

Determination

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

Applicant	Hon Rob Lucas MLC
Agency	State Emergency Service
Ombudsman reference	2015/02390
Agency reference	ESS-14-2322
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:

For 2013, copies of all correspondence between the Auditor-General and Chief Executive of the Department or Agency.

Background

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

Jurisdiction

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

Provisional determination

4. I provided my tentative view about the agency's determination to the parties, by my provisional determination dated 18 January 2016. I informed the parties that subject to my receipt and consideration of submissions from the parties I proposed to reverse the agency's determination.
5. The agency provided detailed submissions in response. I have considered these submissions in this determination.
6. The applicant advised my Office that he did not intend to make any further submissions.

Relevant law

7. A person has a legally enforceable right to be given access to an agency's documents in accordance with the FOI Act.¹
8. 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.
9. Under section 48, the onus is on the agency to justify its determination 'in any proceedings'. This includes the external review process.
10. The agency originally claimed that the document was exempt as an internal working document (clause 9(1)) and a document concerning the operations of agencies (clauses 16(1)(a)(i), 16(1)(a)(ii) and 16(1)(a)(iv), each with clause 16(1)(b)).² Following my provisional determination, the agency accepted my argument that the Auditor-General is not an 'agency' for the purpose of clause 16(1)(a) (or 9(1)), and abandoned its clause 16(1) claims. It noted that the Auditor-General may have a different view, however.
11. For the sake of completeness I will therefore consider the clauses originally claimed. They provide as follows:

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 16(1)(a)(i), 16(1)(a)(ii) and 16(1)(a)(iv), with clause 16(1)(b)

- (1) A document is an exempt document if it contains matter the disclosure of which—
 - (a) could reasonably be expected—
 - (i) to prejudice the effectiveness of any method or procedure for the conduct of tests, examinations or audits by an agency; or
 - (ii) to prejudice on the attainment of the objects of any test, examination or audit conducted by an agency; or
 - ...
 - (iv) to have a substantial adverse effect on the effective performance by an agency of the agency's functions; ... and

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

² The determination following internal review made it clear that the agency's Principal Officer confirmed 'the decision of the SES FOI Officer that the scheduled document is exempt from release under the Clauses detailed in the original schedule' and went on to cite all parts of clause 16(1)(a). The schedule attached to the original determination did not specify the parts of clause 16(1)(a) relied upon. The body of the determination, however, referred only to clause 16(1)(a)(i), 16(1)(a)(ii) and 16(1)(a)(iv), each with clause 16(1)(b).

(b) would, on balance, be contrary to the public interest.

12. Section 39(11) provides that the Ombudsman may confirm, vary or reverse the agency's determination in an external review, based on the circumstances existing at the time of review.

Document in issue

13. The agency identified one document within the scope of the application. It comprises a letter from Mr Simon O'Neill, then Auditor-General, to Mr C Beattie, Chief Officer of the South Australian State Emergency Service, dated 13 June 2013³ (5 pages) and an attachment (1 page).

Issues in this review

14. It is for me to consider whether or not the agency has justified its determination to refuse access to the document.

Parties' submissions

The applicant

15. When applying for internal review, the applicant submitted that in his view the 'documents are in the public interest and should be released'. He reiterated this submission when applying for external review.
16. When applying for external review, the applicant also provided an extract from *Hansard* at which the Auditor-General made comments about his views on the accessibility of audit letters under the FOI Act before the Budget and Finance Committee.⁴ The copy provided is marked as an 'uncorrected proof'. My Office has since obtained the transcript from South Australia's parliament's website.⁵ Although lengthy, I will set out the relevant parts of the extract:

3183 The CHAIRPERSON: ... On the last issue, you gave us advice on another committee—I can't remember; it was many years ago—and I just wanted to confirm the advice I recall you giving that committee. This was on the issue of the audit letters that you exchange with—

Mr O'NEILL: FOI.

3184 The CHAIRPERSON: FOI ultimately, but the audit letters you exchanged with management, your management letters. My recollection of your previous advice many years ago—and you can correct me if I am wrong—is that, whilst something is active in terms of the current audit and prior to your annual audit report, you would expect under FOI the agency not to release that sort of information but, once your audit report has been done, you, the Auditor-General, have no concerns about your audit letters to management being released under FOI. Is that a fair reflection?

