ICSG report.
148. In my view, the public interest in openness and accountability and the ongoing relevance of the information to the applicant and the Association are persuasive factors in this matter, and outweigh the factors against disclosure.
- *Conclusion*
149. I am not satisfied that the remainder of the documents are exempt under clauses 1(1)(e) or 9(1).
150. Although satisfied that documents AGD9 and AGD16 are exempt under clause 13(1)(b), I consider that it would be practicable to release them after redacting the second, third and fourth figures in accordance with section 20(4) of the FOI Act.

⁶⁷ For the purpose of describing their location in the body of the email, I refer to the figures as words. References to paragraphs relate to the substance of the email, excluding the addressee line (eg 'Dear...'; 'Hello ...' etc).

Document AGD10

151. Document AGD10 is an email dated 25 March 2015 (timed 16:31).

- *Public interest test - clause 9(1)(b)*

152. The email contains no contents. It also refers to an attachment, but the attachment is considered separately as documents AGD4 and AGD10A.

153. In considering whether or not disclosure of the document would, on balance, be contrary to the public interest I have had regard to the document's contents and the parties' submissions, along with the following factors:

In favour of disclosure:

- fulfilling the objects of the FOI Act, particularly the public interest in promoting openness and accountability
- the ongoing relevance of the information to the applicant and the Association
- the time that has elapsed since the document was created
- the conclusion of the ICSG and Anderson reviews, and publication of the ICSG report

Contrary to disclosure:

- objections to disclosure raised by AGD
- publication of the ICSG report.

154. In my view, the public interest in openness and accountability and the ongoing relevance of the information to the applicant and the Association are persuasive factors in this matter, and outweigh the factors against disclosure.

- *Conclusion*

155. I am not satisfied that document AGD10 is exempt under clauses 1(1)(e) or 9(1).

Document AGD11

156. Document AGD11 is an email dated 1 April 2015 (timed 16:40).

- *Public interest test - clause 9(1)(b)*

157. The email contains minimal information.

158. In considering whether or not disclosure of the document would, on balance, be contrary to the public interest I have had regard to the document's contents and the parties' submissions, along with the following factors:

In favour of disclosure:

- fulfilling the objects of the FOI Act, particularly the public interest in promoting openness and accountability
- the ongoing relevance of the information to the applicant and the Association
- the time that has elapsed since the document was created
- the conclusion of the ICSG and Anderson reviews, and publication of the ICSG report
- information in the document that is publicly available

Contrary to disclosure:

- objections to disclosure raised by AGD
- publication of the ICSG report.

159. In my view, the public interest in openness and accountability and the ongoing relevance of the information to the applicant and the Association are persuasive factors in this matter, and outweigh the factors against disclosure.

- *Conclusion*

160. I am not satisfied that document AGD11 is exempt under clauses 1(1)(e) or 9(1).

Document AGD13

161. Document AGD13 is an email dated 1 April 2015 (timed 4:17pm).

- *Public interest test - clause 9(1)(b)*

162. The email contains minimal information. It also refers to an attachment, but the attachment is considered separately as part of document AGD41.

163. In considering whether or not disclosure of the document would, on balance, be contrary to the public interest I have had regard to the document's contents and the parties' submissions, along with the following factors:

In favour of disclosure:

- fulfilling the objects of the FOI Act, particularly the public interest in promoting openness and accountability
- the ongoing relevance of the information to the applicant and the Association
- the time that has elapsed since the document was created
- the conclusion of the ICSG and Anderson reviews, and publication of the ICSG report

Contrary to disclosure:

- objections to disclosure raised by AGD
- publication of the ICSG report.

164. In my view, the public interest in openness and accountability and the ongoing relevance of the information to the applicant and the Association are persuasive factors in this matter, and outweigh the factors against disclosure.

- *Conclusion*

165. I am not satisfied that document AGD13 is exempt under clauses 1(1)(e) or 9(1).

Document AGD14

166. Document AGD14 is an email dated 29 April 2015 (timed 4:55pm).

- *Confidential material*

167. The substance of the email refers to three separate figures (excluding times), all expressed as numerals⁶⁸:

- the first figure - the first word on the first line of the second paragraph
- the second figure - the last word on first line of the second paragraph
- the third figure - the sixth word on the second line of the second paragraph.

⁶⁸ For the purpose of describing their location in the body of the email, I refer to the figures as words. References to paragraphs relate to the substance of the email, excluding the addressee line (eg 'Dear...'; 'Hello ...' etc.).

168. These figures do not appear to be replicated in the ICSG report or in documents AGD4 or DPC25.

169. Having regard to the MOU, I accept that the figures are exempt for the reasons set out in relation to document AGD41.

170. Accordingly, I am satisfied that document AGD14 is exempt under clause 13(1)(b).

- *Public interest test - clause 9(1)(b)*

171. I will now consider whether the remainder of the document, that is excluding the first, second and third figures, is exempt.

172. In considering whether or not disclosure of the remainder of the documents would, on balance, be contrary to the public interest I have had regard to the document's contents and the parties' submissions, along with the following factors:

In favour of disclosure:

- fulfilling the objects of the FOI Act, particularly the public interest in promoting openness and accountability
- the ongoing relevance of the information to the applicant and the Association
- the time that has elapsed since the document was created
- the conclusion of the ICSG and Anderson reviews, and publication of the ICSG report

Contrary to disclosure:

- objections to disclosure raised by AGD
- publication of the ICSG report.

173. In my view, the public interest in openness and accountability and the ongoing relevance of the information to the applicant and the Association are persuasive factors in this matter, and outweigh the factors against disclosure.

- *Conclusion*

174. I am not satisfied that the remainder of document AGD14 is exempt under clauses 1(1)(e) or 9(1).

175. Although satisfied that document AGD14 is exempt under clause 13(1)(b), I consider that it would be practicable to release it after redacting the first, second and third figures in accordance with section 20(4) of the FOI Act.

Document AGD17

176. Document AGD17 is an email dated 30 April 2015 (timed 10:26am). It also refers to an attachment, but the attachment is considered separately as document AGD17A.

- *Public interest test - clause 9(1)(b)*

177. The substance of the email refers to some figures, but they concern a very small subset of data referred to in other documents.

178. In considering whether or not disclosure of the document would, on balance, be contrary to the public interest I have had regard to the document's contents and the parties' submissions, along with the following factors:

In favour of disclosure:

- fulfilling the objects of the FOI Act, particularly the public interest in promoting openness and accountability
- the ongoing relevance of the information to the applicant and the Association
- the time that has elapsed since the document was created
- the conclusion of the ICSG and Anderson reviews, and publication of the ICSG report

Contrary to disclosure:

- objections to disclosure raised by AGD
- publication of the ICSG report.

179. In my view, the public interest in openness and accountability and the ongoing relevance of the information to the applicant and the Association are persuasive factors in this matter, and outweigh the factors against disclosure.

- *Conclusion*

180. I am not satisfied that document AGD17 is exempt under clauses 1(1)(e) or 9(1).

Document AGD17A

181. Document AGD17A consists of three pages of data in the form of tables and graphs:

- table - page 1
- table - top of page 2
- graph - middle of page 2
- table - bottom of page 2
- graph - page 3.

- *Confidential material*

182. The graph on page 3 appears in the ICSG report. This graph appears to have been produced on the basis of the data in the table at the bottom of page 2. The tables on page 1 and at the top of page 2 and the graph in the middle of page 2 do not appear to be replicated in the ICSG report or in documents AGD4 or DPC25.

183. Having regard to the MOU, I accept that the tables on page 1 and at the top of page 2 and the graph in the middle of page 2 are exempt for the reasons set out in relation to document AGD41.

184. Accordingly, I am satisfied that document AGD17A is exempt under clause 13(1)(b).

- *Public interest test - clause 9(1)(b)*

185. I will now consider whether the remainder of the document, that is excluding the tables on page 1 and at the top of page 2 and the graph in the middle of page 2, are exempt.

186. In considering whether or not disclosure of the remainder of the documents would, on balance, be contrary to the public interest I have had regard to the document's contents and the parties' submissions, along with the following factors:

In favour of disclosure:

- fulfilling the objects of the FOI Act, particularly the public interest in promoting openness and accountability
- the ongoing relevance of the information to the applicant and the Association
- the time that has elapsed since the document was created

- the conclusion of the ICSG and Anderson reviews, and publication of the ICSG report
 - information that is publicly available
- Contrary to disclosure:*
- objections to disclosure raised by AGD
 - publication of the ICSG report.

187. In my view, the public interest in openness and accountability and the ongoing relevance of the information to the applicant and the Association are persuasive factors in this matter, and outweigh the factors against disclosure. I have also borne in mind that the information is publicly available.

- *Conclusion*

188. I am not satisfied that the remainder of document AGD17A is exempt under clauses 1(1)(e) or 9(1).

189. Although satisfied that document AGD17A is exempt under clause 13(1)(b), I consider that it would be practicable to release it after redacting the tables on page 1 and at the top of page 2 and the graph in the middle of page 2 in accordance with section 20(4) of the FOI Act.

Document AGD18

190. Document AGD18 is an email dated 24 March 2015 (timed 12:12).

- *Business affairs*

191. It contains general information, much of which is publicly available.

192. Nevertheless, I accept it is arguable that document AGD18 contains information concerning SA Police's business affairs within the meaning of clause 7(1)(c)(i). Accordingly, I will proceed on this basis.

193. I am not satisfied that disclosure of the document could reasonably be expected to have an adverse effect on SA Police's affairs, or prejudice the future supply of such information to the Government or to an agency, as required by clause 7(1)(c)(ii)(A). In saying this, I have had particular regard to its contents, including the publicly available information.

- *Public interest test - clauses 7(1)(c) and 9(1)(b)*

194. In considering whether or not disclosure of the document would, on balance, be contrary to the public interest I have had regard to the document's contents and the parties' submissions, along with the following factors:

In favour of disclosure:

- fulfilling the objects of the FOI Act, particularly the public interest in promoting openness and accountability
- the ongoing relevance of the information to the applicant and the Association
- the time that has elapsed since the document was created
- the conclusion of the ICSG and Anderson reviews, and publication of the ICSG report
- information that is publicly available

Contrary to disclosure:

- objections to disclosure raised by AGD

- publication of the ICSG report.

195. In my view, the public interest in openness and accountability and the ongoing relevance of the information to the applicant and the Association are persuasive factors in this matter, and outweigh the factors against disclosure. I have also borne in mind information that is publicly available.

- *Conclusion*

196. I am not satisfied that document AGD18 is exempt under clauses 1(1)(e), 7(1)(c) or 9(1).

Document AGD22

197. Document AGD22 is an email dated 24 March 2015 (timed 10:40am).

- *Public interest test - clauses 7(1)(c) and 9(1)(b)*

198. It contains general information, much of which is publicly available.

199. In considering whether or not disclosure of the document would, on balance, be contrary to the public interest I have had regard to the document's contents and the parties' submissions, along with the following factors:

In favour of disclosure:

- fulfilling the objects of the FOI Act, particularly the public interest in promoting openness and accountability
- the ongoing relevance of the information to the applicant and the Association
- the time that has elapsed since the document was created
- the conclusion of the ICSG and Anderson reviews, and publication of the ICSG report
- information that is publicly available

Contrary to disclosure:

- objections to disclosure raised by AGD
- publication of the ICSG report.

200. In my view, the public interest in openness and accountability and the ongoing relevance of the information to the applicant and the Association are persuasive factors in this matter, and outweigh the factors against disclosure. I have also borne in mind information that is publicly available.

- *Conclusion*

201. I am not satisfied that document AGD22 is exempt under clauses 1(1)(e) or 9(1).

Document AGD23

202. Document AGD23 is an email dated 6 May 2015 (timed 10:47).

- *Business affairs*

203. I accept it is arguable that document AGD23 contains information concerning SA Police's business affairs within the meaning of clause 7(1)(c)(i). Accordingly, I will proceed on this basis.

204. I am not satisfied that disclosure of the document could reasonably be expected to have an adverse effect on SA Police's affairs, or prejudice the future supply of such information to the Government or to an agency, as required by clause 7(1)(c)(ii)(A). In saying this, I have had particular regard to its contents.

- *Public interest test - clauses 7(1)(c) and 9(1)(b)*

205. It is a lengthy email concerning methods of analysis. I note that the outcome is briefly addressed in the ICSG report.

