

Determination

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

Applicant	Mr Brian March
Agency	Department of State Development
Ombudsman reference	2014/06242
Agency reference	BRIEFC/14/1317
Determination	The determination of the agency is reversed.

REASONS

Application for access

1. By application under the *Freedom of Information Act 1991* (the **FOI Act**) the applicant requested access from the agency to:

... PEPR's [Programs for Environmental Protection and Rehabilitation¹] (or equivalent) as detailed in ... [a] letter to Mr G Knight, CEO, DMITRE, dated 21.01.2014 [relating to the following mining exploration licences:]

Eyre Iron Bald Hill drilling program (from its inception)
Eyre Iron/Centrex Fusion Project (from its inception)
Centrex Greenpatch (JV prospect) (from its inception, noting Eyre Iron Pty Ltd was the exploration contractor)
SA Iron Ore Group (JV prospect) (from its inception, noting Eyre Iron Pty Ltd was the exploration contractor)
Lincoln Minerals Gum Flat (from its inception)
Lincoln Minerals Kookaburra Gully Graphite (from its inception)
Centrex Carrow prospect (from its inception)
Centrex Bungalow prospect (from its inception)
Iron Road Murphy South (from its inception)
Iron Road CEIP (the whole tenement as declared to ASX) (from its inception).

2. During the course of my external review, the applicant narrowed the scope of his application to exclude:
 - the 'privately agreed 'financial' quantum for compensation (\$ to be paid and received)²
 - mobile telephone numbers attributed to employees of companies (for example the PEPR applicants and subcontractors)³
 - the names of employees of companies⁴
 - the names of former owners.⁵

¹ Plans under Part 10A of the *Mining Act 1971* are named Programs for Environment Protection and Rehabilitation (**PEPRs**).
² By letter from the applicant dated 27 May 2015. The applicant acknowledged that this 'financial' determination is private and confidential between the parties.
³ Confirmed by email from Ombudsman SA dated 13 October 2015.
⁴ Confirmed by email from Ombudsman SA dated 24 May 2016.
⁵ Confirmed by email from Ombudsman SA dated 24 May 2016.

3. The applicant is a representative of the Eyre Peninsula Community Mine to Port Consultative Committee, which is a sub-committee of the Tumby Bay Residents and Ratepayers Association Inc (**the Association**).
4. The Department for Manufacturing, Innovation, Trade, Resources and Energy (**DMITRE**) received and determined the applications for access and internal review. From 1 July 2014, the agency assumed DMITRE's functions, and is the relevant agency under the FOI Act.

Background

5. For ease of reference, the procedural steps relating to the application and the external review are set out in appendix 1.

Jurisdiction

6. This external review is within the jurisdiction of the Ombudsman as a relevant review authority under section 39 of the FOI Act.
7. The applicant lodged his application for external review beyond the 30 day statutory period. On 1 August 2014, the Acting Ombudsman exercised her discretion under section 39(4) to extend the time for him to make the application. In doing so, she had regard to the applicant's position as a representative of a community based committee and his concession that he did not appreciate the applicable time limit. In addition, she considered there was a public interest in conducting an external review.

Provisional determination

8. The Ombudsman provided his tentative view about the agency's determination to the agency, the applicant, and the four interested parties previously consulted by the agency, namely Lincoln Minerals Limited, Centrex Metals Limited, Iron Road Ltd and Eyre Iron Pty Ltd (**the mining tenement holders**), by his provisional determination dated 19 May 2015. The Ombudsman informed the parties that subject to receipt and consideration of submissions from them he proposed to reverse the agency's determination.
9. The applicant, the agency and Eyre Iron Pty Ltd provided submissions in response. I have considered these submissions in this determination.

Relevant law

10. A person has a legally enforceable right to be given access to an agency's documents in accordance with the FOI Act.⁶
11. 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.
12. The agency claims that the documents are exempt as documents the subject of secrecy provisions (clause 12(1) of Schedule 1, in conjunction with section 77D of the *Mining Act 1971* (**the Mining Act**)), and documents affecting business affairs (clause 7(1)(c) of Schedule 1).⁷

⁶ *Freedom of Information Act 1991*, section 12.

⁷ The agency first raised its clause 7(1)(c) claim on 10 February 2015.

13. Although not claimed by the agency, given the submissions made by some of the interested parties, I have also considered clauses 13(1)(a) and 13(1)(b).⁸
14. The relevant provisions provide:

Clause 12(1) of Schedule 1 to the FOI Act

A document is an exempt document if it contains matter the disclosure of which would constitute an offence against an Act.

Section 77D of the *Mining Act*

- (1) The Director of Mines may release any report, information, sample or other material of a prescribed kind obtained from the holder or former holder of a mining tenement under this Act.
- (2) The Director of Mines may act under subsection (1)—
 - (a) on the Director's own initiative or on application made to the Director in a manner and form determined by the Director; and
 - (b) whether or not the mining tenement to which the report, information, sample or other material relates is still current.
- (3) However, if the mining tenement is still current, the Director of Mines must not act under subsection (1) without—
 - (a) the consent of the holder of the mining tenement; or
 - (b) the consent of the Minister.
- (4) The Minister must consult with the holder of the mining tenement before deciding whether or not to grant a consent under subsection (3).
- (5) Subsections (3) and (4) do not apply—
 - (a) to the release of information in circumstances prescribed by the regulations in connection with the operation of this section; or
 - (b) to the release of statistical information in connection with the general administration of this Act.
- (6) The Director of Mines may release any report, information, sample or material under this section—
 - (a) in such manner and form as the Director thinks fit; and
 - (b) subject to such conditions as the Director thinks fit.
- (7) Without limiting subsection (6)(b), a condition under that subsection may require that a person enter into a bond in such sum, and subject to such terms and conditions, as the Director may require in connection with the release or use of any report, information, sample or material.
- (8) A person who contravenes or fails to comply with a condition under subsection (6)(b) is guilty of an offence.
Maximum penalty: \$120 000.
- (9) A person to whom any report, information, sample or material is released must, if required by the Director of Mines, furnish to the Director specified reports or information, or reports or information of a specified kind, in accordance with any requirement specified by the Director.
Administrative penalty.
- (10) The Director of Mines must, in acting under this section, comply with any other requirement or restriction prescribed by the regulations for the purposes of this section.

Clause 7(1)(c) of Schedule 1 to the FOI Act

- (1) A document is an exempt document—
 - ...
 - (c) if it contains matter-

⁸ 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].

- (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-
 - (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 13(1)(a) and 13(1)(b) of Schedule 1 to the FOI Act

- (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.