Mr O'NEILL: That's correct, but there is a second thing, and that is that there may be some audit documentation through letters of communication to agencies that we regard as audit working paper documentation. For example, under auditing standards, we've got to make an inquiry of an agency with respect to management of fraud risk. So, we will send out a letter of communication each year to the agency requesting certain information and procedural information. We would say that that's an inquiry no different to an inquiry when we undertake a substantive audit, and that's audit documentation and it shouldn't be released.

³ The schedule of documents attached to the original determination erroneously refers to 13 June 2014.

⁴ South Australia, *Parliamentary Debates*, Legislative Council, Budget and Finance Committee, 20 March 2015, 466-477 (Rob Lucas, Chairperson, and Simon O'Neill, Auditor-General).

⁵ South Australia, *Parliamentary Debates*, Legislative Council, Budget and Finance Committee, 20 March 2015, [3183]-[3190] (Rob Lucas, Chairperson, and Simon O'Neill, Auditor-General), available at <http://www.parliament.sa.gov.au/Committees/Pages/Committees.aspx?CTId=3&CId=310> (accessed on 30 November 2015).

3185 The CHAIRPERSON: But your previous advice, and I think you are confirming it here, is that your audit letters would say, 'These are the issues of concern that we want you to look at' and they then eventually—they might have all this audit documentation behind it—come back to you in formal correspondence saying, 'Auditor-General, you say this; we say this to you.' Once your report is done you don't have a concern?

Mr O'NEILL: No, that's all been released.

3186 The CHAIRPERSON: What I'm saying to you, though, is that in the last couple of years every year I have lodged FOIs for these audit letters. Some years ago, when your audit advice was about—I had a much better response rate in terms of getting it, but some people seem to have forgotten, conveniently or otherwise, your position and are now refusing it and I now have to go through the process of internal appeal and the Ombudsman, etc.

Mr O'NEILL: Transparency between you and I. I understand that in a couple of areas, and I honestly believe that it relates to a couple of these areas of communication where we are just seeking preliminary—

3187 The CHAIRPERSON: No, we're not getting even the letter that you have sent and then the final considered response.

Mr O'NEILL: Audit management letters where we have gone through a natural justice process and communicated findings from an audit and the responses from the agency in terms of those findings, I in no way utilise or ask an agency to utilise my exempt status to provide that information under FOI.

3188 The CHAIRPERSON: Thank you for that because that's on the public record, and we will certainly continue to utilise that. However, if there was some way of you making that clear again to whether it be the Commissioner for Public Employment or the chief executive of the Department for the Premier and Cabinet that that's the Auditor-General's position, that's fine. If you don't think that's appropriate—

Mr O'NEILL: No, I consider that already part of the annual audit mandate. There's a way of re-emphasising that.

3189 The CHAIRPERSON: If you weren't to do that, I can send a copy of your evidence today to various CEOs and say, 'This is what the Auditor-General is actually saying, not what your FOI officer is saying to me.'

Mr O'NEILL: If you want to, but—

3190 The CHAIRPERSON: But if you are going to handle it that way potentially, we will leave it at that.

Mr O'NEILL: On that matter, I am aware, because some agencies want to do the right thing. They actually make contact with us and say, 'We've received an FOI request.' We don't say, 'Come to us to screen FOI requests,' but some have done that to ensure that they are doing the right thing by—whether this is audit documentation or not. I have said on a couple of occasions, 'That shouldn't be provided. It's a fraud risk management inquiry; it's not the outcome of an audit process.'

The agency

17. In its notice of determination following internal review, the agency provided the following reasons in support of its claims of exemption:

The exempt document relates to the conduct of a statutory audit carried out by the Auditor-General of government agencies. Other documents, held by the Auditor-General, who is an exempt agency under the FOI Act, would likely inform the total audit working process and the disclosure of one document on its own could lead to a distorted view of the audit process. Upon completion of an agency's audit process, the outcome is publicly available.

18. By email dated 21 November 2014 the agency consulted with the Auditor-General's Department about the document. By email dated 27 November 2014, the Executive Director of Audits (Policy, Planning and Research) objected to its release. In so doing he cited previous communication with agencies.⁶

⁶ Under *Freedom of Information Act 1991*, section 39(15), I should avoid disclosing matter that the agency claims is exempt. Accordingly, I have omitted reference to the contents of the previous communication.