206. In considering whether or not disclosure of the document would, on balance, be contrary to the public interest I have had regard to the document's contents and the parties' submissions, along with the following factors:

In favour of disclosure:

- fulfilling the objects of the FOI Act, particularly the public interest in promoting openness and accountability
- facilitating more effective participation by members of the public in making and administration of laws and policies in the future (for example, when the 'lock out' laws are reviewed)
- the ongoing relevance of the information to the applicant and the Association
- the time that has elapsed since the document was created
- the conclusion of the ICSG and Anderson reviews, and publication of the ICSG report

Contrary to disclosure:

- objections to disclosure raised by AGD
- the possibility that disclosure may inhibit frankness and candour in the future (although I consider this risk to be slight given the obligations imposed on public sector employees⁶⁹)
- publication of the ICSG report.

207. In my view, the public interest in openness and accountability, facilitating public participation in the making and administration of laws and policies, along with the ongoing relevance of the information to the applicant and the Association, are persuasive factors in this matter, and outweigh the factors against disclosure. I consider it important for the applicant, and members of the public, to have the opportunity to interpret and assess the validity of the ICSG's findings, and to have input into relevant laws in the future. I have also borne in mind information that is publicly available.

- *Conclusion*

208. I am not satisfied that document AGD23 is exempt under clauses 1(1)(e), 7(1)(c) or 9(1).

⁶⁹ Public sector employees:

- have a general duty to act honestly in the performance of their duties at all times: *Public Sector (Honesty and Accountability) Act 1995*, section 26(1)
- are required to observe the public sector code of conduct: *Public Sector Act 2009*, section 6
- should act 'with the utmost professional integrity': *Code of Ethics for the South Australian Public Sector*, 1 (issued under the *Public Sector Act 2009*)
- 'must rely on evidence to provide objective advice to Government': *Code of Ethics for the South Australian Public Sector*, 7
- should act 'truthfully, consistently, and fairly': *Code of Ethics for the South Australian Public Sector*, 9
- 'must exhibit the highest standards of professional conduct': *Code of Ethics for the South Australian Public Sector*, 10
- are to 'be diligent in the discharge of their role and duties and not act in a way that is negligent': *Code of Ethics for the South Australian Public Sector*, 11.

Document AGD24

209. Document AGD24 is a brief email dated 5 May 2015 (timed 11:59), that is routine in nature.

- *Public interest test - clause 9(1)(b)*

210. In considering whether or not disclosure of the document would, on balance, be contrary to the public interest I have had regard to the document's contents and the parties' submissions, along with the following factors:

In favour of disclosure:

- fulfilling the objects of the FOI Act, particularly the public interest in promoting openness and accountability
- the ongoing relevance of the information to the applicant and the Association
- the time that has elapsed since the document was created
- the conclusion of the ICSG and Anderson reviews, and publication of the ICSG report

Contrary to disclosure:

- objections to disclosure raised by AGD
- publication of the ICSG report.

211. In my view, the public interest in openness and accountability and the ongoing relevance of the information to the applicant and the Association are persuasive factors in this matter, and outweigh the factors against disclosure.

- *Conclusion*

212. I am not satisfied that document AGD24 is exempt under clauses 1(1)(e) or 9(1).

Document AGD26

213. Document AGD26 is an email dated 4 March 2015 (timed 3:45pm), that is routine in nature.

- *Personal affairs*

214. DPC consulted SA Police about this email. SA Police raised no objections to release of its contents, but claimed that contact telephone numbers and email addresses of its employees are exempt under clause 6(1).⁷⁰

215. The telephone numbers and government email address appear as part of an SA Police employee's signature block on an email sent in an employment capacity.

216. I am therefore not satisfied that these contact details represent the author's personal affairs.

- *Business affairs*

217. I accept it is arguable that document AGD26 contains information concerning SA Police's business affairs within the meaning of clause 7(1)(c)(i). Accordingly, I will proceed on this basis.

⁷⁰ It is part of SA Police document 12 and Ombudsman SA document DPC21.

218. I am not satisfied that disclosure of the document could reasonably be expected to have an adverse effect on SA Police's affairs, or prejudice the future supply of such information to the Government or to an agency, as required by clause 7(1)(c)(ii)(A). In saying this, I have had particular regard to its contents, the MOU, and SA Police's consultation response to DPC.

- *Public interest test - clauses 7(1)(c) and 9(1)(b)*

219. In considering whether or not disclosure of the document would, on balance, be contrary to the public interest I have had regard to the document's contents, the parties' submissions, and the MOU, along with the following factors:

In favour of disclosure:

- fulfilling the objects of the FOI Act, particularly the public interest in promoting openness and accountability
- the ongoing relevance of the information to the applicant and the Association
- the time that has elapsed since the document was created
- the conclusion of the ICSG and Anderson reviews, and publication of the ICSG report
- SA Police's views

Contrary to disclosure:

- objections to disclosure raised by AGD and DPC
- publication of the ICSG report.

220. In my view, the public interest in openness and accountability and the ongoing relevance of the information to the applicant and the Association are persuasive factors in this matter, and outweigh the factors against disclosure.

- *Conclusion*

221. I am not satisfied that document AGD26 is exempt under clauses 1(1)(e), 7(1)(c) or 9(1).

Document AGD27

222. Document AGD27 is a lengthy email dated 27 February 2015 (timed 7:08pm). It also refers to a publicly accessible attachment. AGD provided the attachment to my Office on 12 May 2016. For the sake of completeness, I will consider the attachment as part of document AGD27. In saying this, I note that the attachment is not readily identifiable from document AGD27. Information in the document, in addition to the attachment, is also publicly accessible.

223. I note that DPC consulted SA Police about this email, and SA Police objected to disclosure of the majority of it, namely from the third paragraph onwards, claiming clauses 4(3) and 9(1).⁷¹

- *Law enforcement and public safety*

224. The document was created by a DPC employee working for the ICSG. Accordingly, I am not satisfied that it was created by the former Bureau of Criminal Intelligence, the State Intelligence Section or an authority substituted for that body, as required by clause 4(3).

⁷¹ It is part of SA Police document 12 and Ombudsman SA document DPC21.

225. Clause 4(3) may also be satisfied if the document is held by the State Intelligence Section of SA Police or an authority substituted for that body.
226. I note that multiple agencies may each hold a copy of the same document. There is currently no evidence from which I may be satisfied that the document is in fact held by the State Intelligence Section of SA Police or an authority substituted for that body. Further and in any event, even if a copy of the document is so held, I am not satisfied that this clause applies given that the document I am reviewing is held by DPC.
- *Business affairs*
227. I accept it is arguable that document AGD27 contains information concerning SA Police's business affairs within the meaning of clause 7(1)(c)(i). Accordingly, I will proceed on this basis.
228. I consider there is a possibility that disclosure of the document could reasonably be expected to have an adverse effect on SA Police's affairs and general standing, as required by clause 7(1)(c)(ii)(A). That said, I consider this risk to be minimal given the contents of the document as a whole, as well as information in the document that is reflected in the ICSG report. I am not satisfied that disclosure of the document would prejudice the future supply of such information to the Government or to an agency, however. In saying this, I note that information in the document is reflected in the ICSG report, and that SA Police is aware of the document.
- *Public interest test - clauses 7(1)(c) and 9(1)(b)*
229. In considering whether or not disclosure of the document would, on balance, be contrary to the public interest I have had regard to the document's contents and the parties' submissions, along with the following factors:
- In favour of disclosure:*
- fulfilling the objects of the FOI Act, particularly the public interest in promoting openness and accountability
 - facilitating more effective participation by members of the public in making and administration of laws and policies in the future (for example, when the 'lock out' laws are reviewed)
 - the ongoing relevance of the information to the applicant and the Association
 - the time that has elapsed since the document was created
 - the conclusion of the ICSG and Anderson reviews, and publication of the ICSG report
 - information that is publicly available
- Contrary to disclosure:*
- objections to disclosure raised by AGD, DPC and SA Police
 - the effect disclosure may have on SA Police's affairs and general standing (although as indicated above, I consider this to be only a slight risk)
 - the possibility that disclosure may inhibit frankness and candour in the future (although I consider this risk to be slight given the obligations imposed on public sector employees, referred to above)
 - publication of the ICSG report.
230. In my view, the public interest in openness and accountability, facilitating public participation in the making and administration of laws and policies, along with the ongoing relevance of the information to the applicant and the Association, are persuasive factors in this matter, and outweigh the factors against disclosure. I consider it important for the applicant, and members of the public, to have the opportunity to

interpret and assess the validity of the ICSG's findings, and to have input into relevant laws in the future. I have also borne in mind information that is publicly available.

- *Conclusion*

231. I am not satisfied that document AGD27 is exempt under clauses 1(1)(e), 4(3), 7(1)(c) or 9(1).

Document AGD28

232. Document AGD28 is a brief email dated 27 April 2015 (timed 16:47).

- *Business affairs*

233. I accept it is arguable that document AGD28 contains information concerning SA Police's business affairs within the meaning of clause 7(1)(c)(i). Accordingly, I will proceed on this basis.

234. I consider that there is a possibility that disclosure of the document could reasonably be expected to have an adverse effect on SA Police's affairs and general standing, as required by clause 7(1)(c)(ii)(A). That said, I consider this risk to be minimal given the contents of the document as a whole, as well as information in the ICSG report. I am not satisfied that disclosure of the document would prejudice the future supply of such information to the Government or to an agency, however. In saying this, I note that SA Police is clearly aware of the issue outlined in the document, even if it is not aware of the document itself.

- *Public interest test - clauses 7(1)(c) and 9(1)(b)*

235. In considering whether or not disclosure of the document would, on balance, be contrary to the public interest I have had regard to the document's contents and the parties' submissions, along with the following factors:

In favour of disclosure:

- fulfilling the objects of the FOI Act, particularly the public interest in promoting openness and accountability
- facilitating more effective participation by members of the public in making and administration of laws and policies in the future (for example, when the 'lock out' laws are reviewed)
- the ongoing relevance of the information to the applicant and the Association
- the time that has elapsed since the document was created
- the conclusion of the ICSG and Anderson reviews, and publication of the ICSG report

Contrary to disclosure:

- objections to disclosure raised by AGD
- the effect disclosure may have on SA Police's affairs and general standing (although as indicated above, I consider this to be only a slight risk)
- the possible effect that disclosure may have on SA Police's relationship with other agencies (although I consider the risk to be slight given SA Police's awareness of the issue and information in the ICSG report)
- the possibility that disclosure may inhibit frankness and candour in the future (although I consider this risk to be slight given the obligations imposed on public sector employees, referred to above)
- publication of the ICSG report.

236. In my view, the public interest in openness and accountability, facilitating public participation in the making and administration of laws and policies, along with the ongoing relevance of the information to the applicant and the Association, are persuasive factors in this matter, and outweigh the factors against disclosure. I consider it important for the applicant, and members of the public, to have the opportunity to interpret and assess the validity of the ICSG's findings, and to have input into relevant laws in the future.

- *Conclusion*

237. I am not satisfied that document AGD28 is exempt under clauses 1(1)(e), 7(1)(c) or 9(1).

Documents AGD31, AGD32, AGD33, AGD35 and AGD36

238. Document AGD31 is an email dated 27 April 2015 (timed 11:16am). Document AGD32 is an email dated 24 April 2015 (timed 4:55am). Document AGD33 is an email dated 23 April 2015 (timed 1:57pm). Document AGD35 is an email dated 23 April 2015 (timed 1:42pm). Document AGD36 is an email dated 23 April 2015 (timed 9:23pm). They are all emails in the same chain and concern the same issue.

- *Public interest test - clause 9(1)(b)*

239. In considering whether or not disclosure of the documents would, on balance, be contrary to the public interest I have had regard to the documents' contents and the parties' submissions, along with the following factors:

In favour of disclosure:

- fulfilling the objects of the FOI Act, particularly the public interest in promoting openness and accountability
- the ongoing relevance of the information to the applicant and the Association
- the time that has elapsed since the documents were created
- the conclusion of the ICSG and Anderson reviews, and publication of the ICSG report

Contrary to disclosure:

- objections to disclosure raised by AGD
- publication of the ICSG report.

240. In my view, the public interest in openness and accountability and the ongoing relevance of the information to the applicant and the Association are persuasive factors in this matter, and outweigh the factors against disclosure.