- 15. Under section 48, the onus is on the agency to justify its determination 'in any proceedings'. This includes the external review process.
- 16. 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

- 17. The agency identified 64 PEPR documents within the scope of the application. A schedule of the documents that formed part of the agency's notice of determination dated 17 March 2014 is set out in appendix 2.
- 18. By email dated 3 November 2014, following a request for further information from Ombudsman SA, the agency confirmed that covering letters and emails within the following documents are not PEPRs and therefore claimed that they are outside the scope of the application:

Document Number	Agency's reference number
1	20020122
14	20080724
21	20100525
25	20100727
31	20101221
32	20110125
37	20110616

- 19. Having regard to the terms of the application for access and the meaning of a PEPR, my view is that covering letters and emails within the above documents are outside the scope of the application. I have therefore excluded them from further consideration.⁹
- 20. The agency has refused access to the documents in their entirety.
- 21. The 64 documents, excluding:
 - the covering letters and emails that form part of the documents identified above

⁹ The Ombudsman advised the parties of his intention to exclude the information from further consideration in his provisional determination.

- the 'privately agreed 'financial' quantum for compensation (\$ to be paid and received)' ¹⁰
 - mobile telephone numbers attributed to employees of companies (for example the PEPR applicants and subcontractors)
 - the names of employees of companies
 - the names of former owners
- are in issue in my review (**the documents**).

Issues in this review

22. It is for me to consider whether the agency has justified its determination to refuse access to the documents 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. ¹¹

The parties' submissions

The agency

23. Before DMITRE determined the application for access, the Manager, Exploration Regulation Team, of its Mineral and Energy Resources Branch consulted the mining tenement holders. They objected to the release of their PEPRs.
24. In its original notice of determination, DMITRE claimed that the documents were exempt under clause 12(1). DMITRE explained that:
- Section 77D(3) of the Mining Act prescribes that the agency cannot disclose details relating to current mining tenements without either the consent of the holder of the mining tenement or the Minister. On this basis information detailing the particulars of any PEPRs are exempt as release would disclose details pertaining to mining tenements.
25. By email dated 10 February 2015, the agency maintained its reliance on clause 12(1) of Schedule 1 to the FOI Act, in conjunction with sections 77D(1) to 77D(4) of the Mining Act, despite acknowledging that none of the sections included an offence provision. ¹² The agency explained that it did so '[a]fter consultation with key staff'. The agency further submitted:

that PEPRs (either past or current) can only be released to the public (irrespective of whether the tenement is current or not) if the Minister (or Delegate) determines that they can be released in the public interest. The only other way the Agency can publicly release PEPRs is if the companies consent to the release.

To obtain consent from the tenement holders, DSD has followed the procedure of 77D(3). As you are aware, the tenement holders refused...

Separate to the question of whether the PEPR's may or may not be released pursuant to the *Mining Act 1971*, DSD notes that the documents contain information concerning the tenement holders business affairs, and thus clause 7(1)(c) of the FOI Act could also apply, and be subject to the public interest test.

This information includes:

- *Location of drill holes and other exploration sites*
- *Agreements, including compensation arrangements with landowners*
- *Landowner details*

¹⁰ I comment that the documents do not appear to include such information, however.

¹¹ *Re Pope and Queensland Health* (1994) 1 QAR 616, [17].

¹² This was in response to tentative views expressed by Ombudsman SA on 8 December 2014 that the agency had not justified its clause 12(1) claim.

- *Details and outcomes of consultation with Landowners*

Senior staff of this Agency hold the view that this information should not be released as it may impact on landowner/explorer relationships and in some cases the safety of landowners within their own community. For example, some landowners are being ostracized within their own community for allowing exploration to occur on their land. Interested third parties (opposed to the conduct of exploration activities within certain regions) have also allegedly trespassed on private land to gather information on exploration programs...

26. Following internal review and during my external review, DMITRE's and the agency's Chief Executives explained that the Director of Mines had not applied to the Minister for the documents to be released. DMITRE and the agency concluded that it would be appropriate not to do so in light of the previous objections raised by the mining tenement holders and the requirement for the Minister to consult with the mining tenement holders before giving consent to release the documents.

27. At Ombudsman SA's request, on 3 November 2014, the agency provided details as to the status of the exploration licences relevant to the documents. A number of the exploration licences have expired. The agency explained that:

ELs [exploration licences] can be renewed for a period of up to 5 years. At the end of the 5 year term the EL holder has the right to apply for a subsequent EL. Once granted the subsequent EL becomes a new licence.

28. In response to my provisional determination, by letter dated 18 June 2015, the agency advised that it maintained its previous submissions. In addition, the agency submitted that it would be unreasonable to disclose 'the personal details of landholders' contained in the documents, and that redacting such information would not disadvantage the applicant. The agency also advised that one additional exploration licence had expired.

29. By letter dated 16 February 2016, the agency advised that it relied on its previous submissions that 'the release of these documents would breach the *Mining Act 1971*.'

30. By email dated 8 April 2016, the agency updated Ombudsman SA on the licences that had expired since 18 June 2015.

31. I understand that PEPRs approved since 1 July 2015 are now provided by the agency on request.¹³

The applicant

32. When applying for access to the documents, the applicant:

- expressed concern on behalf of 'the Association and its affiliated committees... at the proliferation of exploration activities on Eyre Peninsula, and especially such activities that have been occurring in agricultural land, ie land south of the Goyder line'.
- referred to 'political mileage gained' from announcements that companies had established, or were in the process of establishing, mines
- sought 'to raise the real concerns of people affected by decisions made in complete isolation to what is happening on the ground'
- likened DMITRE's role to that of an 'approving agency, not a regulator, ... geared more towards facilitating mining and not ensuring that due process is occurring'
- submitted that landowners were not being given PEPRs once a 'form 21 requesting access to one's property' had been issued, despite claims to the contrary; form 21 does not refer to any requirement to produce a PEPR

¹³ *MG22 Guidelines for conducting mineral exploration in South Australia*, section 9 (41).