19. The agency has also provided me with correspondence from the Crown Solicitor's Office (**the CSO**) addressed to another agency dated 20 December 2014 about a similar FOI application.⁷
20. The CSO responded to my provisional determination on behalf of the agency by letter dated 16 February 2016. A summary of the submissions follows.

Clause 9(1)

21. Reiterating the agency's claim that the document is exempt under clause 9(1), the agency provided the following submissions:⁸
- in support of its claim that the Auditor-General is part of the 'Government' for the purpose of clause 9(1)(a):
 - 'whether an entity is relevantly the Crown or the Government in a particular case depends on the context in which the question is asked'
 - 'the meaning of "Government" may include a statutory corporation and is not necessarily limited to the executive or legislative branch of government': *TransAdelaide v Evans*. In that case 'Doyle CJ accepted that TransAdelaide, a statutory corporation, was "part of the Government"'
 - The Auditor-General:
 - 'is not a body corporate'
 - 'holds a public office in the services of Government that has been created by statute and to which he is appointed by the Governor'
 - 'is not subject to the direction of any person in carrying out his functions'
 - 'as a holder of public office, he does not have a legal status independent of or separate from the Government'
 - has "'the powers and functions of a chief executive in relation to the administrative unit", ie the Auditor-General's Department': section 25(2) of the *Public Finance and Audit Act 1987*
 - the Auditor-General is part of the Government as 'a holder of public office acting as the chief executive of an administrative unit which is part of Government'
 - the Auditor-General's Department:
 - 'is "an administrative unit of the Public Service" established by the Governor to assist the Auditor-General in carrying out his functions': section 25(1) of the *Public Finance and Audit Act 1987*
 - 'is plainly part of the Government'
 - the rationale underpinning clause 9(1):

is directed at encouraging ... frank advice, consultation and deliberation in the course of decision-making within the Government. [It] ... must extend to a holder of public office who is not only appointed by the Government to provide services to the Government but also vital to maintaining the accountability of the Government. This is also consistent with the fact that the Auditor-General is an exempt agency under the Act. It would be incongruous with the scheme of the FOI Act and contrary to Parliament's intention if the exemption from disclosure under clause 9 would not apply to a public officer of the State simply because he has some degree of independence from Parliament or the Executive.
 - the agency submitted that the document contains matter 'that relates to a consultation or deliberation that has taken place in the course of, or for the purpose of, the decision-making functions (being the statutory audit and reporting functions) of the Auditor-General'. In so doing, the agency agreed with the following aspects of my provisional determination:

⁷ I have omitted reference to the contents of this letter so as to avoid disclosing claimed exempt matter, as required by *Freedom of Information Act 1991*, section 39(15).

⁸ I have omitted footnotes and paragraph numbers.

- 'that the scope of clause 9(1) is wide, particularly given the words "that relates to"'
- 'that the document relates to the Auditor-General's obligation to report to Parliament, relates to the Auditor-General's deliberations, opinions and advice to Parliament, and was created to enable the Auditor-General to make decisions'
- in support of its claims that disclosure of the document would, on balance, be contrary to the public interest, the agency proffered the following submissions:
 - ***Interpreting the public interest test***
 - '[t]he public interest question is necessarily informed by the adverse effect of disclosure to which an exemption under the FOI Act is directed'; 'it is relevant ... to have regard to any specific adverse effect that such disclosure could reasonably be expected to cause': *Daycorp Pty Ltd v Parnell*
 - 'the judgment as to where the public interest lies is to be made':
in the context of, and for the purposes of, legislation which has the object described above [the objects of the *Freedom of Information Act 1982 (Cth)* which included "providing for a right of access to documents"], which begins from the premise of a public right of access to official documents, and which acknowledges a qualification of that right in the case of necessity for the protection of *essential* public interests (emphasis in original): *McKinnon v Secretary, Department of the Treasury*
 - From the decision of *Lobo v Department of Immigration and Citizenship*:
The right to access to a document ... is not read down in light of the exceptions and exemptions. Rather, it is defined by them. Therefore, an exemption is not read down by reason of a person's having a right of access. It remains part of the context defining that right and part of the context in which a decision whether disclosure under the Act would, on balance, be in the public interest