- *Conclusion*

241. I am not satisfied that documents AGD31, AGD32, AGD33, AGD35 and AGD36 are exempt under clauses 1(1)(e) or 9(1).

Document AGD39

242. Document AGD39 is a brief email dated 5 March 2015 (timed 11:21am), of a routine nature.

- *Public interest test - clause 9(1)(b)*

243. In considering whether or not disclosure of the document would, on balance, be contrary to the public interest I have had regard to the document's contents and the parties' submissions, along with the following factors:

In favour of disclosure:

- fulfilling the objects of the FOI Act, particularly the public interest in promoting openness and accountability
- the ongoing relevance of the information to the applicant and the Association
- the time that has elapsed since the document was created
- the conclusion of the ICSG and Anderson reviews, and publication of the ICSG report

Contrary to disclosure:

- objections to disclosure raised by AGD
- publication of the ICSG report.

244. In my view, the public interest in openness and accountability and the ongoing relevance of the information to the applicant and the Association are persuasive factors in this matter, and outweigh the factors against disclosure.

- *Conclusion*

245. I am not satisfied that document AGD39 is exempt under clauses 1(1)(e) or 9(1).

Document AGD41

246. Document AGD41 is a USB containing SA Police data. The USB includes three separate Excel spreadsheets:

- 'APs', which contains 109040 lines of data, including headings
- 'Calculations', which contains 113 lines of data, including headings and some blank lines
- 'IRs', which contains 107709 lines of data, including headings.

247. AGD claims that the document is exempt as a document affecting the conduct of research and a document containing confidential material. SA Police also claims that the raw data is exempt.

- *Confidential material*

248. Having regard to the MOU and various communications between SAPOL and the ICSG, I am satisfied that:

- matter in document 41 was 'received under an express or inferred understanding that [it] would be kept confidential'⁷²
- disclosure of the matter might reasonably be expected to prejudice SAPOL's future supply of such information to the Government or an agency

249. In considering whether or not disclosure of the document would, on balance, be contrary to the public interest I have had regard to the document's contents and the parties' submissions, along with the following factors:

In favour of disclosure:

- fulfilling the objects of the FOI Act, particularly the public interest in promoting openness and accountability

⁷² See *Re Maher and Attorney General's Department* (1985) 7 ALD 731 at 737.

- facilitating more effective participation by members of the public in making and administration of laws and policies in the future (for example, when the 'lock out' laws are reviewed)
- the ongoing relevance of the information to the applicant and the Association
- the time that has elapsed since the document was created
- the conclusion of the ICSG and Anderson reviews, and publication of the ICSG report

Contrary to disclosure:

- objections to disclosure raised by AGD and SAPOL
- the understanding that the document would be kept confidential
- the likelihood that disclosure of the document might reasonably be expected to prejudice SAPOL's future supply of such information to the Government or an agency
- publication of the ICSG report.

250. In my view, the public interest in treating the document confidentially, as intended by the ICSG and SAPOL, along with the effect that disclosure may have on the future supply of such information, given the importance of such information to Government decisions, are persuasive factors in this matter, and outweigh the factors in favour of disclosure.

- *Conclusion*

251. I am satisfied that document AGD41 is exempt under clause 13(1)(b). In my view, given the document's contents, it would not be practicable to provide partial access (as envisaged by section 20(4)).

252. Given my finding above, I do not consider it necessary to consider whether or not document AGD41 is also exempt under clause 8(1).

DPC documents⁷³

Document DPC1

253. For the purpose of my review, document DPC1 consists of an email dated 17 October 2014 (timed 5:28pm).⁷⁴ I consider the remainder of the document to be outside the scope of the narrowed application.

254. The document contains minimal information of a routine nature.

- *Public interest test - clause 9(1)(b)*

255. In considering whether or not disclosure of the document would, on balance, be contrary to the public interest I have had regard to the document's contents and the parties' submissions, along with the following factors:

In favour of disclosure:

- fulfilling the objects of the FOI Act, particularly the public interest in promoting openness and accountability
- the ongoing relevance of the information to the applicant and the Association
- the time that has elapsed since the document was created
- the conclusion of the ICSG and Anderson reviews, and publication of the ICSG report

⁷³ My discussion regarding individual documents is premised on my findings above under the headings 'Clause 1(1)(e)' and 'Clause 9(1)'.

⁷⁴ There are two copies of the same email in the document.

Contrary to disclosure:

- objections to disclosure raised by AGD and DPC
- publication of the ICSG report.

256. In my view, the public interest in openness and accountability and the ongoing relevance of the information to the applicant and the Association are persuasive factors in this matter, and outweigh the factors against disclosure.

- *Conclusion*

257. I am not satisfied that document DPC1 is exempt under clauses 1(1)(e) or 9(1). It should be released after redacting all but the two copies of the email dated 17 October 2014 (timed 5:28pm).

Document DPC2

258. Document DPC2 consists of one page of handwritten research dated 22 October 2014. It comprises a heading and five dot-points.

- *Cabinet document*

259. Having regard to the contents of the document and the first Cabinet submission, I accept that document DPC2 contains matter the disclosure of which would disclose information concerning a deliberation and decision of Cabinet. I say this even though the document pre-dates the first Cabinet submission. In my view, the matter concerning Cabinet's deliberations and decision-making for the purpose of clause 1(1)(e) is limited to the first six words on the first line of the first dot-point.

260. The exceptions set out in clause 1(2) do not apply.

261. Accordingly, I am satisfied that document DPC2 is exempt under clause 1(1)(e).

- *Public interest test - clause 9(1)(b)*

262. I will now consider whether or not the remainder of the document, that is after excluding the first six words on the first line of the first dot-point, is exempt under clause 9(1).

263. In considering whether or not disclosure of the document would, on balance, be contrary to the public interest I have had regard to the document's contents and the parties' submissions, along with the following factors:

In favour of disclosure:

- fulfilling the objects of the FOI Act, particularly the public interest in promoting openness and accountability
- the ongoing relevance of the information to the applicant and the Association
- the time that has elapsed since the document was created
- the conclusion of the ICSG and Anderson reviews, and publication of the ICSG report

Contrary to disclosure:

- objections to disclosure raised by AGD and DPC
- publication of the ICSG report.

264. In my view, the public interest in openness and accountability and the ongoing relevance of the information to the applicant and the Association are persuasive factors in this matter, and outweigh the factors against disclosure.

- *Conclusion*

265. I am not satisfied that the remainder of the document is exempt under clause 9(1).

266. Although satisfied that document DPC2 is exempt under clause 1(1)(e), I consider that it would be practicable to release it after redacting the first six words on the first line of the first dot-point.

Document DPC3

267. Document DPC3 consists of two pages of handwritten meeting notes dated 4 December 2014.

268. DPC consulted SA Police about parts of this document, and SA Police raised no objections to release of those parts.⁷⁵

- *Whether part of the document is within the scope of the application*

269. In addition to its claims of exemption, DPC claims that eight lines of text at the bottom of page 2 are outside the scope of the application. Having regard to the terms of the application, in particular the third and fourth dot-points which are limited to correspondence between the ICSG and SAPOL or OCSAR, I agree. I will therefore exclude it from further consideration.

- *Public interest test - clause 9(1)(b)*

270. In considering whether or not disclosure of the document would, on balance, be contrary to the public interest I have had regard to the document's contents and the parties' submissions, along with the following factors:

In favour of disclosure:

- fulfilling the objects of the FOI Act, particularly the public interest in promoting openness and accountability
- the ongoing relevance of the information to the applicant and the Association
- the time that has elapsed since the document was created
- the conclusion of the ICSG and Anderson reviews, and publication of the ICSG report
- SA Police's views

Contrary to disclosure:

- objections to disclosure raised by AGD and DPC
- publication of the ICSG report.

271. In my view, the public interest in openness and accountability and the ongoing relevance of the information to the applicant and the Association are persuasive factors in this matter, and outweigh the factors against disclosure.

- *Conclusion*

272. I am not satisfied that document DPC3 is exempt under clauses 1(1)(e) or 9(1). It should be released after redacting the eight lines of text at the bottom of page 2 that are outside the scope of the application.

⁷⁵ It is SA Police document 3.

Document DPC4

273. Document DPC4 consists of two pages of handwritten meeting notes dated 22 December 2014.

- *Public interest test - clause 9(1)(b)*

274. In considering whether or not disclosure of the document would, on balance, be contrary to the public interest I have had regard to the document's contents and the parties' submissions, along with the following factors:

In favour of disclosure:

- fulfilling the objects of the FOI Act, particularly the public interest in promoting openness and accountability
- the ongoing relevance of the information to the applicant and the Association
- the time that has elapsed since the document was created
- the conclusion of the ICSG and Anderson reviews, and publication of the ICSG report

Contrary to disclosure:

- objections to disclosure raised by AGD and DPC
- publication of the ICSG report.

275. In my view, the public interest in openness and accountability and the ongoing relevance of the information to the applicant and the Association are persuasive factors in this matter, and outweigh the factors against disclosure.

- *Conclusion*

276. I am not satisfied that document DPC4 is exempt under clauses 1(1)(e) or 9(1).

Document DPC5

277. For the purpose of my review, document DPC5 consists of:

- partial email dated 29 January 2015 (timed 11:41am)
- emails dated 29 January 2015 (timed 15:56; 4:48pm)
- email dated 30 January 2015 (timed 16:24), including handwritten notes
- email dated 3 February 2015 (timed 11:15am).

- *Public interest test - clause 9(1)(b)*

278. In considering whether or not disclosure of the document would, on balance, be contrary to the public interest I have had regard to the document's contents and the parties' submissions, along with the following factors:

In favour of disclosure:

- fulfilling the objects of the FOI Act, particularly the public interest in promoting openness and accountability
- the ongoing relevance of the information to the applicant and the Association
- the time that has elapsed since the document was created
- the conclusion of the ICSG and Anderson reviews, and publication of the ICSG report

Contrary to disclosure:

- objections to disclosure raised by AGD and DPC
- publication of the ICSG report.

279. In my view, the public interest in openness and accountability and the ongoing relevance of the information to the applicant and the Association are persuasive factors in this matter, and outweigh the factors against disclosure.

- *Conclusion*

280. I am not satisfied that document DPC5 is exempt under clauses 1(1)(e) or 9(1).

Document DPC6

281. For the purpose of my review, document DPC6 consists of:

- emails dated 13 February 2015 (timed 11:14am; 1:31pm; 1:58pm)
- emails dated 18 February 2015 (timed 11:48am; 11:56am; 11:58am).

282. I consider the remainder of the document to be outside the scope of the narrowed application.

- *Public interest test - clause 9(1)(b)*

283. In considering whether or not disclosure of the document would, on balance, be contrary to the public interest I have had regard to the document's contents and the parties' submissions, along with the following factors:

In favour of disclosure:

- fulfilling the objects of the FOI Act, particularly the public interest in promoting openness and accountability
- the ongoing relevance of the information to the applicant and the Association
- the time that has elapsed since the document was created
- the conclusion of the ICSG and Anderson reviews, and publication of the ICSG report

Contrary to disclosure:

- objections to disclosure raised by AGD and DPC
- publication of the ICSG report.

284. In my view, the public interest in openness and accountability and the ongoing relevance of the information to the applicant and the Association are persuasive factors in this matter, and outweigh the factors against disclosure.

- *Conclusion*

285. I am not satisfied that document DPC6 is exempt under clauses 1(1)(e) or 9(1). It should be released after redacting all but the emails dot-pointed above

Documents DPC7 and DPC8

286. For the purpose of my review, document DPC7 consists of:

- emails dated 4 February 2015 (timed 3:05pm; 3:47pm) (duplicated in document DPC8)
- email dated 12 February 2015 (timed 9:45am).

287. I consider the remainder of the documents to be outside the scope of the narrowed application.

- *Public interest test - clause 9(1)(b)*

288. In considering whether or not disclosure of the documents would, on balance, be contrary to the public interest I have had regard to the documents' contents and the parties' submissions, along with the following factors:

In favour of disclosure:

- fulfilling the objects of the FOI Act, particularly the public interest in promoting openness and accountability
- the ongoing relevance of the information to the applicant and the Association
- the time that has elapsed since the document was created
- the conclusion of the ICSG and Anderson reviews, and publication of the ICSG report

Contrary to disclosure:

- objections to disclosure raised by AGD and DPC
- publication of the ICSG report.