- submitted that ‘the reality ... is the [mining] company request access and the land owner has a limited time in which to respond’
 - raised concerns about DMITRE’s auditing abilities:
 - an audit found significant shortcomings about one of the interested parties
 - the audit was not completed ‘due to the pressures of time’
 - although not completed, Dr Tyne, DMITRE’s ‘Executive Director signed off on the interim report as being completed to the satisfaction of DMITRE’
 - DMITRE did not accede to representations calling for completion of the audit and querying the proposed action in response to reported legislative breaches
 - expressed concern about:
 - Dr Tyne’s appointment ‘as the government’s officer to facilitate the passage of various approvals the said company requires through government processes’; citing a ‘real or perceived’ conflict of interest
 - the creation of similar position in DMITRE ‘to enable ... [another interested party’s] Project smoother passage through government processes’
 - DMITRE’s various roles as ‘the issuer of a licence or lease; the regulator and the facilitator of applications through government process’
 - questioned how the public can ‘be assured of compliance to a legislative process when access to the actual document outlining the performance criteria ... is denied’
 - questioned the logic of DMITRE’s advice to take companies’ failures ‘to perform to the communities’ or landowners['] expectations ... up with the Company’ because:
 - (a) In the absence of evidence to the contrary, ie no access to PEPR, what ground for negotiation with the company exist? and
 - (b) The individual is not the Regulator. DMITRE has a legal responsibility to enforce ... the Mining Act and the Regulations ... and hence all complaints should be directed to ... [it] for full and unbiased investigation.
33. The applicant sought internal review, primarily because the original determination ‘did not include an application ... to the Minister for the release’ of the documents.
34. When applying for external review, the applicant noted that the only ways to access the documents were via the Minister for Natural Resources and Energy (and subject to the Minister’s assessment of the public interest) and through court processes. He sought to ‘highlight the barriers to access the relevant information and to seek, if possible, a pathway whereby the relevant information is systematically disclosed to the benefit of landholders and the public alike’. In so doing, he submitted that:
- a) The public does not have access to the PEPR documents.
 - b) The PEPR is not available to landholders who are issued with Notice of Entry (Form 21 et al) under the Mining Act.
 - c) The landholder has no baseline upon which to make a decision about the acceptability or otherwise of the environmental impact upon the land if access is granted, especially if a waiver is given over EXEMPT land (as defined by the Act).
 - d) The landholder has no baseline upon which to make an assessment of appropriate compensation arising from granting access.
 - e) There is a perception that Mining companies are providing access to the PEPR, but this is not the case. A case currently before the ERD Court is being contested in part on the basis of no access to the PEPR and the denial of access to EXEMPT land.
 - f) The cyclic referral process as evidenced by ... [one company’s] response to a community consultation session “... [It] will need to seek DMITRE permission to release the PEPR documentation”, whilst, as evidenced by the outcome of the FOI, DMITRE claims approval must come from the Company (which was denied when sought by DMITRE).

- g) The PEPR is the document against which a company's behaviour is audited in the event of a formal complaint being made, an example of which is the audit of the activities of ... [one company] is 2012, an audit that appears to have never been completed by DMITRE.

35. In response to my provisional determination the applicant made the following further submissions:

... the requirement for a PEPR is not singular but a dynamic document during an approved process and is required to be produced to achieve multiple requirements for the evolving activities of the company...

The PEPR references compliance with [multiple acts] not only the Mining Act ...

...

It is ... monetary compensation that gives rise to commercial and in-confidence clauses within private agreements with the landowner, not the PEPR.

The compensation agreements... are in effect environmental management agreements routinely identifying the sequential listing of the issues that are required for the management criteria of the PEPR. Therein the private agreement with a compensation payment provision existing for those management impacts not otherwise able to be agreeably managed. These may include:

- a) access points (fencing and gate variations)
- b) access tracks (creation of tracks and traffic impact)
- c) rehabilitation of the track(s) or agreed retention of track(s) in lieu of financial sum payment
- ... [d) to j) omitted]

It is recognised that a confidentiality clause within a compensation agreement cannot have relevance upon those aspects of agreement obligated to be provided for the management requirements of the PEPR. The compensation payment arises as a monetary payment to mitigate issues arising from the activities of the Company not able to be managed by the PEPR so that it does not impact upon the land and/or the landowner.

...

It is however, noted that an aggregated financial figure for land access (private land access agreements) may be disclosed in the balance sheets of tenement holding Companies listed on the ASX. The information is not available for Proprietary Limited Companies (Pty Ltd).

... [Listing various publicly accessible records from a) to i)]

... [For example] the EPBC Referral Application of Eyre Iron Pty Ltd (2013/6919) in relation to Project Fusion. In particular, the disclosure of some 300+ properties (identified by Personal /Business name and Certificate of Title, etc.) that may be affected as a consequence of the proposed mining activities is made from page 100 onwards [the applicant provided a copy of this document to Ombudsman SA]...

...

The only personal information not already disclosed by Government, Community Record or Mining Industry standard practices that exists in the PEPR and within any private land access agreement with compensation is the individual monetary funds (compensation) as the agreed 'financial' determination. Private land access and compensation agreements, as an alternative to Prescribed Notices only, is a document supporting a requirement within the criteria for PEPR documentation...

The interested parties

36. DMITRE consulted with the mining tenement holders, all of whom objected to the documents relevant to them being released.

37. By email dated 9 December 2014 the agency provided the mining tenement holders' consultation responses to Ombudsman SA. Their views are set out below.

Iron Road

38. By email to DMITRE dated 28 February 2014, Iron Road advised that it did not consent to release of the documents for the following reasons:
- We believe portions of each EWA/DEF/PEPR comprise either commercially sensitive or confidential information that should not be released to any party. We are particularly concerned about landowner names and contact details, drill hole locations and maps being released.
 - On principle we object to the release to an unnamed party with an unknown objective. Our view is that the only reason someone would want historical information about our activities that isn't already in the public domain is to cause some kind of mischief. Iron Road's quarterly activity reports and regular ASX releases provide more than enough information on our activities and all are available for anyone to view or download from our website.
 - While we appreciate that changes relating to PEPRs will occur from 1st July 2014, all work programs submitted to DMITRE for assessment and approval since our first drilling campaign in 2008 have been prepared on the understanding that they would not be released to any third party.

Centrex Metals¹⁴

39. By email to DMITRE dated 17 March 2014, Centrex Metals advised that it had 'major concerns' about the documents being released and therefore objected to their disclosure.
40. Centrex Metals did not identify what its concerns were, but indicated that it would 'defend its right to have the information kept confidential'.
41. At my direction, the agency undertook further consultations with Centrex Metals in March 2016 about documents 26, 28, 30, 34, 35, 36, 39, 41, 47, 48, 52, 60, 61, 64. Centrex Metals did not provide views in response.

Eyre Iron¹⁵

42. By email to DMITRE dated 3 March 2014, Eyre Iron objected to the documents being released and outlined its 'major concerns' as follows:

These concerns include the commercial sensitivity of the specific nature and locations of planned field activities as well as the details of landowners and their properties on which the proposed works are planned to be undertaken. Eyre Iron is also most concerned of the likelihood that this information will be used to undermine the company's hard-earned reputation and standing in the local community; this concern is based on previous experience with a similar request. In any event, Eyre Iron believes that DMITRE is obligated to maintain any information relating to its exploration work programs confidential under 'closed file' for at least five years.

Eyre Iron therefore ... will vigorously defend its rights to have the information kept confidential.

43. Eyre Iron advised that it was 'greatly disappointed' with my provisional determination and 'the direction this matter is headed' and reiterated its previous submissions to the agency. In addition, Eyre Iron made the following submissions:

¹⁴ Also referred to as interested party number 10.