Public interest factors

- if clause 9(1)(a) is satisfied, 'that will be a significant factor weighing against disclosure for the purpose of clause 9(1)(b)'
- The agency referred to the following factors in addition to those identified in my provisional determination:
First, there is a significant public interest in the proper and efficient operation of the Auditor-General and in maintaining the integrity of and public confidence in the Auditor-General's audit processes. This is because the Auditor-General plays a vital role in maintaining public sector accountability by providing independent assurance to Parliament that Government activities are conducted and accounted for properly and are in accordance with the law. While the importance of the Auditor-General's role means that there is also a public interest in the community's knowing of the Auditor-General's activities, that does not necessarily equate with its being privy to every aspect of those activities in a particular audit process. This is also consistent with the Auditor-General being an exempt agency under the FOI Act.

Secondly, the Document is only one of a number of audit working documents ... and its disclosure could lead to a distorted view of the audit process. On this point, SES relies on the views expressed by the Auditor-General (... referred to in the provisional reasons) ... and in comments made before the Budget and Finance Committee and as set out in correspondence from the Crown Solicitor's Office dated 20 December 2014.

The Document [contains] ... substantive matters relating to the audit and reporting process[.]

SES also relies on the view of the Auditor-General's Department ... that the Document is an "audit working document". SES submits that the Auditor-General, having knowledge of the audit working documents relating to SES

and also as to the audit process more broadly, is best placed to make the assessment whether a distorted view could or could not result from disclosure. A decision-maker under the FOI Act ... does not have the advantage of having the general and specific contextual knowledge relevant to the Document which the Auditor-General possesses.

In *McKinnon v Secretary, Department of the Treasury*, Hayne J considered that the assertion that release of material would have “the potential to lead to confusion and to mislead the public” could constitute a reasonable ground for a claim that disclosure would be contrary to the public interest. SES submits that it is not in the public interest to disclose material which represents only a small subset of audit working documents relating to the audit of SES where it is in the public interest to maintain the integrity of and public confidence in the Auditor-General’s audit processes.

Thirdly, ... there is a public interest in not disclosing the Document because it contains matter that relates to a consultation or deliberation that has taken place in the course of, or for the purpose of, the decision-making functions of the Auditor-General.

- The agency also provided submissions in relation to the factors identified in my provisional determination:

While the fulfilment of the objects of the FOI Act, being the public interest in promoting openness and accountability, is in favour of disclosure, that object is, as mentioned above, to be qualified by the public interest in protecting certain material from disclosure.

While the contents of the Document may appear on their face to be innocuous, that does not weigh heavily in favour of disclosure in light of the fact that the Document represents only a small part of the audit working documents relating to SES and there is a public interest in not causing a distorted view of the audit process in relation to which there is a public interest in maintaining integrity and public confidence. An apparently innocuous document is still capable of misleading the public as to an audit process if it represents only a small part of that process.

Similarly while the Document itself shows when it was created, and that may appear to put it into context in a temporal sense, again, the disclosure of the Document on its own would disclose only a small subset of matters relating to the SES audit process. That takes it out of the context needed to properly understand the Document and its significance or consequences, that context being the whole of the audit process and the audit working documents which represent it (or large parts of it).

Importantly, the applicant and the public have the benefit of the Auditor-General’s final report and published financial statements and this militates against the need to provide access to the Document.

Clause 16(1)

22. In response to my provisional determination, by reason of the definition of 'agency' under section 4(1) of the FOI Act, the agency conceded that the Auditor-General is not an 'agency' for the purpose of clause 16(1)(a) (or clause 9(1)(a)).
23. The agency noted, however, that the Auditor-General has previously submitted that disclosure would have an adverse effect on his functions as set out above.

Consideration

24. I have had regard to the parties’ submissions, including the supporting documentation.

Clause 9(1)