289. In my view, the public interest in openness and accountability and the ongoing relevance of the information to the applicant and the Association are persuasive factors in this matter, and outweigh the factors against disclosure.

- *Conclusion*

290. I am not satisfied that documents DPC7 and DPC8 are exempt under clauses 1(1)(e) or 9(1). They should be released after redacting all but the emails dot-pointed above.

Document DPC9

291. For the purpose of my review, document DPC9 consists of:

- emails dated 29 January 2015 (timed 4:54pm; 4:55pm)
- email dated 3 February 2015 (timed 4:18pm)
- email dated 4 February 2015 (timed 8:28am).

292. DPC consulted SA Police about these emails.⁷⁶ With the possible exception of the email dated 3 February 2015 (timed 4:18pm), SA Police raised no objections to release of their contents, but claimed that contact telephone numbers and email addresses of its employees are exempt under clause 6(1). Regarding the email dated 3 February 2015 (timed 4:18pm), SA Police may be claiming it is exempt under clauses 4(3) and 9(1).

293. I consider the remainder of the document to be outside the scope of the narrowed application.

- *Law enforcement and public safety*

294. The email dated 3 February 2015 (timed 4:18pm) was created by a DPC employee. Accordingly, I am not satisfied that it was created by the former Bureau of Criminal Intelligence, the State Intelligence Section or an authority substituted for that body, as required by clause 4(3).

295. Clause 4(3) may also be satisfied if the document is held by the State Intelligence Section of SA Police or an authority substituted for that body.

296. I note that multiple agencies may each hold a copy of the same document. There is currently no evidence from which I may be satisfied that the email in question is in fact

⁷⁶ It is SA Police document 5. Some of the emails also appear as part of SA Police document 12.

held by the State Intelligence Section of SA Police or an authority substituted for that body. Further and in any event, even if a copy of the email is so held, I am not satisfied that this clause applies given that the email I am reviewing is held by DPC.

- *Personal affairs*

297. The telephone numbers and government email address of one SA Police employee appear as part of their signature blocks on emails sent in an employment capacity. One other SA Police employee's email address and landline number appear in the body of the email, and are clearly provided in an employment capacity.

298. I am therefore not satisfied that these contact details represent the employees' personal affairs.

- *Public interest test - clause 9(1)(b)*

299. In considering whether or not disclosure of the document would, on balance, be contrary to the public interest I have had regard to the document's contents and the parties' submissions, along with the following factors:

In favour of disclosure:

- fulfilling the objects of the FOI Act, particularly the public interest in promoting openness and accountability
- the ongoing relevance of the information to the applicant and the Association
- the time that has elapsed since the document was created
- the conclusion of the ICSG and Anderson reviews, and publication of the ICSG report

Contrary to disclosure:

- objections to disclosure raised by AGD and DPC
- publication of the ICSG report.

300. In my view, the public interest in openness and accountability and the ongoing relevance of the information to the applicant and the Association are persuasive factors in this matter, and outweigh the factors against disclosure.

- *Conclusion*

301. I am not satisfied that document DPC9 is exempt under clauses 1(1)(e), 4(3), 6(1) or 9(1). It should be released after redacting all but the emails dot-pointed above.

Document DPC10

302. For the purpose of my review, document DPC10 consists of emails dated 18 February 2015 (timed 11:34am⁷⁷; 11:45am; 1:19pm; 1:36pm⁷⁸).

303. I consider the remainder of the document to be outside the scope of the narrowed application.

- *Public interest test - clause 9(1)(b)*

304. In considering whether or not disclosure of the document would, on balance, be contrary to the public interest I have had regard to the document's contents and the parties' submissions, along with the following factors:

⁷⁷ There are three copies of the same email in the document.

⁷⁸ There are three copies of the same email in the document.

In favour of disclosure:

- fulfilling the objects of the FOI Act, particularly the public interest in promoting openness and accountability
- the ongoing relevance of the information to the applicant and the Association
- the time that has elapsed since the document was created
- the conclusion of the ICSG and Anderson reviews, and publication of the ICSG report

Contrary to disclosure:

- objections to disclosure raised by AGD and DPC
- publication of the ICSG report.

305. In my view, the public interest in openness and accountability and the ongoing relevance of the information to the applicant and the Association are persuasive factors in this matter, and outweigh the factors against disclosure.

- *Conclusion*

306. I am not satisfied that document DPC10 is exempt under clauses 1(1)(e) or 9(1). It should be released after redacting all but the emails dated 18 February 2015 (timed 11:34am⁷⁹; 11:45am; 1:19pm; 1:36pm⁸⁰).

Document DPC11

307. For the purpose of my review, document DPC11 consists of emails dated 26 February 2015 (timed 12:50pm; 1:17pm). It refers to an attachment. The attachment is considered separated as document DPC12.

308. DPC consulted SA Police about this document.⁸¹ SA Police claims that it is exempt under clauses 4(3) and 9(1).

- *Law enforcement and public safety*

309. One of the emails was created by an OCS employee. The other email was created by a DPC employee. Accordingly, I am not satisfied that they were created by the former Bureau of Criminal Intelligence, the State Intelligence Section or an authority substituted for that body, as required by clause 4(3).

310. Clause 4(3) may also be satisfied if the document is held by the State Intelligence Section of SA Police or an authority substituted for that body.

311. I note that multiple agencies may each hold a copy of the same document. There is currently no evidence from which I may be satisfied that the document in question is in fact held by the State Intelligence Section of SA Police or an authority substituted for that body. Further and in any event, even if a copy of the document is so held, I am not satisfied that this clause applies given that the document I am reviewing is held by DPC.

- *Business affairs*

312. I accept it is arguable that document DPC11 contains information concerning SA Police's business affairs within the meaning of clause 7(1)(c)(i). Accordingly, I will proceed on this basis.

⁷⁹ There are three copies of the same email in the document.

⁸⁰ There are three copies of the same email in the document.

⁸¹ It is SA Police document 7 and part of SA Police document 12.

313. I am not satisfied that disclosure of the document could reasonably be expected to have an adverse effect on SA Police's affairs or general standing, or that it would prejudice the future supply of such information to the Government or to an agency, including SA Police, as required by clause 7(1)(c)(ii)(A). In saying this, I note that the substance of the document details a common, SA Police procedure. It is a procedure about which a number of affected people are undoubtedly aware. The document does not disclose the results of the procedure referred to.

- *Public interest test - clauses 7(1)(c) and 9(1)(b)*

314. In considering whether or not disclosure of the document would, on balance, be contrary to the public interest I have had regard to the document's contents and the parties' submissions, along with the following factors:

In favour of disclosure:

- fulfilling the objects of the FOI Act, particularly the public interest in promoting openness and accountability
- facilitating more effective participation by members of the public in making and administration of laws and policies in the future (for example, when the 'lock out' laws are reviewed)
- the ongoing relevance of the information to the applicant and the Association
- the time that has elapsed since the document was created
- the conclusion of the ICSG and Anderson reviews, and publication of the ICSG report
- information that appears to be common knowledge, at least amongst certain groups within the community

Contrary to disclosure:

- objections to disclosure raised by AGD, DPC and SA Police
- publication of the ICSG report.

315. In my view, the public interest in openness and accountability, facilitating public participation in the making and administration of laws and policies, along with the ongoing relevance of the information to the applicant and the Association, are persuasive factors in this matter, and outweigh the factors against disclosure. I consider it important for the applicant, and members of the public, to have the opportunity to interpret and assess the validity of the ICSG's findings, and to have input into relevant laws in the future. I have also borne in mind information that appears to be common knowledge.

- *Conclusion*

316. I am not satisfied that document DPC11 is exempt under clauses 1(1)(e), 4(3), 7(1)(c) or 9(1).

Document DPC12

317. For the purpose of my review, document DPC12 consists of undated data input questions and responses.

318. DPC consulted SA Police about this document.⁸² SA Police claims that it is exempt under clauses 4(3) and 9(1).

⁸² It is SA Police document 8.

- *Law enforcement and public safety*

319. The author of this documents appears to have been SA Police. That said, there is no evidence from which I may be satisfied that it was created by the former Bureau of Criminal Intelligence, the State Intelligence Section or an authority substituted for that body, as required by clause 4(3).
320. Clause 4(3) may also be satisfied if the document is held by the State Intelligence Section of SA Police or an authority substituted for that body.
321. I note that multiple agencies may each hold a copy of the same document. There is currently no evidence from which I may be satisfied that the document in question is in fact held by the State Intelligence Section of SA Police or an authority substituted for that body. Further and in any event, even if a copy of the document is so held, I am not satisfied that this clause applies given that the document I am reviewing is held by DPC.

- *Business affairs*

322. I accept it is arguable that document DPC12 contains information concerning SA Police's business affairs within the meaning of clause 7(1)(c)(i). Accordingly, I will proceed on this basis.
323. I am not satisfied that disclosure of the document could reasonably be expected to have an adverse effect on SA Police's affairs, or that it would prejudice the future supply of such information to the Government or to an agency, including SA Police, as required by clause 7(1)(c)(ii)(A). In saying this, I note that the substance of the document details a common, SA Police procedure. It is a procedure about which a number of affected people are undoubtedly aware. The document does not disclose the results of the procedure referred to.

- *Public interest test - clauses 7(1)(c) and 9(1)(b)*

324. In considering whether or not disclosure of the document would, on balance, be contrary to the public interest I have had regard to the document's contents and the parties' submissions, along with the following factors:

In favour of disclosure:

- fulfilling the objects of the FOI Act, particularly the public interest in promoting openness and accountability
- facilitating more effective participation by members of the public in making and administration of laws and policies in the future (for example, when the 'lock out' laws are reviewed)
- the ongoing relevance of the information to the applicant and the Association
- the time that has elapsed since the document was created
- the conclusion of the ICSG and Anderson reviews, and publication of the ICSG report
- information that appears to be common knowledge, at least amongst certain groups within the community

Contrary to disclosure:

- objections to disclosure raised by AGD, DPC and SA Police
- publication of the ICSG report.

325. In my view, the public interest in openness and accountability, facilitating public participation in the making and administration of laws and policies, along with the ongoing relevance of the information to the applicant and the Association, are persuasive factors in this matter, and outweigh the factors against disclosure. I consider

it important for the applicant, and members of the public, to have the opportunity to interpret and assess the validity of the ICSG's findings, and to have input into relevant laws in the future. I have also borne in mind information that appears to be common knowledge.

- *Conclusion*

326. I am not satisfied that document DPC11 is exempt under clauses 1(1)(e), 4(3), 7(1)(c) or 9(1).

Document DPC13

327. Document DPC13 is a three-page letter from the Adelaide Casino.

328. In addition to DPC's claims of exemption, I will consider whether or not document DPC13 is exempt as a document concerning business affairs or a document containing confidential material.

329. The Adelaide Casino is exempt from the 'lockout' provision in the Late Night Code. It is public knowledge that the Adelaide Casino supports this exemption.⁸³ Other licensees and the Association, however, have expressed strong opposition to it.⁸⁴

- *Business affairs*

330. The Adelaide Casino is clearly operating as a business. I accept that the document contains information concerning the Adelaide Casino's 'business affairs' within the meaning of clause 7(1)(c)(i).⁸⁵

331. I am not satisfied that disclosure of the document could reasonably be expected to have an adverse effect on the Adelaide Casino's affairs. In saying this, I have borne in mind its uniqueness as a licensed venue; the outcomes of both the ICSG and Anderson reviews; and the fact that some of the information in the document has been reported publicly.⁸⁶

332. I am not satisfied that disclosure of the document would prejudice the future supply of such information to the Government or an agency either. The Adelaide Casino is in an advantageous position, having been granted an exemption from the Late Night Code's 'lockout' provision. In my view, the Adelaide Casino has a financial interest in preserving its position, and is therefore unlikely to be deterred from communicating with agencies and the Government in the future as a result of the disclosure of this document. Again, I consider it relevant that some of the information in the document is publicly available.

⁸³ Internal Consultancy Services Group, 'Review of Codes Established under the *Liquor Licensing Act 1997*: Late Night Code of Practice General Code of Practice', 30 April 2015, p62.

⁸⁴ Internal Consultancy Services Group, 'Review of Codes Established under the *Liquor Licensing Act 1997*: Late Night Code of Practice General Code of Practice', 30 April 2015, p62; Late Night Venue Association of SA Incorporated, *Submission to the SA Liquor Licensing Review, 29 January 2016*, p4 available at: http://www.agd.sa.gov.au/sites/agd.sa.gov.au/files/documents/Liquor%20licensing/Submissions-%20Feb2016/43_Late%20Night%20Venue%20Association%20of%20SA%20Inc.pdf (accessed on 22 May 2016).