¹⁵ Also referred to as interested party number 20.

- the applicant is not a resident of the area;
- the landowners and details of negotiations referenced in these documents are, and must remain confidential to avoid breach of trust; and
- recent decisions by the Ombudsman regarding FOI requests of special interest anti-mining groups has forced the Company to restrict correspondence and engagement activities with government and local council bodies and thereby progressively restricting the capacity of the company to fully engage with the broader community which is contrary to the interests of the State.

44. At my direction, the agency undertook further consultations with Eyre Iron in February 2016 about documents 48 and 61. Eyre Iron did not object to information in these documents being released.

Lincoln Minerals

45. The agency advised that Lincoln Minerals verbally objected to the release of the PEPRs for the following reasons:

- They believe the entire PEPR document is commercially sensitive and therefore should not be released.
- They were not aware that PEPRs could be made publicly available and therefore did not write them with this in mind.
- They are concerned with the intentions of the applicant.

Other interested parties

46. By letters dated 18 November 2015 and 24 February 2016, respectively, the Ombudsman asked and directed the agency to consult those interested parties not previously consulted about information contained in the documents under review. To assist the agency, the Ombudsman provided it with a schedule identifying the relevant interested parties, and the information about which he considered they must be consulted. Among other things, the Ombudsman asked the agency to provide consultation correspondence and file notes, and details of attempts to consult if the agency had been unable to make direct contact, to Ombudsman SA.

47. I have ascribed a number to each of these interested parties. In all but two instances,¹⁶ I will refer to the interested parties solely by this number so as to avoid disclosing claimed exempt matter.¹⁷ I will provide a schedule to the agency identifying which number has been ascribed to each interested party.

48. A summary of each of these interested parties' positions is set out in appendix 3. It is divided into four sections:

- interested parties who consented or did not object to disclosure of information about them
- interested parties who did not respond to attempts to consult them by letter¹⁸
- interested parties who were unable to be consulted¹⁹
- interested parties who objected to disclosure of information about them.²⁰

¹⁶ These being interested parties 10 and 20.

¹⁷ *Freedom of Information Act 1991*, section 39(15) provides that I should avoid disclosing claimed exempt matter in my reasons.

¹⁸ I note that the agency's consultation letters advised the interested parties that in the absence of a response from them within seven days 'a "no comment" response' would be recorded.

¹⁹ These interested parties no longer own the properties referred to in the documents. In my view, by undertaking the searches referred to in appendix 3, the agency has taken such steps as are reasonably practicable to obtain the views of interested parties 24, 31, 46 and 59. I note that the applicant does seek access to the names of these interested parties, however

²⁰ The reasons for the interested parties' objections and information they claim as exempt is detailed in appendix 3.

Consideration

Clause 12(1)

49. Section 77D(3) of the Mining Act provides that the Director of Mines must not release various documents without the consent of the holder of the mining tenement or the Minister. The section only applies 'if the mining tenement is still current'.
50. The agency has conceded that a number of the documents relate to mining tenements that have expired.²¹ In my view, section 77D(3) does not apply to these documents.
51. Clause 12(1) of Schedule 1 to the FOI Act applies if a document 'contains matter the disclosure of which would constitute an offence against an Act.' Non-compliance with section 77D(3) of the Mining Act does not give rise to an offence, however.²²
52. The agency has also referred to sections 77D(1); 77D(2); and 77D(4). Sections 77D(1) and 77D(2) are enabling provisions. They give the Director of Mines the discretion to release various documents. Section 77D(4) requires the Minister to consult with a mining tenement holder before deciding whether or not to consent to the release of documents under section 77D(3). None of these subsections contain an offence provision or give rise to an offence in the event of non-compliance.
53. In my view, the agency's reliance on clause 12(1) of Schedule 1 to the FOI Act, in conjunction with sections 77D(1) to 77D(4) of the Mining Act, is misguided.
54. I am not satisfied that the documents are exempt under clause 12(1).

Clause 13(1)(a)

55. 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 equitable, and 'would' should be read as 'could'.²³
56. 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.²⁴
 - 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.
57. Six of the interested parties appear to be claiming that the documents are confidential and/or private.²⁵ The bases for their claims are unclear.

²¹ According to the agency, only the following exploration licences are current as at 12 April 2016: numbered 4643; 4849; 4884; 4885; 4998; 5065 and 5559. The following documents relate to, or contain information concerning, current exploration licences: 44 to 46; 49 to 51; 53 to 63; and 64 (part). The residual documents, and parts of documents, relate to exploration licences that have expired.

²² In contrast, non-compliance with section 77D(6)(b) of the Mining Act does constitute an offence: *Mining Act 1971*, section 77D(8).

²³ *Bray and Smith v WorkCover* (1994) 62 SASR 218 at 226 to 227. I note that neither the agency nor any of the interested parties have claimed the existence of a contractual obligation of confidentiality.

²⁴ *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.

²⁵ Interested parties 7, 8, 15, Iron Road, Centrex Metals and Eyre Iron.

58. The claims made by interested parties 7, 8 and 15 appear limited to the information concerning their personal affairs. Eyre Iron's claim appears limited to 'the specific nature and locations of planned field activities as well as the details of landowners and their properties on which the proposed works are planned to be undertaken.' It is unclear from the submissions made by Iron Road and Centrex Metals whether all, or only some, of the information in the documents is claimed confidential, however.²⁶
59. Information that is publicly available cannot, in my view, have the necessary quality of confidence. I accept, however, that not all of the information in the documents is publicly available. The applicant's submissions, and the application for access itself, support this view. To date, however, the interested parties have not satisfied me that some or all of the information in the documents has the necessary quality of confidence.
60. I am not persuaded that the information was received, first by the companies and then by the agency, in circumstances which would import an obligation of confidence. In saying this, I note the obligation to provide PEPRs and other information imposed by the Mining Act (discussed further below) and the discretion to release such documents under sections 77D(1) and 77D(3) of the Mining Act. The consent of the mining tenement holder is not a prerequisite to releasing current tenements, if the Minister has consented to this course, or to releasing expired tenements. I am also mindful of information in the documents that is publicly available.
61. I accept that if the other criteria for founding an action for breach of confidence are satisfied, release of the documents under the FOI Act would constitute their misuse.
62. 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.²⁷ If detriment is an essential element, my view is that it is easily established. It would be sufficient, for example, to show that disclosure would cause distress to the confiders.
63. Based on the information currently before me, my view is that not all of the criteria set out above have been satisfied, and the documents are therefore not exempt under clause 13(1)(a).