25. 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).
26. The scope of clause 9(1)(a) is wide, particularly given the words ‘that relates to’.
27. 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’.
28. The Auditor-General is an ‘exempt agency’,⁹ and therefore not an ‘agency’¹⁰ for the purposes of the FOI Act. Nor is he a Minister.
29. It is therefore necessary to consider whether or not the Auditor-General is part of the ‘Government’ within the meaning of clause 9(1)(a).
30. The definition of ‘government’ in the FOI Act provides that the term ‘includes local government, and *intergovernmental* has a corresponding meaning’.¹¹
31. The Auditor-General’s role includes:
 - providing ‘independent assurance to Parliament that Government activities are conducted and accounted for properly and are in accordance with the law’
 - ‘ensuring public sector accountability’
 - assisting ‘public sector agencies to improve their performance in delivering better outcomes to the community’.¹²
32. I accept that:
 - the document relates to the Auditor-General’s obligation to report to Parliament
 - the document relates to the Auditor-General’s deliberations, opinions and advice to Parliament
 - the document was created to enable the Auditor-General to make decisions.
33. As an independent, statutory officer, I have doubts as to whether the Auditor-General is part of the ‘Government’ within the meaning of clause 9(1)(a).¹³ Nevertheless, I accept it is arguable that he is, and will therefore proceed on the basis that clause 9(1)(a) is satisfied.
34. Clause 9(1)(b) introduces a public interest test, which limits the scope of clause 9(1)(a). I will discuss the public interest test below.

Clauses 16(1)(a)(i), 16(1)(a)(ii) and 16(1)(a)(iv)

35. To satisfy clause 16(1)(a) an agency must show that disclosure of a document could reasonably be expected to ‘prejudice’ or ‘have a substantial adverse effect’ on specified operations of ‘an agency’.
36. Given my view is that the Auditor-General is not an agency within the meaning of clause 16(1), my view is that clause 16(1)(a) cannot apply to his operations.

⁹ *Freedom of Information Act 1991*, section 4(1) and Schedule 2 (h).

¹⁰ *Freedom of Information Act 1991*, Section 4(1) of the FOI Act defines the word ‘agency’. The definition specifically excludes ‘an exempt agency’.

¹¹ *Freedom of Information Act 1991*, section 4(1).

¹² <https://www.audit.sa.gov.au/About-us> accessed on 30 November 2015 and 18 January 2016.

¹³ Bradley Selway QC, *The Constitution of South Australia* (The Federation Press, 1997) [9.10; 12.2].

37. I accept that the State Emergency Service (**the agency**) and the Auditor-General's Department are agencies within the meaning of section 4(1) and 16(1)(a).
38. That said, based on the submissions provided to date, I am not satisfied that disclosure of the document could reasonably be expected:
- 'to prejudice the effectiveness of any method or procedure for the conduct of tests, examinations or audits by' the agency or another agency, as required by clause 16(1)(a)(i); or
 - 'to prejudice on the attainment of the objects of any test, examination or audit conducted by' the agency or another agency, as required by clause 16(1)(a)(ii); or
 - 'to have a substantial adverse effect on the effective performance by' the agency or another agency of its functions, as required by clause 16(1)(a)(iv).

Public interest test - clauses 9(1)(b) and 16(1)(b)

39. In order to satisfy clauses 9(1)(b) and 16(1)(b), the agency must show that disclosure of the documents would 'on balance, be contrary to the public interest.'
40. In considering whether or not disclosure of the document would, on balance, be contrary to the public interest I have had regard to 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, including of the audit process
- the contents of the document
- that more than two and a half years has elapsed since the document was created
- the document itself shows when it was created, thereby putting it into context
- the Auditor-General has published his 2013, 2014 and 2015 annual reports.¹⁴ Each report includes a section devoted to the State Emergency Service.¹⁵

Contrary to disclosure:

- the Auditor-General's views, as expressed to the agency
- the fact that the document represents only part of the audit process
- the information about audit outcomes published in the Auditor-General's annual reports¹⁶

41. Based on the information currently before me, I am not satisfied that disclosure of *the document* 'could lead to a distorted view of the audit process' or undermine 'the integrity of and public confidence in the Auditor-General's audit processes'. In saying this, I have borne in mind the factors set out in the paragraph above.
42. Ultimately, I am not satisfied that disclosure of *the document* would, on balance, be contrary to the public interest, as required by clause 9(1)(b) and 16(1)(b).

¹⁴ <https://www.audit.sa.gov.au/Publications/Annual-reports> (accessed on 30 November 2015 and 18 January 2016).