⁸⁵ See for example *Stewart and Department of Transport* (1993) 1 QAR 227.

⁸⁶ Internal Consultancy Services Group, 'Review of Codes Established under the *Liquor Licensing Act 1997*: Late Night Code of Practice General Code of Practice', 30 April 2015, p62; Late Night Venue Association of SA Incorporated, *Submission to the SA Liquor Licensing Review, 29 January 2016*, available at: http://www.agd.sa.gov.au/sites/agd.sa.gov.au/files/documents/Liquor%20licensing/Submissions-%20Feb2016/43_Late%20Night%20Venue%20Association%20of%20SA%20Inc.pdf (accessed on 22 May 2016). I have omitted reference to the page number so as to avoid disclosing claimed exempt matter.

- *Confidential material*

333. There is currently no evidence before me from which I may be satisfied that a contractual or equitable obligation of confidence exists (as required by clause 13(1)(a)) or that the document was 'received under an express or inferred understanding that [it] would be kept confidential' (as required by clause 13(1)(b)).⁸⁷ In saying this, I note that neither agency has raised such a claim and the Adelaide Casino only alluded to reliance on clauses 13(1)(a) and 13(1)(b) during a discussion with a DPC officer, without more.

- *Public interest test - clauses 7(1)(c), 9(1)(b), 13(1)(b)*

334. The public interest test applies to a number of the exemption claims raised by AGD, DPC and the Adelaide Casino.

335. In considering whether or not disclosure of the document would, on balance, be contrary to the public interest I have had regard to the document's contents and the parties' submissions, along with the following factors:

In favour of disclosure:

- fulfilling the objects of the FOI Act, particularly the public interest in promoting openness and accountability
- the ongoing relevance of the information to the applicant and the Association
- the time that has elapsed since the document was created
- the conclusion of the ICSG and Anderson reviews
- information in the document that is publicly available

Contrary to disclosure:

- objections to disclosure raised by DPC, AGD and the Adelaide Casino
- publication of the ICSG report.

336. In my view, the public interest in openness and accountability, the ongoing relevance of the information to the applicant and the Association, and the fact that some of the information in the document is publicly accessible are persuasive factors in this matter, and outweigh the factors against disclosure.

- *Conclusion*

337. I am not satisfied that document DPC13 is exempt under clauses 1(1)(e), 7(1)(c), 9(1), 13(1)(a) or 13(1)(b).

Document DPC14

338. For the purpose of my review, document DPC14 consists of emails dated 3 March 2015 (timed 10:05am; 10:34am). The email timed 10:05am refers to an attachment, but DPC has been unable to identify it.

339. DPC consulted SA Police about these emails,⁸⁸ and SA Police raised no objections to their release.

340. I consider the remainder of the document to be outside the scope of the narrowed application.

⁸⁷ See *Re Maher and Attorney General's Department* (1985) 7 ALD 731 at 737.

⁸⁸ It is part of SA Police document 10.

- *Public interest test - clause 9(1)(b)*

341. In considering whether or not disclosure of the document would, on balance, be contrary to the public interest I have had regard to the document's contents and the parties' submissions, along with the following factors:

In favour of disclosure:

- fulfilling the objects of the FOI Act, particularly the public interest in promoting openness and accountability
- the ongoing relevance of the information to the applicant and the Association
- the time that has elapsed since the document was created
- the conclusion of the ICSG and Anderson reviews, and publication of the ICSG report
- SA Police's views

Contrary to disclosure:

- objections to disclosure raised by AGD and DPC
- publication of the ICSG report.

342. In my view, the public interest in openness and accountability and the ongoing relevance of the information to the applicant and the Association are persuasive factors in this matter, and outweigh the factors against disclosure.

- *Conclusion*

343. I am not satisfied that document DPC14 is exempt under clauses 1(1)(e) or 9(1). It should be released after redacting all but the emails dated 3 March 2015 (timed 10:05am; 10:34am).

Document DPC16

344. For the purpose of my review, document DPC16 consists of:

- email dated 19 February 2015 (timed 1:59pm)
- email dated 20 February 2015 (timed 3:23pm)
- email dated 23 February 2015 (timed 2:20pm).

345. DPC consulted SA Police about these emails,⁸⁹ and SA Police raised no objections to their release.

346. I consider the remainder of the document to be outside the scope of the narrowed application.

- *Business affairs*

347. I accept it is arguable that document DPC16 contains information concerning SA Police's business affairs within the meaning of clause 7(1)(c)(i). Accordingly, I will proceed on this basis.

348. I am not satisfied that disclosure of the document could reasonably be expected to have an adverse effect on SA Police's affairs, or that it would prejudice the future supply of such information to the Government or to an agency, as required by clause 7(1)(c)(ii)(A). In saying this, I have had particular regard to its contents.

⁸⁹ It is part of SA Police document 10.

- *Public interest test - clauses 7(1)(c) and 9(1)(b)*

349. In considering whether or not disclosure of the document would, on balance, be contrary to the public interest I have had regard to the document's contents and the parties' submissions, along with the following factors:

In favour of disclosure:

- fulfilling the objects of the FOI Act, particularly the public interest in promoting openness and accountability
- the ongoing relevance of the information to the applicant and the Association
- the time that has elapsed since the document was created
- the conclusion of the ICSG and Anderson reviews, and publication of the ICSG report
- SA Police's views

Contrary to disclosure:

- objections to disclosure raised by AGD and DPC
- publication of the ICSG report.

350. In my view, the public interest in openness and accountability and the ongoing relevance of the information to the applicant and the Association are persuasive factors in this matter, and outweigh the factors against disclosure.

- *Conclusion*

351. I am not satisfied that document DPC16 is exempt under clauses 1(1)(e), 7(1)(c) or 9(1). It should be released after redacting all but the emails dot-pointed above.

Document DPC17

352. Document DPC17 consists of four pages of meeting notes dated 4 March 2015.

353. DPC consulted SA Police about this document,⁹⁰ and SA Police raised no objections to its release.

- *Business affairs*

354. I accept it is arguable that document DPC16 contains information concerning SA Police's business affairs within the meaning of clause 7(1)(c)(i). Accordingly, I will proceed on this basis.

355. I am not satisfied that disclosure of the document could reasonably be expected to have an adverse effect on SA Police's affairs, as required by clause 7(1)(c)(ii)(A). In saying this, I have had particular regard to its contents.

356. That said, I accept that disclosure of one person's initials on page 1 of the document (halfway down the page to the left of a dash) could prejudice the future supply of information to the Government or an agency. In saying this, I have borne in mind the capacity, and conditions, in which the information was provided,⁹¹ along with additional information contained in another document under review.⁹²

⁹⁰ It is SA Police document 11.

⁹¹ See documents DPC14 and DPC16.

⁹² Document DPC16.

- *Public interest test - clauses 7(1)(c) and 9(1)(b)*

357. In considering whether or not disclosure of the document would, on balance, be contrary to the public interest I have had regard to the document's contents and the parties' submissions, along with the following factors:

In favour of disclosure:

- fulfilling the objects of the FOI Act, particularly the public interest in promoting openness and accountability
- the ongoing relevance of the information to the applicant and the Association
- the time that has elapsed since the document was created
- the conclusion of the ICSG and Anderson reviews, and publication of the ICSG report
- SA Police's views

Contrary to disclosure:

- objections to disclosure raised by AGD and DPC
- publication of the ICSG report
- with respect to the initials on page 1 only - the capacity, and conditions, in which the information was provided, and additional information contained in another document.

358. With respect to the initials, I consider that the capacity, and conditions, in which the information was provided, in conjunction with information contained in another document under review, outweigh the factors in favour of disclosure.

359. Accordingly, I am satisfied that document DPC17 is exempt under clauses 7(1)(c) and 9(1)

360. In my view, the public interest in openness and accountability and the ongoing relevance of the information to the applicant and the Association are persuasive factors in this matter, and outweigh the factors against disclosure of the remaining information, that is, excluding the initials.

- *Conclusion*

361. I am not satisfied that document DPC17 is exempt under clause 1(1)(e).

362. Although satisfied that document DPC17 is exempt under clauses 7(1)(c) and 9(1), I consider that it would be practicable to release it after redacting the initials on page 1 (halfway down the page to the left of a dash) in accordance with section 20(4) of the FOI Act.

Document DPC18

363. For the purpose of my review, document DPC18 consists of:

- email dated 26 March 2015 (timed 2:23pm)
- emails dated 1 April 2015 (timed 10:28am⁹³; 10:31am; 10:34am; 10:37am; 10:39am (three separate emails); 10:40am).

364. DPC consulted SA Police about the email dated 26 March 2015 (timed 2:23pm), albeit in a different format.⁹⁴ SA Police claims that this email is exempt under clause 9(1).

365. I consider the remainder of the document to be outside the scope of the narrowed application.

⁹³ This email is a duplicate of document AGD8, but the formatting is different.

⁹⁴ It is SA Police document 16.

- *Confidential material*

366. The email dated 1 April 2015 (timed 10:28am) refers to a figure expressed as a proportion. The figure appears as the seventh and eighth words on second line of the second first paragraph of the email. The figure in the email does not appear to be replicated in the ICSG report or in documents AGD4 or DPC25.

367. Having regard to the MOU, I accept that the figure is exempt for the reasons set out in relation to document AGD41.

368. Accordingly, I am satisfied that document DPC18 is exempt under clause 13(1)(b).

- *Business affairs*

369. I will now consider whether the remainder of document DPC18, that is excluding the figure, is exempt.

370. I accept it is arguable that document DPC18 contains information concerning SA Police's business affairs within the meaning of clause 7(1)(c)(i). Accordingly, I will proceed on this basis.

371. I consider there is a possibility that disclosure of the document could reasonably be expected to have an adverse effect on SA Police's affairs and general standing, as required by clause 7(1)(c)(ii)(A). That said, I consider this risk to be minimal given the contents of the document as a whole, as well as information in the ICSG report. I am not satisfied that disclosure of the document would prejudice the future supply of such information to the Government or to an agency, however. In saying this, I note that SA Police is clearly aware of the issue outlined in the document, even if it is not aware of the document itself.

- *Public interest test - clauses 7(1)(c) and 9(1)(b)*

372. In considering whether or not disclosure of the remainder of the document would, on balance, be contrary to the public interest I have had regard to the document's contents and the parties' submissions, along with the following factors:

In favour of disclosure:

- fulfilling the objects of the FOI Act, particularly the public interest in promoting openness and accountability
- facilitating more effective participation by members of the public in making and administration of laws and policies in the future (for example, when the 'lock out' laws are reviewed)
- the ongoing relevance of the information to the applicant and the Association
- the time that has elapsed since the document was created
- the conclusion of the ICSG and Anderson reviews, and publication of the ICSG report

Contrary to disclosure:

- objections to disclosure raised by AGD, DPC and SA Police
- the effect disclosure may have on SA Police's affairs and general standing (although as indicated above, I consider this to be only a slight risk)
- the possible effect that disclosure may have on SA Police's relationship with other agencies (although I consider the risk to be slight given SA Police's awareness of the issue and information in the ICSG report)
- publication of the ICSG report.

373. In my view, the public interest in openness and accountability, facilitating public participation in the making and administration of laws and policies, along with the ongoing relevance of the information to the applicant and the Association, are persuasive factors in this matter, and outweigh the factors against disclosure. I consider it important for the applicant, and members of the public, to have the opportunity to interpret and assess the validity of the ICSG's findings, and to have input into relevant laws in the future.

- *Conclusion*

374. I am not satisfied that the remainder of document DPC18 is exempt under clauses 1(1)(e), 7(1)(c) or 9(1).

375. Although satisfied that document DPC18 is exempt under clause 13(1)(b), I consider that it would be practicable to release it after redacting the figure from the email dated 1 April 2015 (timed 10:28am) (the seventh and eighth words on second line of the second first paragraph of the email) in accordance with section 20(4) of the FOI Act, along with the emails other than those dot-pointed above.

Document DPC19

376. For the purpose of my review, document DPC19 consists of:

- emails dated 5 March 2015 (timed 14:29; 2:30pm;⁹⁵ 2:39pm; 2:59pm)
- emails dated 24 March 2015 (timed 3:36pm; 3:57pm; 4:53pm).