Clause 13(1)(b)

64. To satisfy clause 13(1)(b), the information in the document must have been 'received under an express or inferred understanding that [it] would be kept confidential'.²⁸
65. The agency has not claimed that it received the documents from the interested parties under an express or inferred understanding that they would be kept confidential. Six of the interested parties have claimed that the documents are confidential and/or private; confidential for five years; or were 'prepared on the understanding that they would not be released to any third party'. The bases for these claims are not clear, however.
66. Based on the submissions received to date, and having regard to the obligations on mining licence applicants and tenement holders imposed by the Mining Act (referred to below), I am not satisfied that:

²⁶ The Ombudsman raised this issue in his provisional determination, and noted that even if the agency or interested parties were to 'provide sufficient evidence to establish an equitable obligation of confidence, it may nevertheless be practicable to release parts of the documents in accordance with section 20(4) of the FOI Act.'

²⁷ *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.

²⁸ See *Re Maher and Attorney General's Department* (1985) 7 ALD 731 at 737.

- the agency *received* the documents under an express or inferred understanding of confidentiality
- the companies *received* the information from landholders under an express or inferred understanding of confidentiality.

67. Further, and in any event, I am not satisfied that disclosure of *the documents* ‘might reasonably be expected to prejudice the future supply of *such* information to the government or to an agency’. In saying this, section 70B of the Mining Act is apposite.²⁹ The relevant subsections provide:

70B—Preparation or application of program under this Part

- (1) The holder of a mining tenement must not carry out mining operations unless a program that complies with the requirements of this Part is in force for those operations.
- (2) A program under subsection (1) must
 - (a) specify the mining operations that the holder of the mining tenement proposes to carry out in pursuance of the tenement; and
 - (b) set out—
 - (i) the environmental outcomes that are expected to occur as a result of the mining operations (including after taking into account any rehabilitation proposed by the holder of the tenement and other steps to manage, limit or remedy any adverse environmental impacts); and
 - (ii) the criteria to be adopted to measure those environmental outcomes; and
 - (c) incorporate information about the ability of the holder of the mining tenement to achieve the environmental outcomes set out under paragraph (b); and
 - (d) set out such other information as may be required by a condition of the tenement or by the regulations; and
 - (e) comply with any other requirements prescribed by the regulations.
- (3) The Minister may, on application by the holder or holders of 2 or more mining tenements, determine that a program may relate to a group of mining tenements within a particular area and, in such a case—
 - (a) the holder or holders of the mining tenements within the ambit of the determination may prepare and furnish a combined program for the purposes of this section; and
 - (b) this section will apply to the holder or holders of the mining tenements with such modifications as may be necessary for the purpose.
- (4) A program under subsection (2) or (3) must be provided in a manner and form specified or approved by the Minister...

68. In addition, under the Mining Act, applications ‘for an exploration licence must be made in a manner and form determined by the Minister and must be lodged with the Director of Mines’, and be accompanied by specified information.³⁰ Tenement holders are, or can be, compelled to provide information; samples; reports; and ‘other material required by the regulations’ to either the Minister or the Director of Mines.³¹

²⁹ Section 70B comes under Part 10A of the *Mining Act 1971*, which is entitled ‘Programs for environment protection and rehabilitation’.

³⁰ *Mining Act 1971*, sections 29(1) and 29(2).

³¹ See for example: *Mining Act 1971*, sections 29(3); 32; 77B and 77C and *Mining Regulations 2011*, regulations 85 and 86. Tenement holders are also obliged to retain specified documentation for various periods of time. See for example: *Mining Act 1971*, sections 77 and 77A and *Mining Regulations 2011*, regulation 84.

69. Even if both elements of clause 13(1)(b)(i) are satisfied, I would still need to be satisfied that disclosure of the documents would, on balance, be contrary to the public interest test, as required by clause 13(1)(b)(ii). I have considered the public interest test below.

Clause 7(1)(c)

70. Some of the interested parties are clearly operating businesses. The documents concern applications made, and operations undertaken, in the course of those businesses. Some of the documents also disclose property holdings of businesses. I accept that the documents contain information concerning the 'business affairs' of those interested parties within the meaning of clause 7(1)(c)(i).³²
71. I am not satisfied that disclosure of the documents could reasonably be expected to 'prejudice the future supply of information to the Government or to an agency' for the reasons set out in relation to clause 13(1)(b) above.
72. The agency has claimed that disclosure of the documents may adversely affect the relationship between the landowners and explorers, and presumably by extension the interested parties', namely the mining tenement holders', business affairs. One of the interested parties has also expressed concern that information in the documents 'will be used to undermine the company's hard-earned reputation and standing in the local community ... based on previous experience with a similar request'.
73. 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'...³³
74. 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 minimus [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.³⁴
75. I have borne in mind the agency's claims that landholders have been 'ostracized within their own community for allowing exploration to occur on their land' and that 'third parties (opposed to the conduct of exploration activities within certain regions) have ... allegedly trespassed on private land to gather information on exploration programs'. That said, it seems that such things are occurring, or have already occurred, and such consequences would not be as a result of disclosing the documents.
76. Having regard to the submissions provided to date, I am not persuaded that disclosure of the documents could reasonably be expected to have an adverse effect on interested parties' business affairs. They already have rights over the land under the Mining Act. In addition, there appears to be considerable information in the public domain about the projects,³⁵ and information about landholders which is publicly available.

³² See for example *Stewart and Department of Transport* (1993) 1 QAR 227.

³³ *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.

³⁴ *Ipex Info Tech v Dept of Info Tech Services* (1997) 192 LSJS 54, 65.

³⁵ Searches conducted via www.google.com.au on 5 May 2015, using the names of the projects as described in the application for access.

77. That said, if disclosure of the documents were to reveal that the interested parties had not complied with their obligations under the PEPRs, I accept that their reputations may be adversely affected and they may have to expend further resources to remedy shortcomings.

The public interest test

78. Given my view that clause 7(1)(c)(i) has been satisfied, and the possibility that clause 7(1)(c)(ii)(A) may be satisfied, I will consider whether or not the public interest test has been met.
79. Public interest considerations relevant to this matter are:
- fulfilling the objects of the FOI Act
 - ensuring transparency of the agency's decision-making process
 - ensuring accountability of the agency and its staff
 - facilitating more effective participation by members of the public.
80. In considering the public interest, I have had regard to the factors referred to in the paragraph above and submissions received from the parties, including the objections raised by some of the interested parties. I have also considered:
- the public interest in ensuring that the mining tenement holders are fulfilling their obligations under the PEPRs
 - the objects of Part 10A of the Mining Act, include to:³⁶
 - ...
 - (b) ensure that mining operations that have (or potentially have) adverse environmental impacts are properly managed to reduce those impacts as far as reasonably practicable and eliminate, as far as reasonably practicable, risk of significant long term environmental harm; and
 - (c) ensure that land adversely affected by mining operations is properly rehabilitated.
 - the age of a number of the documents
 - the expiration of tenements relevant to a number of the documents
 - information in the documents that is publicly available (for example, via the Lands Titles Office; 'quarterly activity reports and regular ASX releases'; EPBC disclosures; and the Internet)
 - information of this sort that has apparently been released in the past. When consulting with the interested parties, the agency noted that:
 - Previous FOI requests have been made for PEPRs, DEFs and EWAs in the past. From memory, most (if not all) of these documents were released through the process with the exception of specific landowner names and contact details.
 - expectations of confidentiality are 'always subject to the provisions of the FOIA [the FOI Act] and cannot be affected by any representation ... that greater confidentiality might be accorded to material than properly reflects the effect of the FOIA'³⁷
81. I am not satisfied that disclosure of the documents would, on balance, be contrary to the public interest.