¹⁵ Auditor-General, South Australian, *Annual Report for the year ended 30 June 2013*, Part B, Volume 5, 1676 (https://www.audit.sa.gov.au/Portals/0/Documents/Audit%20Reports/2012-13/B/Part%20B_5.pdf - accessed on 30 November 2015 and 18 January 2016); Auditor-General, South Australian, *Annual Report for the year ended 30 June 2014*, Part B, Volume 5, 1801 (https://www.audit.sa.gov.au/Portals/0/Documents/Audit%20Reports/2013-14/B/Part%20B_Vol_5.pdf - accessed on 30 November 2015 and 18 January 2016); Auditor-General, South Australian, *Annual Report for the year ended 30 June 2015*, Volume 5, 1 (available via <https://www.audit.sa.gov.au/Publications/Annual-reports/2015-Reports> - accessed on 30 November 2015 and 18 January 2016)

¹⁶ <https://www.audit.sa.gov.au/Publications/Annual-reports> (accessed on 30 November 2015 and 18 January 2016).

Conclusion

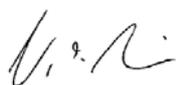
43. I am not satisfied that the document is exempt under clause 9(1) or 16(1)(a)(i), 16(1)(a)(ii) or 16(1)(a)(iv) with clause 16(1)(b).

Comments

44. In my view, the reasons provided by the agency in its notices of determination are inadequate. The original determination merely quoted the claimed exemption clauses. The determination following internal review contains minimal reasons and fails to address the public interest test applicable to all of the claimed exemption clauses.
45. 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.¹⁷ 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.¹⁸
46. In addition, I remind the agency that it must engage in a 'public interest balancing process' in applying the public interest test.¹⁹ Merely satisfying the initial criteria in an exemption clause with a public interest test under the Act, is not enough to satisfy the test that disclosure would, on balance, be contrary to the public interest. Agencies should always turn their mind to the objects of the Act, to extend as far as possible, the rights of the public to obtain access to information held by the government. This issue was also discussed in the Ombudsman's 2014 FOI audit.²⁰
47. The agency has submitted that the Auditor-General is 'best placed to make the assessment whether a distorted view could or could not result from disclosure', as I do 'not have the advantage of ... the [Auditor-General's] general and specific knowledge relevant to the Document'. This is akin to saying I should accept that disclosure of the document would mislead the public because the Auditor-General says it would. This is not how I interpret my role as an external review authority. I must make my determination based on the circumstances existing at the time of my review. The onus is on either the agency to justify its determination, or on the party claiming the exemption clause to ensure there is sufficient evidence before me from which I may be satisfied that the document is otherwise exempt.²¹ The Auditor-General's views are relevant to my determination, but they are not determinative.

Determination

48. In light of my views above, I reverse the agency's determination.



Wayne Lines
SA OMBUDSMAN

10 March 2016

¹⁷ *Freedom of Information Act 1991*, section 23(2)(f).

¹⁸ 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>.

¹⁹ *Iplex Information Technology Group Pty Ltd v Department of Information Technology Services SA* (1997) 192 LSJS 54, 70.

²⁰ See 'An audit of state government departments' implementation of the *Freedom of Information Act 1991* (SA), May 2014, Part 7B, 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>.

²¹ *Re Pope and Queensland Health* (1994) 1 QAR 616, [17]. A decision of the Queensland Information Commissioner in relation to the Queensland equivalent of section 48 of the South Australian FOI Act.



APPENDIX - 2015/02390

Procedural steps

Date	Event
July 2014	The agency received the FOI application dated 9 July 2014.
17 July 2014	The agency acknowledged the application for access.
2 February 2015	The agency determined the application.
2 March 2015	The agency received the internal review application dated 26 February 2015.
11 March 2015	The agency acknowledged the internal review application.
13 March 2015	The agency confirmed the determination.
31 March 2015	The Ombudsman received the applicant's request for external review dated 27 March 2015.
2 April 2015	Ombudsman SA acknowledged the application and advised the agency of the external review and requested submissions and documentation.
21 April 2015	The agency provided the Ombudsman with its submissions and documentation.
18 January 2016	The Ombudsman notified both parties of his provisional determination.
20 January 2016	The applicant advised my Office that he did not intend to make any submissions in response to my provisional determination.
16 February 2015	The Crown Solicitor's Office provided submissions on behalf of the agency by letter.
8 March 2016	Ombudsman SA provided the Crown Solicitor's Office and the agency an opportunity to identify any claimed confidential material in a summary of the agency's submissions proposed for inclusion in the Ombudsman's determination by email.