377. The email 24 March 2015 (timed 3:36pm) refers to a publicly available attachment.

378. I consider the remainder of the document to be outside the scope of the narrowed application.

- *Personal affairs*

379. DPC consulted SA Police about the email dated 5 March 2015 (timed 2:30pm; 2:59pm; 2:39pm; 14:29). SA Police raised no objections to release of their contents, but claimed that contact telephone numbers and email addresses of its employees are exempt under clause 6(1).⁹⁶

380. The telephone numbers and government email address appear as part of an SA Police employee's signature block on the email timed 14:29, which was sent in an employment capacity.

381. I am therefore not satisfied that these contact details represent the author's personal affairs.

- *Business affairs*

382. I accept it is arguable that the email dated 24 March 2015 (timed 3:57pm) contains information concerning SA Police's business affairs within the meaning of clause 7(1)(c)(i). Accordingly, I will proceed on this basis.

383. I consider there is a possibility that disclosure of the document could reasonably be expected to have an adverse effect on SA Police's affairs and general standing, as required by clause 7(1)(c)(ii)(A). That said, I consider this risk to be minimal given the

⁹⁵ The emails timed 14:29 and 2:30pm include largely the same substance. The email timed 14:29 includes a signature block and disclaimer, however.

⁹⁶ It is part of SA Police document 13.

contents of the document as a whole, as well as information in the ICSG report. I am not satisfied that disclosure of the document would prejudice the future supply of such information to the Government or to an agency, however. In saying this, I note that SA Police is clearly aware of the issue outlined in the email, even if it is not aware of the email itself.

- *Public interest test - clauses 7(1)(c) and 9(1)(b)*

384. In considering whether or not disclosure of the document would, on balance, be contrary to the public interest I have had regard to the document's contents and the parties' submissions, along with the following factors:

In favour of disclosure:

- fulfilling the objects of the FOI Act, particularly the public interest in promoting openness and accountability
- the ongoing relevance of the information to the applicant and the Association
- the time that has elapsed since the document was created
- the conclusion of the ICSG and Anderson reviews, and publication of the ICSG report

Contrary to disclosure:

- objections to disclosure raised by AGD, DPC and SA Police
- the effect disclosure may have on SA Police's affairs and general standing (although as indicated above, I consider this to be only a slight risk)
- the possible effect that disclosure may have on SA Police's relationship with other agencies (although I consider the risk to be slight given SA Police's awareness of the issue and information in the ICSG report)
- publication of the ICSG report.

385. In my view, the public interest in openness and accountability, facilitating public participation in the making and administration of laws and policies, along with the ongoing relevance of the information to the applicant and the Association, are persuasive factors in this matter, and outweigh the factors against disclosure. I consider it important for the applicant, and members of the public, to have the opportunity to interpret and assess the validity of the ICSG's findings, and to have input into relevant laws in the future.

- *Conclusion*

386. I am not satisfied that document DPC19 is exempt under clauses 1(1)(e), 6(1), 7(1)(c) or 9(1). It should be released after redacting all but the emails dot-pointed above.

Document DPC20

387. For the purpose of my review, document DPC31 consists of an email dated 5 March 2015 (timed 10:58am). It refers to an attachment, but DPC has been unable to identify it.

388. I consider the remainder of the document to be outside the scope of the narrowed application. In my view, the mobile telephone number of a DPC employee, provided in the body of the email dated 5 March 2015 (timed 10:58am), for administrative purposes, is also outside the scope of the narrowed application.

- *Personal affairs*

389. DPC consulted SA Police about the email.⁹⁷ SA Police raised no objections to disclosure of its contents, but raised a general claim of exemption over contact telephone numbers under clause 6(1). Given my finding above, however, I do not intend to consider this clause.

- *Public interest test - clause 9(1)(b)*

390. In considering whether or not disclosure of the document would, on balance, be contrary to the public interest I have had regard to the document's contents and the parties' submissions, along with the following factors:

In favour of disclosure:

- fulfilling the objects of the FOI Act, particularly the public interest in promoting openness and accountability
- the ongoing relevance of the information to the applicant and the Association
- the time that has elapsed since the document was created
- the conclusion of the ICSG and Anderson reviews, and publication of the ICSG report
- SA Police's views

Contrary to disclosure:

- objections to disclosure raised by AGD and DPC
- publication of the ICSG report.

391. In my view, the public interest in openness and accountability and the ongoing relevance of the information to the applicant and the Association are persuasive factors in this matter, and outweigh the factors against disclosure.

- *Conclusion*

392. I am not satisfied that document DPC20 is exempt under clauses 1(1)(e) or 9(1). It should be released after redacting the mobile telephone number from the email dated 5 March 2015 (timed 10:58am), and emails other than the email dated 5 March 2015 (timed 10:58am).

Document DPC21

393. For the purpose of my review, document DPC21 consists of

- email dated 27 February 2015 (timed 7:08pm)⁹⁸
- email dated 4 March 2015 (timed 15:44)⁹⁹
- emails dated 5 March 2015 (timed 11:21am; 2:30pm¹⁰⁰).

394. I consider the remainder of the document to be outside the scope of the narrowed application.

395. DPC consulted SA Police about the emails dated 5 March 2015 (timed 11:21am),¹⁰¹ 4 March 2015 (timed 15:44),¹⁰² and 27 February 2015 (timed 7:08pm).¹⁰³ SA Police

⁹⁷ It is part of SA Police document 12.

⁹⁸ This email is a duplicate of document AGD27.

⁹⁹ This email is a duplicate of document AGD26.

¹⁰⁰ The email timed 2:30pm is a duplicate of part of document DPC19.

¹⁰¹ It is part of SA Police document 13.

¹⁰² It is part of SA Police document 13. SA Police document 12 also included a version of the email dated 4 March 2015 (timed 3:45pm).

¹⁰³ It is part of SA Police document 12. SA Police document 12 also included a version of the email dated 4 March 2015 (timed 3:45pm).

claimed that contact telephone numbers and email addresses exempt under clause 6(1). It also objected to disclosure of the majority of the email dated 27 February 2015 (timed 7:08pm), namely from the third paragraph onwards, claiming clauses 4(3) and 9(1).

- *Law enforcement and public safety*

396. The email dated 27 February 2015 (timed 7:08pm) was created by a DPC employee working for the ICSG. Accordingly, I am not satisfied that it was created by the former Bureau of Criminal Intelligence, the State Intelligence Section or an authority substituted for that body, as required by clause 4(3).
397. Clause 4(3) may also be satisfied if the document is held by the State Intelligence Section of SA Police or an authority substituted for that body.
398. I note that multiple agencies may each hold a copy of the same document. There is currently no evidence from which I may be satisfied that the document is in fact held by the State Intelligence Section of SA Police or an authority substituted for that body. Further and in any event, even if a copy of the document is so held, I am not satisfied that this clause applies given that the document I am reviewing is held by DPC.

- *Personal affairs*

399. The telephone numbers and government email address appear as part of signature blocks of an SA Police employee and an ICSG employee, which were sent in an employment capacity.
400. I am therefore not satisfied that these contact details represent the authors' personal affairs.

- *Business affairs*

401. I accept it is arguable that the emails dated 27 February 2015 (timed 7:08pm) and dated 4 March 2015 (timed 15:44) contain information concerning SA Police's business affairs within the meaning of clause 7(1)(c)(i). Accordingly, I will proceed on this basis.
402. I consider there is a possibility that disclosure of the document could reasonably be expected to have an adverse effect on SA Police's affairs and general standing, as required by clause 7(1)(c)(ii)(A). That said, I consider this risk to be minimal given the contents of the document as a whole, as well as information in the document that is reflected in the ICSG report. I am not satisfied that disclosure of the document would prejudice the future supply of such information to the Government or to an agency, however. In saying this, I note that information in the document is reflected in the ICSG report, and that SA Police is aware of the document.
403. In considering whether or not disclosure of the document would, on balance, be contrary to the public interest I have had regard to the document's contents and the parties' submissions, along with the following factors:

In favour of disclosure:

- fulfilling the objects of the FOI Act, particularly the public interest in promoting openness and accountability
- facilitating more effective participation by members of the public in making and administration of laws and policies in the future (for example, when the 'lock out' laws are reviewed)
- the ongoing relevance of the information to the applicant and the Association

- the time that has elapsed since the document was created
- the conclusion of the ICSG and Anderson reviews, and publication of the ICSG report
- information that is publicly available

Contrary to disclosure:

- objections to disclosure raised by AGD, DPC and SA Police
- the effect disclosure may have on SA Police's affairs and general standing (although as indicated above, I consider this to be only a slight risk)
- the possibility that disclosure may inhibit frankness and candour in the future (although I consider this risk to be slight given the obligations imposed on public sector employees, referred to above)
- publication of the ICSG report.

404. In my view, the public interest in openness and accountability, facilitating public participation in the making and administration of laws and policies, along with the ongoing relevance of the information to the applicant and the Association, are persuasive factors in this matter, and outweigh the factors against disclosure. I consider it important for the applicant, and members of the public, to have the opportunity to interpret and assess the validity of the ICSG's findings, and to have input into relevant laws in the future. I have also borne in mind information that is publicly available.

- *Conclusion*

405. I am not satisfied that document DPC21 is exempt under clauses 1(1)(e), 4(3), 6(1), 7(1)(c) or 9(1). It should be released after redacting all but the emails dot-pointed above.

Document DPC23

406. Document DPC23 consists of a one-page letter from SAPOL to the ICSG dated 12 March 2015.

407. DPC consulted SA Police about this document,¹⁰⁴ and SA Police raised no objections to its release.

- *Business affairs*

408. I accept it is arguable that document DPC23 contains information concerning SA Police's business affairs within the meaning of clause 7(1)(c)(i). Accordingly, I will proceed on this basis.

409. I am not satisfied that disclosure of the document could reasonably be expected to have an adverse effect on SA Police's affairs, or prejudice the future supply of such information to the Government or to an agency, as required by clause 7(1)(c)(ii)(A). In saying this, I have had particular regard to the views expressed by SA Police in its consultation response to DPC.

- *Public interest test - clauses 7(1)(c) and 9(1)(b)*

410. In considering whether or not disclosure of the document would, on balance, be contrary to the public interest I have had regard to the document's contents and the parties' submissions, along with the following factors:

¹⁰⁴ It is SA Police document 15.

In favour of disclosure:

- fulfilling the objects of the FOI Act, particularly the public interest in promoting openness and accountability
- the ongoing relevance of the information to the applicant and the Association
- the time that has elapsed since the document was created
- the conclusion of the ICSG and Anderson reviews, and publication of the ICSG report
- SA Police's views

Contrary to disclosure:

- objections to disclosure raised by AGD and DPC
- publication of the ICSG report.

411. In my view, the public interest in openness and accountability and the ongoing relevance of the information to the applicant and the Association are persuasive factors in this matter, and outweigh the factors against disclosure.

- *Conclusion*

412. I am not satisfied that document DPC23 is exempt under clauses 1(1)(e), 7(1)(c) or 9(1).

Document DPC24

413. Document DPC24 consists of an email dated 26 March 2015 (timed 2:23pm). It is a duplicate of part of document DPC18, albeit in a different format. It refers to an attachment, which appears to be document 25.

- *Public interest test - clauses 7(1)(c) and 9(1)(b)*

414. In considering whether or not disclosure of the document would, on balance, be contrary to the public interest I have had regard to the document's contents and the parties' submissions, along with the following factors:

In favour of disclosure:

- fulfilling the objects of the FOI Act, particularly the public interest in promoting openness and accountability
- the ongoing relevance of the information to the applicant and the Association
- the time that has elapsed since the document was created
- the conclusion of the ICSG and Anderson reviews, and publication of the ICSG report

Contrary to disclosure:

- objections to disclosure raised by AGD and DPC
- publication of the ICSG report.

415. In my view, the public interest in openness and accountability and the ongoing relevance of the information to the applicant and the Association are persuasive factors in this matter, and outweigh the factors against disclosure.

- *Conclusion*

416. I am not satisfied that document DPC24 is exempt under clauses 1(1)(e) or 9(1).

Document DPC25

417. Document DPC25 consists of undated draft findings, totalling 14 pages, and includes a couple of comments added electronically.

418. DPC consulted SA Police about this document.¹⁰⁵ SA Police advised that it was not a SA Police document, and expressed no views about its release.