³⁶ *Mining Act 1971*, section 70A.

³⁷ *Ipex Information Technology Group Pty Ltd v The Department of Information Technology Services South Australia* (1997) 192 LSJS 54, 70. In addition, the FOI Act has been in operation for more than 20 years.

Determination

82. In light of my views above, I vary the agency's determination. The documents³⁸ should be released, that is, after redacting:
- the 'privately agreed 'financial' quantum for compensation (\$ to be paid and received)',³⁹
 - mobile telephone numbers attributed to employees of companies
 - the names of employees of companies, but particularly the employees' names in documents 15, 19, 27 and 51⁴⁰
 - the names of the following former owners from the affected documents:

Interested party number	Affected documents
3	15, 19, 27
24	28
31	24, 29
46	64
59	64

Comment - section 39(16)

83. By letter dated 18 November 2015 the Ombudsman asked the agency to consult those interested parties not previously consulted about information contained in the documents under review.⁴¹ Among other things, the Ombudsman asked the agency to provide consultation correspondence and file notes, and details of attempts to consult if the agency had been unable to make direct contact, to Ombudsman SA by 29 January 2016.
84. On 9 February 2016 Ombudsman SA learned that the agency had not even commenced the consultation process.
85. By letter dated 10 February 2016 the Ombudsman sought an explanation from the agency for its failure to comply with my earlier request to undertake consultations, and details as to how it intended to comply with his request.
86. The reasons proffered by the agency included leave arrangements over the Christmas and New Year period and 'the Government launching a public consultation process in late November 2015, for a significant mining and associated infrastructure proposal for the Central Eyre Iron Project', with responses due by 2 February 2016 (which coincided with 'the school holiday period and grain harvesting which is a busy time ... in rural communities'). According to the agency, seven of the landowners involved in that consultation are also involved in this FOI review. The agency expressed the view that overlapping consultations 'requires careful management' due to the potential for reputational risk to the agency, as well as 'increasing sensitivities' and 'creating confusion' within the community.
87. The agency then failed to consult or make reasonable efforts to consult with a number of interested parties by the deadline the Ombudsman imposed by letter dated 24 February 2016 because they no longer owned the property referred to in the documents or their addresses were incorrect or incomplete.

³⁸ That is, excluding the covering letters and emails that form part of documents 1, 14, 21, 25, 31, 32 and 37.

³⁹ I comment that the documents do not appear to include such information, however.

⁴⁰ As per the objection raised by interested party 58.

⁴¹ The Ombudsman asked the agency to consult with 71 interested parties.

88. Pursuant to section 39(16) of the FOI Act, I comment that in my view, the agency's conduct delayed progress of the review unreasonably.

Emily Strickland
DEPUTY OMBUDSMAN

1 June 2016

APPENDIX 1 - 2014/06242

Procedural steps

Date	Event
18 February 2014	The Department for Manufacturing, Innovation, Trade, Resources and Energy (DMITRE) received the FOI application dated 21 January 2014.
25 February 2014	DMITRE acknowledged the application for access.
17 March 2014	DMITRE determined the application.
4 April 2014	DMITRE received the internal review application dated 28 March 2014.
10 April 2014	DMITRE acknowledged the internal review application
17 April 2014	DMITRE confirmed the determination.
1 July 2014	The agency assumed DMITRE's functions.
10 July 2014	The Acting Ombudsman received the applicant's request for external review by email.
1 August 2014	The Acting Ombudsman determined to extend the time for the applicant to make his external review application. ¹ Ombudsman SA notified the applicant of this decision by email.
5 August 2014	The Acting Ombudsman advised the agency of the external review and her decision to exercise her discretion and extend the time for the applicant to apply for external review, and requested submissions and documentation.
19 August 2014	The agency provided the Ombudsman with its submissions and documentation.
27 October to 3 November 2014	Ombudsman SA requested and received additional information from the agency.
11 November 2014	Ombudsman SA questioned the agency's reliance on clause 12(1) of Schedule 1 to the FOI Act and invited the agency to provide further submissions by telephone.
8 December 2014	Ombudsman SA requested details of consultations undertaken by the agency with interested parties and reiterated the invitation to the agency to provide further submissions in support of its determination refusing access to the documents by email.

¹ *Freedom of Information Act 1991*, section 39(4).

9 December 2014	Ombudsman SA received information from the agency about its consultation with interested parties.
10 February and 13 February 2015	Ombudsman SA received additional submissions from the agency.
19 May 2015	The Ombudsman issued his provisional determination and provided a copy to the agency, the applicant, Lincoln Minerals Limited, Centrex Mineral Limited, Iron Road Ltd and Eyre Iron Pty Ltd.
	The Ombudsman sought advice from the applicant as to whether he wanted access to certain information about the landowners.
27 May 2015	Ombudsman SA received the applicant's response to the provisional determination by email.
1 June 2015	Ombudsman SA received Eyre Iron Pty Ltd's response to the provisional determination by email.
18 June 2015	Ombudsman SA received the agency's response to the provisional determination by email.
13 October 2015	The applicant narrowed the scope of his application to exclude mobile telephone numbers attributed to employees of companies (for example the PEPR applicants and subcontractors), by telephone (confirmed by email dated 13 October 2015).
10 November 2015	Ombudsman SA requested missing documents and foreshadowed requiring the agency to undertake consultations with those interested parties who had not previously been consulted.
16 November 2015	An Ombudsman SA legal officer met with officers of the agency to discuss the review.
18 November 2015	By letter (copied by email), the Ombudsman requested: by 30 November 2015: <ul style="list-style-type: none"> • reasons if the agency took a different view about required consultations • copies of missing documents • submissions in support of any claims of exemptions over the missing documents. by 29 January 2016: <ul style="list-style-type: none"> • that the agency consult those interested parties not previously consulted and providing supporting documentation.
30 November 2015	Ombudsman SA received the missing documents from the agency by email.
	Ombudsman SA advised the agency of additional consultation requirements with respect to the missing documents.
10 February 2016	The Ombudsman sought an explanation from the agency about its failure to comply with his request that the agency undertake consultations by letter (copied by email).

16 February 2016	The agency provided reasons for its delay, reiterated its previous submissions, and asked the Ombudsman to <i>direct</i> the agency to undertake consultations.
24 February 2016	By letter (copied by email), the Ombudsman directed the agency to undertake consultations, and required weekly updates from 2 March to 6 April 2016, with a final response due on 8 April 2016. In addition, the Ombudsman foreshadowed making a comment about the agency's conduct.
2 March 2016	Ombudsman SA received the agency's weekly update by email.
9 March 2016	Ombudsman SA received the agency's weekly update by email.
16 March 2016	Ombudsman SA received the agency's weekly update by email.
23 March 2016	Ombudsman SA received the agency's weekly update by three emails.
31 March 2016	Ombudsman SA received the agency's weekly update by email.
6 April 2016	Ombudsman SA received the agency's weekly update by email.
8 April 2016	Ombudsman SA received the agency's final response by email.
13 April 2016	By email, Ombudsman SA asked the agency to consult or make reasonable efforts to consult interested parties that the agency had failed to consult to date (as per the Ombudsman's previous requests).
18 April 2016	The applicant narrowed the scope of his application to exclude the names of employees and former owners by telephone (confirmed by email dated 24 May 2016).
2 May and 6 May 2016	The agency responded to Ombudsman SA's request dated 13 April 2016.
10 May 2016	Ombudsman SA consulted with interested parties 33 and 36 by letter.
23 May 2016	Interested party 36 consented to the release of information concerning them by telephone.
30 May 2016	Ombudsman SA requested contact information for a number of interested parties by telephone.
31 May 2016	Ombudsman SA received contact information from the agency by email.

APPENDIX 2 - 2014/06242

Schedule of documents

	Exploration Licence No.	Tenement Holder	Operating Company	PEPR Approval Date
1	2887	South Australian Iron Ore Group Pty Ltd	Centrex Metals Ltd	1/02/2002
2	2905	South Australian Iron Ore Group Pty Ltd	Centrex Metals Ltd	12/04/2002
3	2817	Centrex Resources NL	Centrex Metals Ltd	23/05/2002
4	2816	Centrex Resources NL	Centrex Metals Ltd	18/10/2005
5	2905	South Australian Iron Ore Group Pty Ltd	Centrex Metals Ltd	18/10/2005
	3269	Centrex Metals Ltd		
6	2905	South Australian Iron Ore Group Pty Ltd	Centrex Metals Ltd	7/11/2005
7	2887	South Australian Iron Ore Group Pty Ltd	Centrex Metals Ltd	31/01/2006
8	2817	Centrex Metals Ltd	Centrex Metals Ltd	29/06/2006
9	3422	Lincoln Minerals Ltd	Lincoln Minerals Ltd	17/06/2007
10	3877	South Australian Iron Ore Group Pty Ltd	Lincoln Minerals Ltd	30/08/2007
11	3610	Centrex Metals Ltd	Centrex Metals Ltd	30/01/2008
12	3422	Lincoln Minerals Ltd	Lincoln Minerals Ltd	20/02/2008
13	3422	Lincoln Minerals Ltd	Lincoln Minerals Ltd	17/07/2008
14	3699	Iron Road Ltd	Iron Road Ltd	24/07/2008
15	3422	Lincoln Minerals Ltd	Lincoln Minerals Ltd	2/09/2008
16	3731	South Australian Iron Ore Group Pty Ltd	Centrex Metals Ltd	4/11/2008
17	3699	Iron Road Ltd	Iron Road Ltd	13/02/2009
18	3610	Centrex Metals Ltd	Centrex Metals Ltd	27/08/2009
19	3422	Lincoln Minerals Ltd	Lincoln Minerals Ltd	20/11/2009
20	3699	Iron Road Ltd	Iron Road Ltd	4/12/2009
21	3699	Iron Road Ltd	Iron Road Ltd	25/05/2010
22	3699	Iron Road Ltd	Iron Road Ltd	25/05/2010
23	3699	Iron Road Ltd	Iron Road Ltd	1/06/2010
24	3610	Centrex Metals Ltd	Centrex Metals Ltd	15/07/2010
25	3699	Iron Road Ltd	Iron Road Ltd	27/07/2010
26	3731	South Australian Iron Ore Group Pty Ltd	Eyre Iron Pty Ltd	13/08/2010
27	3422	Lincoln Minerals Ltd	Lincoln Minerals Ltd	24/09/2010
28	3611	Centrex Metals Ltd	Eyre Iron Pty Ltd	19/10/2010
29	3610	Centrex Metals Ltd	Centrex Metals Ltd	29/10/2010
30	3731	South Australian Iron Ore Group Pty Ltd	Eyre Iron Pty Ltd	29/11/2010
	3877			

31	3699	Iron Road Ltd	Iron Road Ltd	21/12/2010
32	3699	Iron Road Ltd	Iron Road Ltd	25/01/2011
33	3610	Centrex Metals Ltd	Centrex Metals Ltd	16/02/2011
34	3731	South Australian Iron Ore Group Pty Ltd	Eyre Iron Pty Ltd	28/02/2011
	3877			
35	3731	South Australian Iron Ore Group Pty Ltd	Eyre Iron Pty Ltd	22/03/2011
36	3877	South Australian Iron Ore Group Pty Ltd	Eyre Iron Pty Ltd	30/05/2011
37	3699	Iron Road Ltd	Iron Road Ltd	16/06/2011
38	3699	Iron Road Ltd	Iron Road Ltd	19/07/2011
39	3731	South Australian Iron Ore Group Pty Ltd	Eyre Iron Pty Ltd	7/09/2011
	3877			
	4384	Centrex Metals Ltd		
40	3610	Centrex Metals Ltd	Centrex Metals Ltd	28/10/2011
41	3731	South Australian Iron Ore Group Pty Ltd	Eyre Iron Pty Ltd	9/12/2011
	3877			
42	3699	Iron Road Ltd	Iron Road Ltd	13/01/2012
43	3699	Iron Road Ltd	Iron Road Ltd	21/03/2012
44	4849	Iron Road Ltd	Iron Road Ltd	16/04/2012
45	4849	Iron Road Ltd	Iron Road Ltd	16/04/2012
46	4849	Iron Road Ltd	Iron Road Ltd	7/05/2012
47	3731	South Australian Iron Ore Group Pty Ltd	Eyre Iron Pty Ltd	9/07/2012
48	3731	South Australian Iron Ore Group Pty Ltd	Lincoln Minerals Ltd	9/07/2012
	3877			
49	4884	Centrex Metals Ltd	Centrex Metals Ltd	10/07/2012
50	4849	Iron Road Ltd	Iron Road Ltd	7/09/2012
51	4849	Iron Road Ltd	Iron Road Ltd	17/09/2012
52	3877	South Australian Iron Ore Group Pty Ltd	Eyre Iron Pty Ltd	20/09/2012
	4384	Centrex Metals Ltd		
53	4849	Iron Road Ltd	Iron Road Ltd	9/10/2012
54	4998	South Australian Iron Ore Group Pty Ltd	Eyre Iron Pty Ltd	4/12/2012
55	4849	Iron Road Ltd	Iron Road Ltd	12/12/2012
56	4849	Iron Road Ltd	Iron Road Ltd	19/12/2012
57	4849	Iron Road Ltd	Iron Road Ltd	30/01/2013
58	4849	Iron Road Ltd	Iron Road Ltd	11/02/2013
59	4884	Centrex Metals Ltd	Centrex Metals Ltd	19/07/2013
60	4998	South Australian Iron Ore Group Pty Ltd	Lincoln Minerals Ltd	9/08/2013
61	5065	South Australian Iron Ore Group Pty Ltd	Lincoln Minerals Ltd	9/08/2013
62	4849	Iron Road Ltd	Iron Road Ltd	4/09/2013
63	4849	Iron Road Ltd	Iron Road Ltd	4/09/2013
64	4384	Centrex Metals Ltd	Eyre Iron Pty Ltd	8/11/2013
	4998	South Australian Iron Ore Group Pty Ltd		
	5065			