- *Public interest test - clause 9(1)(b)*

419. I note that the majority of the information in document DPC25 appears in the ICSG report, either in the same or a similar format. Further and in any event, I am mindful that the draft appears to have been submitted for inclusion in the ICSG report. As such, it appears that SAPOL had consented to publication of the figures and statistics in document DPC25, even if they did not ultimately appear in the ICSG report. Document DPC25 is similar to document AGD4 in many respects.

420. I have reviewed the document in conjunction with the ICSG report. It is clearly marked as a draft.

421. In considering whether or not disclosure of the document would, on balance, be contrary to the public interest I have had regard to the document's contents and the parties' submissions, along with the following factors:

In favour of disclosure:

- fulfilling the objects of the FOI Act, particularly the public interest in promoting openness and accountability
- facilitating more effective participation by members of the public in making and administration of laws and policies in the future (for example, when the 'lock out' laws are reviewed)
- the ongoing relevance of the information to the applicant and the Association
- the time that has elapsed since the document was created
- the conclusion of the ICSG and Anderson reviews, and publication of the ICSG report
- information in the document that is publicly available

Contrary to disclosure:

- objections to disclosure raised by AGD
- publication of the ICSG report.

422. In my view, the public interest in openness and accountability, facilitating public participation in the making and administration of laws and policies, along with the ongoing relevance of the information to the applicant and the Association, are persuasive factors in this matter, and outweigh the factors against disclosure. I consider it important for the applicant, and members of the public, to have the opportunity to interpret and assess the validity of the ICSG's findings, and to have input into relevant laws in the future. I am also mindful of the fact that the document is clearly marked as a draft.

- *Conclusion*

423. I am not satisfied that document DPC25 is exempt under clauses 1(1)(e) or 9(1).

Document DPC26

424. For the purpose of my review, document DPC26 consists of emails dated 1 April 2015 (timed 10:28am¹⁰⁶; 10:34am¹⁰⁷; 10:39am (two separate emails¹⁰⁸)).

¹⁰⁵ It is SA Police document 17.

¹⁰⁶ This is a duplicate of document AGD8 and part of document DPC18.

¹⁰⁷ This is a duplicate of document AGD7.

¹⁰⁸ One of the emails timed 10:39am is a duplicate of document AGD6.

- *Confidential material*

425. For the same reasons given in relation to documents AGD7 and AGD8, I consider the figures in the emails timed 10:34am (the 10th and 11th words on the second line of the email) and 10:28am (the fourth and fifth words on the second line of the second paragraph of the email), respectively, to be exempt under clause 13(1)(b).

426. Accordingly, I am satisfied that document DPC26 is exempt under clause 13(1)(b).

- *Business affairs*

427. I will now consider whether the remainder of document DPC26, that is excluding the figures described above, is exempt.

428. I accept it is arguable that the emails dated 1 April 2015 (timed 10:28am¹⁰⁹; 10:34am¹¹⁰) contain information concerning SA Police's business affairs within the meaning of clause 7(1)(c)(i). Accordingly, I will proceed on this basis.

429. I am not satisfied that disclosure of the remainder of the document could reasonably be expected to have an adverse effect on SA Police's affairs, or prejudice the future supply of such information to the Government or to an agency, as required by clause 7(1)(c)(ii)(A). In saying this, I have had particular regard to its contents and the MOU.

- *Public interest test - clauses 7(1)(c) and 9(1)(b)*

430. In considering whether or not disclosure of the remainder of the document would, on balance, be contrary to the public interest I have had regard to the document's contents and the parties' submissions, along with the following factors:

In favour of disclosure:

- fulfilling the objects of the FOI Act, particularly the public interest in promoting openness and accountability
- the ongoing relevance of the information to the applicant and the Association
- the time that has elapsed since the document was created
- the conclusion of the ICSG and Anderson reviews, and publication of the ICSG report

Contrary to disclosure:

- objections to disclosure raised by AGD
- publication of the ICSG report.

431. In my view, the public interest in openness and accountability and the ongoing relevance of the information to the applicant and the Association are persuasive factors in this matter, and outweigh the factors against disclosure.

- *Conclusion*

432. I am not satisfied that the remainder of document DPC26 is exempt under clauses 1(1)(e) or 9(1).

433. Although I am satisfied that document DPC26 is exempt under clause 13(1)(b), I consider that it would be practicable to release it after redacting the figures (namely the 10th and 11th words on the second line of the email timed 10:34am and the fourth and fifth words on the second line of the second paragraph of the email timed 10:28am) in accordance with section 20(4) of the FOI Act.

¹⁰⁹ This is a duplicate of document AGD8 and part of document DPC18.

¹¹⁰ This is a duplicate of document AGD7.

Document DPC27

434. Document DPC27 consists of emails dated 1 May 2015 (timed 10:24am¹¹¹; 11:00am; 3:50pm).

- *Public interest test - clause 9(1)(b)*

435. In considering whether or not disclosure of the remainder of the document would, on balance, be contrary to the public interest I have had regard to the document's contents and the parties' submissions, along with the following factors:

In favour of disclosure:

- fulfilling the objects of the FOI Act, particularly the public interest in promoting openness and accountability
- the ongoing relevance of the information to the applicant and the Association
- the time that has elapsed since the document was created
- the conclusion of the ICSG and Anderson reviews, and publication of the ICSG report

Contrary to disclosure:

- objections to disclosure raised by AGD
- publication of the ICSG report.

436. In my view, the public interest in openness and accountability and the ongoing relevance of the information to the applicant and the Association are persuasive factors in this matter, and outweigh the factors against disclosure.

- *Conclusion*

437. I am not satisfied that document DPC27 is exempt under clauses 1(1)(e) or 9(1).

Document DPC28

438. For the purpose of my review, document DPC28 consists of:

- email dated 23 April 2015 (timed 1:57pm)
- emails dated 27 April 2015 (timed 3:20pm; 12:05pm)
- email dated 29 April 2015 (timed 4:31pm)
- email dated 1 May 2015 (timed 10:24am¹¹²).

439. I consider the remainder of the document to be outside the scope of the narrowed application. In my view, the mobile telephone number of an AGD employee, provided in at the bottom of the email dated 23 April 2015 (timed 1:57pm), for administrative purposes, is also outside the scope of the narrowed application.

440. DPC consulted SA Police about all but the email dated 23 April 2015 (timed 1:57pm). SA Police claimed telephone numbers and email addresses exempt under clause 6(1), and the email dated 29 April 2015 (timed 4:31pm) exempt under clause 9(1).¹¹³

- *Personal affairs*

441. The remaining telephone numbers and a government email address appear as part of signature blocks of an SA Police employee and an ICSG employee, which were sent in an employment capacity.

¹¹¹ There are two copies of the same email in the document.

¹¹² This is a duplicate of an email in document DPC27.

¹¹³ The emails were part of SA Police document 21.

442. I am therefore not satisfied that these contact details represent the authors' personal affairs.

- *Business affairs*

443. I accept it is arguable that the emails dated 27 April 2015 (timed 3:20pm) and 29 April 2015 (timed 4:31pm) contain information concerning SA Police's business affairs within the meaning of clause 7(1)(c)(i). Accordingly, I will proceed on this basis.

444. I am not satisfied that disclosure of the remainder of the document could reasonably be expected to have an adverse effect on SA Police's affairs, or prejudice the future supply of such information to the Government or to an agency, as required by clause 7(1)(c)(ii)(A). In saying this, I have had particular regard to its contents, and information in the ICSG report.

- *Public interest test - clauses 7(1)(c) and 9(1)(b)*

445. In considering whether or not disclosure of the document would, on balance, be contrary to the public interest I have had regard to the document's contents and the parties' submissions, along with the following factors:

In favour of disclosure:

- fulfilling the objects of the FOI Act, particularly the public interest in promoting openness and accountability
- facilitating more effective participation by members of the public in making and administration of laws and policies in the future (for example, when the 'lock out' laws are reviewed)
- the ongoing relevance of the information to the applicant and the Association
- the time that has elapsed since the document was created
- the conclusion of the ICSG and Anderson reviews, and publication of the ICSG report

Contrary to disclosure:

- objections to disclosure raised by AGD, DPC and SA Police
- the possibility that disclosure may inhibit frankness and candour in the future (although I consider this risk to be slight given the obligations imposed on public sector employees, referred to above)
- publication of the ICSG report.

446. In my view, the public interest in openness and accountability, facilitating public participation in the making and administration of laws and policies, along with the ongoing relevance of the information to the applicant and the Association, are persuasive factors in this matter, and outweigh the factors against disclosure. I consider it important for the applicant, and members of the public, to have the opportunity to interpret and assess the validity of the ICSG's findings, and to have input into relevant laws in the future.

- *Conclusion*

447. I am not satisfied that document DPC28 is exempt under clauses 1(1)(e), 7(1)(c) or 9(1). It should be released after redacting the mobile telephone number from the email dated 23 April 2015 (timed 1:57pm), along with all but the emails dot-pointed above.

Document DPC29

448. Document DPC29 consists of an email dated 1 May 2015 (timed 3:10pm). It refers to an attachment, but DPC has been unable to identify it. The document appears to be classified, but the email itself is routine in nature.
449. In my view, however, the mobile telephone number of a DPC employee, provided in the body of the email, for administrative purposes, is outside the scope of the narrowed application.
450. DPC consulted SA Police about this document.¹¹⁴ SA Police advised that it was not a SA Police document, and expressed no views about its release.

- *Public interest test - clause 9(1)(b)*

451. In considering whether or not disclosure of the document would, on balance, be contrary to the public interest I have had regard to the document's contents and the parties' submissions, along with the following factors:

In favour of disclosure:

- fulfilling the objects of the FOI Act, particularly the public interest in promoting openness and accountability
- the ongoing relevance of the information to the applicant and the Association
- the time that has elapsed since the document was created
- the conclusion of the ICSG and Anderson reviews, and publication of the ICSG report

Contrary to disclosure:

- objections to disclosure raised by AGD and DPC
- publication of the ICSG report.

452. In my view, the public interest in openness and accountability and the ongoing relevance of the information to the applicant and the Association are persuasive factors in this matter, and outweigh the factors against disclosure.

- *Conclusion*

453. I am not satisfied that document DPC29 is exempt under clauses 1(1)(e) or 9(1). It should be released after redacting the mobile telephone number from the email.

Document DPC30

454. Document DPC30 consists of an email dated 24 April 2015 (timed 4:21pm). It refers to an attachment, but DPC has been unable to identify it.
455. DPC consulted SA Police about this email.¹¹⁵ SA Police advised that it was not a SA Police document, and expressed no views about its release.
456. I consider the remainder of the document to be outside the scope of the narrowed application.

¹¹⁴ It is part of SA Police document 22.

¹¹⁵ It is part of SA Police document 22.

- *Public interest test - clause 9(1)(b)*

457. In considering whether or not disclosure of the document would, on balance, be contrary to the public interest I have had regard to the document's contents and the parties' submissions, along with the following factors:

In favour of disclosure:

- fulfilling the objects of the FOI Act, particularly the public interest in promoting openness and accountability
- the ongoing relevance of the information to the applicant and the Association
- the time that has elapsed since the document was created
- the conclusion of the ICSG and Anderson reviews, and publication of the ICSG report

Contrary to disclosure:

- objections to disclosure raised by AGD and DPC
- publication of the ICSG report.

458. In my view, the public interest in openness and accountability and the ongoing relevance of the information to the applicant and the Association are persuasive factors in this matter, and outweigh the factors against disclosure.

- *Conclusion*

459. I am not satisfied that document DPC30 is exempt under clauses 1(1)(e) or 9(1). It should be released after redacting all but the email dated 24 April 2015 (timed 4:21pm).

Document DPC31

460. For the purpose of my review, document DPC31 consists of:

- emails dated 6 May 2015 (timed 11:41am; 3:40pm¹¹⁶; 3:54pm)
- emails dated 7 May 2015 (timed 10:45am; 11:21am; 2:36pm).

461. It refers to an attachment, but DPC has been unable to identify it.

462. I consider the remainder of the document to be outside the scope of the narrowed application.

463. DPC consulted SA Police about this document. SA Police claimed that it was exempt under clause 9(1), if it was not a Cabinet document.

- *Business affairs*

464. I accept it is arguable that the emails other than the dated 6 May 2015 (timed 3:54pm) contain information concerning SA Police's business affairs within the meaning of clause 7(1)(c)(i). Accordingly, I will proceed on this basis.