APPENDIX 3 - 2014/06242

Interested parties' positions

- The following interested parties consented or did not object to disclosure of information about them:

Interested party number	Documents about which they were consulted
1	64
12	14
17	64
18	22
20 Eyre Iron Pty Ltd	48, 61
25	42
29	13, 15, 19, 27
30	22
36	24, 29
40 ¹	28
41	14, 17, 20, 22, 25, 32, 42, 45, 55, 58, 62
42	42
43 ²	61
47	24, 29
48	24, 29
50	14, 17, 20, 37, 45, 46, 50, 51, 53, 57, 62, 63
51	14
53	24, 29
56	24
61	64
62 ³	26
63	14, 17, 20, 32, 45, 53, 57
67	28
70	26, 47
71	28, 30, 34, 35, 36, 39, 41, 52, 60, 61, 64

- The following interested parties did not respond to attempts to consult them by letter:

Interested party number ⁴	Documents about which they were consulted
4	61
5	26
6	22
9	64
10 Centrex Metals Limited	26, 28, 30, 34, 35, 36, 39, 41, 47, 48, 52, 60, 61, 64
11	47
13	24, 29
14	62
16	64
19	47
21	64
22	28

¹ Interested party, a company, sought and received additional information from the agency by emails dated 4 April 2016, but provided no further comment.

² Interested party 43, a company, expressly advised that it did not wish to make any comments.

³ Interested party 62, a company, expressly advised that it did not wish to make any comments.

⁴ Interested parties 10, 11, 13, 28, 49 and 65 are companies.

23	58
26	61
27	63
28	42, 44, 63
32	64
33	24, 29
34	28
35	22
37	61
38	64
39	64
45	24, 29
49	30, 34, 35, 36, 39, 41, 47, 48, 52, 60, 61, 64
52	22
54	64
57	26
60	64
64	42
65	22, 42
66	14
68	24, 29
69	28

3. The following interested parties were unable to be consulted:

Interested party number	Documents concerning their personal/ business affairs	Searches conducted in an attempt to locate the interested party
3	15, 19, 27	<ul style="list-style-type: none"> • unable to consult with interested party • unable to identify interested party's personal representative
24 ^b	28	<ul style="list-style-type: none"> • White Pages; Yellow Pages (Farmers in SA), ASIC, LinkedIn; Google; Facebook • one possible match to a property, but not a postal address, identified via Google
31	24, 29	<ul style="list-style-type: none"> • White Pages; Yellow Pages (Farmers in SA); ASIC; LinkedIn; Google; SA Electoral Roll; Facebook • no matches identified
46 ^b	64	<ul style="list-style-type: none"> • White Pages; Yellow Pages (Farmers in SA); ASIC; LinkedIn; Google; SA Electoral Roll; Facebook • one possible match to a property, but not a postal address, identified via Google
59	64	<ul style="list-style-type: none"> • letter dated 24 March 2016 returned to sender • subsequent searches via White Pages; Yellow Pages (Farmers in SA); ASIC; LinkedIn; Google; SA Electoral Roll; Facebook • possible matches identified via the Yellow Pages; SA Electoral Roll and White Pages; not considered likely matches for the interested party, however.

⁵ Interested party 24 is a company.

⁶ Interested party 46 is a company.

4. The following interested parties objected to disclosure of information about them:

Interested party number	Documents about which they were consulted	Reasons for objection/ information claimed exempt
2	60, 61	<p>The following information in the documents is claimed exempt:</p> <ul style="list-style-type: none"> • Figures 2, 3, 4 and 5 in E-PEPR 2013-038 (for EL 4998) • Figures 2 and 3 in the E-PEPR 2013-060 (for EL 5065) • the Waivers of Exemption Forms 23A and 23B as signed by two interested parties (Appendix 1 in EPEPR 2013-038 and Appendix 2 in EPEPR 2013-060) • the letter from an interested party (Appendix 2 in the EPEPR 2013-038)
7	48	<p>Strong objections to release because:</p> <ul style="list-style-type: none"> • the information is private and confidential • the information is between the landowner and company only • release could lead to questions about land management • drillhole locations should be of no interest to the applicant as locations have been discussed and agreed to by the landowner • release could lead to trespassing to find drillsites • the activities conducted were done in the past and have all been rehabilitated
8	61	Same reasons as for interested party 7
15	47, 48, 54, 60, 61	<p>Strong objections to release because:</p> <ul style="list-style-type: none"> • the information is private • the information is between the landowner and company only • they provided this information to the company on the understanding that it would not be made publicly available and that conversations they had with the company would be confidential • release could lead to questions about the management of the land and the locations selected for drillsites • maps showing drillhole locations should be of no interest to the applicant as locations have been discussed and agreed to by the landowner and company. The applicant should only need to understand how the company manages its activities • The activities conducted were done in the past and have all been rehabilitated
44	64	objection to both release and mining in agricultural areas
55	15, 19, 27	<ul style="list-style-type: none"> • the information contained within the 'Issues Raised' and 'Action' columns in table 3 is claimed exempt • the management measures and procedures mentioned are between the landowner and company only • release of this information could allow someone to question management of the land
58	15, 19, 27, 51	requested redaction of the names of individual employees who worked on the report for their personal protection/privacy.