465. I am not satisfied that disclosure of the remainder of the document could reasonably be expected to have an adverse effect on SA Police's affairs, or prejudice the future supply of such information to the Government or to an agency, as required by clause 7(1)(c)(ii)(A). In saying this, I have had particular regard to its contents and information in the ICSG report.

¹¹⁶ There are two copies of the same email in the document.

- *Public interest test - clauses 7(1)(c) and 9(1)(b)*

466. In considering whether or not disclosure of the document would, on balance, be contrary to the public interest I have had regard to the document's contents and the parties' submissions, along with the following factors:

In favour of disclosure:

- fulfilling the objects of the FOI Act, particularly the public interest in promoting openness and accountability
- facilitating more effective participation by members of the public in making and administration of laws and policies in the future (for example, when the 'lock out' laws are reviewed)
- the ongoing relevance of the information to the applicant and the Association
- the time that has elapsed since the document was created
- the conclusion of the ICSG and Anderson reviews, and publication of the ICSG report

Contrary to disclosure:

- objections to disclosure raised by AGD, DPC and SA Police
- the possible effect that disclosure may have on SA Police's relationship with other agencies (although I consider the risk to be slight given SA Police's awareness of the issue and information in the ICSG report)
- publication of the ICSG report.

467. In my view, the public interest in openness and accountability, facilitating public participation in the making and administration of laws and policies, along with the ongoing relevance of the information to the applicant and the Association, are persuasive factors in this matter, and outweigh the factors against disclosure. I consider it important for the applicant, and members of the public, to have the opportunity to interpret and assess the validity of the ICSG's findings, and to have input into relevant laws in the future.

- *Conclusion*

468. I am not satisfied that document DPC31 is exempt under clauses 1(1)(e), 7(1)(c) or 9(1). It should be released after redacting all but the dot-pointed emails described above.

Comments

AGD

469. The FOI Act says that on receipt of an access application, if an agency makes a determination to refuse access to the requested documents, it must give reasons in its notice of determination.¹¹⁷ Agencies must link the exemptions claimed to the actual contents of the documents, rather than make 'blanket' claims over the documents. This issue was discussed in the Ombudsman's 2014 FOI audit.¹¹⁸

470. AGD relies on an MOU to justify its claim of exemption over some of the documents. It is disappointing and unhelpful that despite conceding that I did not appear to be restrained from referring to the MOU in my determination, AGD nevertheless declined to provide a copy to the applicant.

¹¹⁷ *Freedom of Information Act 1991*, section 23(2)(f).

¹¹⁸ See 'An audit of state government departments' implementation of the *Freedom of Information Act 1991* (SA), May 2014, Part 7A, available at <http://www.ombudsman.sa.gov.au/wp-content/uploads/An-audit-of-state-government-departments-implementation-of-the-Freedom-of-Information-Act-1991-SA1.pdf>.

DPC

471. I am concerned about the ICSG's failure to store emails in a format that would have enabled DPC to identify the relevant attachments and for them to then be considered as part of my external review. Arguably, ICSG (and by extension DPC) has failed to comply with the record keeping obligations imposed by the *State Records Act 1997*.
472. To this end, under section 39(14) of the FOI Act, I intend to provide a copy of this determination to the Manager of State Records.

Determinations

473. In light of my views above, I vary AGD's and DPC's determinations as follows:

- **I vary AGD's determination to enable the following to be released:**
 - AGD4 (also AGD10A); AGD5; AGD6; AGD10; AGD11; AGD13; AGD17; AGD18; AGD22; AGD23; AGD24; AGD26; AGD27; AGD28; AGD31, AGD32, AGD33, AGD35; AGD36; and AGD39 in full
 - AGD7 after redacting the figure (namely the 10th and 11th words on the second line of the document)
 - AGD8 after redacting the figure from the email (the fourth and fifth words on the second line of the second paragraph of the email) and the table from the attachment
 - AGD9 and AGD16 after redacting:
 - the second figure - the second to last word on third line of the first paragraph and the fifth word on the fourth line of the first paragraph
 - the third figure - the sixth word on the first line of the second paragraph
 - the fourth figure - the second word on the second line of the second paragraph
 - AGD14 after redacting:
 - the first figure - the first word on the first line of the second paragraph
 - the second figure - the last word on first line of the second paragraph
 - the third figure - the sixth word on the second line of the second paragraph.
 - AGD17A after redacting the tables on page 1 and at the top of page 2 and the graph in the middle of page 2.
- **I vary DPC's determination to enable the following to be released:**
 - DPC4; DPC11; DPC12; DPC13; DPC23; DPC24; DPC25; and DPC27 in full
 - DPC1 after redacting all but the two copies of the email dated 17 October 2014 (timed 5:28pm)
 - DPC2 after redacting the first six words on the first line of the first dot-point
 - DPC3 after redacting the eight lines of text at the bottom of page 2
 - DPC5 after redacting all but:
 - partial email dated 29 January 2015 (timed 11:41am)
 - emails dated 29 January 2015 (timed 15:56; 4:48pm)
 - email dated 30 January 2015 (timed 16:24), including handwritten notes
 - email dated 3 February 2015 (timed 11:15am)
 - DPC6 after redacting all but:
 - emails dated 13 February 2015 (timed 11:14am; 1:31pm; 1:58pm)
 - emails dated 18 February 2015 (timed 11:48am; 11:56am; 11:58am)
 - DPC7 and DPC8 after redacting all but:
 - emails dated 4 February 2015 (timed 3:05pm; 3:47pm) (duplicated in document DPC8)

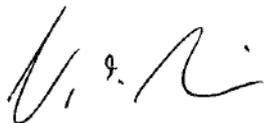
- email dated 12 February 2015 (timed 9:45am)
- DPC9 after redacting all but:
 - emails dated 29 January 2015 (timed 4:54pm; 4:55pm)
 - email dated 3 February 2015 (timed 4:18pm)
 - email dated 4 February 2015 (timed 8:28am)
- DPC10 after redacting all but the emails dated 18 February 2015 (timed 11:34am¹¹⁹; 11:45am; 1:19pm; 1:36pm¹²⁰).
- DPC14 after redacting all but the emails dated 3 March 2015 (timed 10:05am; 10:34am)
- DPC16 after redacting all but:
 - email dated 19 February 2015 (timed 1:59pm)
 - email dated 20 February 2015 (timed 3:23pm)
 - email dated 23 February 2015 (timed 2:20pm).
- DPC17 after redacting the initials on page 1 (halfway down the page to the left of a dash)
- DPC18 after redacting the figure from the email dated 1 April 2015 (timed 10:28am) (the seventh and eighth words on second line of the second first paragraph of the email) and emails other than:
 - email dated 26 March 2015 (timed 2:23pm)
 - emails dated 1 April 2015 (timed 10:28am; 10:31am; 10:34am; 10:37am; 10:39am (three separate emails); 10:40am).
- DPC19 after redacting all but:
 - emails dated 5 March 2015 (timed 14:29; 2:30pm;¹²¹ 2:39pm; 2:59pm)
 - emails dated 24 March 2015 (timed 3:36pm; 3:57pm; 4:53pm)
- DPC20 after redacting the mobile telephone number from the email dated 5 March 2015 (timed 10:58am) and emails other than the email dated 5 March 2015 (timed 10:58am)
- DPC21 after redacting all but:
 - email dated 27 February 2015 (timed 7:08pm)
 - email dated 4 March 2015 (timed 15:44)
 - emails dated 5 March 2015 (timed 11:21am; 2:30pm)
- DPC26 after redacting the figures (namely the 10th and 11th words on the second line of the email timed 10:34am and the fourth and fifth words on the second line of the second paragraph of the email timed 10:28am)
- DPC28 after redacting the mobile telephone numbers and emails other than:
 - email dated 23 April 2015 (timed 1:57pm)
 - email dated 27 April 2015 (timed 3:20pm; 12:05pm)
 - email dated 29 April 2015 (timed 4:31pm)
 - email dated 1 May 2015 (timed 10:24am)
- DPC29 after redacting and the mobile telephone number
- DPC30 after redacting all but the email dated 24 April 2015 (timed 4:21pm)

¹¹⁹ There are three copies of the same email in the document.

¹²⁰ There are three copies of the same email in the document.

¹²¹ The emails timed 14:29 and 2:30pm include largely the same substance. The email timed 14:29 includes a signature block and disclaimer, however.

- DPC31 after redacting all but:
 - emails dated 6 May 2015 (timed 11:41am; 3:40pm¹²²; 3:54pm)
 - emails dated 7 May 2015 (timed 10:45am; 11:21am; 2:36pm).



Wayne Lines
SA OMBUDSMAN

11 January 2017

¹²² There are two copies of the same email in the document.

APPENDIX 1

Procedural steps - AGD

Date	Event
11 August 2015	The agency received the FOI application dated 10 August 2015.
22 September 2015	The agency determined the application (41 documents) Full access - documents 1, 2, 3 Partial access - document 41 - clauses 1(1)(e); 8(1); 13(1)(a); 13(1)(b)); appears to be full refusal though Refused access - remaining documents - clause 1(1)(e)
28 September 2015	The agency received the internal review application dated 25 September 2015.
9 October 2015	The agency confirmed the determination: refused access (full or partial) - document 41 - clauses 8(1); 13(1)(b)) Refused access - remaining documents - clause 1(1)(e); 9(1)
14 October 2015	The Ombudsman received the applicant's request for external review by email.
19 October 2015	The Ombudsman advised the agency of the external review and requested submissions and documentation.
24 November 2015	The agency provided the Ombudsman with its submissions and documentation.
9 May 2016	The parties attended a settlement conference.
10 May 2016	Ombudsman SA summarised the outcomes and agreements reached during the settlement conference by email.
12 to 26 May 2016	Ombudsman SA requested and received additional information from the agency by email.
31 May 2016	Ombudsman SA provided a schedule of documents assessed as within the scope of the narrowed application and invited the agency's response by email.
3 June 2016	The agency provided its response.
15 June 2016	The agency provided further submissions by email.
24 November 2016	The Ombudsman issued his provisional determination to the parties.

28 November 2016	The applicant provided his response to the provisional determination by email.
16 December 2016	AGD provided its response to the provisional determination by email.

APPENDIX 2

Procedural steps - DPC

Date	Event
11 August 2015	The agency received to the application addressed to Internal Consultancy Services Group (cheque to DPC) the FOI application dated 10 August 2015.
11 September 2015	The agency failed to determine the application within the 30 day period required by the FOI Act, ¹²³ and is deemed to have refused access to the documents. ¹²⁴
8 October 2015	The agency consulted with SA Police by email.
12 October 2015	The agency received the internal review application dated 9 October 2015.
14 October to 23 October 2015	The agency consulted with the Adelaide Casino by email.
27 October 2015	The agency failed to determine the application within the statutory time frame, and is taken to have confirmed the original determination. ¹²⁵
2 November 2015	The Ombudsman received the applicant's request for external review dated 2 November 2015.
5 November 2015	By email, SA Police responded to the agency's consultation email.
9 November 2015	The Ombudsman advised the agency of the external review and requested submissions and documentation.
12 April 2016	The agency provided the Ombudsman with its submissions and documentation.
9 May 2016	The parties attended a settlement conference.
10 May 2016	Ombudsman SA summarised the outcomes and agreements reached during the settlement conference by email.
31 May 2016	The agency provided Ombudsman SA with further information and documentation.
	Ombudsman SA provided a schedule of documents assessed as within the scope of the narrowed application and invited the agency's response, and requested additional documentation, by email.

¹²³ *Freedom of Information Act 1991*, section 14(2).

¹²⁴ *Freedom of Information Act 1991*, section 19(2).

¹²⁵ *Freedom of Information Act 1991*, section 29(5).

27 June 2016	The agency provided further oral submissions to Ombudsman SA.
8 November 2016	The agency provided further documentation to Ombudsman SA by email.
24 November 2016	The Ombudsman issued his provisional determination to the parties.
28 November 2016	The applicant provided his response to the provisional determination by email.
6 December 2016	DPC provided oral submissions in response to the provisional determination.
7 December 2016	By email, the Adelaide Casino advised that it did not wish to make any submissions in response to the provisional determination.
5 January 2017	By email, DPC advised that it did not intend to provide submissions in response to the provisional determination.

