



OmbudsmanSA

Determination

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

Applicant:	Ms Leah Cassidy
Agency:	Department of Treasury and Finance
Ombudsman reference:	2022/00548
Agency reference:	T&F21/1091
Determination:	The determination of the agency is varied.
Date of Ombudsman's determination:	29 July 2022
Issues considered:	Definition of personal affairs Unreasonableness (personal affairs) Adverse effect on business affairs Contract entered into after 2005 Agency's decision-making functions Legal professional privilege Whether disclosure constitutes an offence Matter obtained in confidence Effective performance of agency's functions Parliamentary privilege
Exemption clauses relied upon:	6(1) 7(1)(c), (3) 9(1) 10(1) 12(1) 13(1)(b) 16(1)(a)(iv) 17(c)
Legislation considered:	<i>Freedom of Information Act 1991</i>

Terms of the original application:

Investigation report and all associated notes and documentation, including emails, text messages and Ministerial briefings relating to the investigation of complaints of bullying against Minister Corey Wingard claimed by Leah Cassidy, CEO, Sport SA.

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:

Investigation report and all associated notes and documentation, including emails, text messages and Ministerial briefings relating to the investigation of complaints of bullying against Minister Corey Wingard claimed by Leah Cassidy, CEO, Sport SA.

2. I am mindful that since the documents in issue were created there has been a change in the South Australian Government of the Day as a result of the 2022 state election. However, for consistency with the documents in issue and the agency's determination, a reference in this determination to 'the Minister' or 'Minister Wingard' is a reference to Mr Corey Wingard. Similarly, a reference to 'the Premier' is a reference to Mr Steven Marshall.

Background

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

Jurisdiction

4. This external review is within the jurisdiction of the Ombudsman as a relevant review authority under section 39 of the FOI Act.
5. I have exercised my discretion under section 39(4) of the FOI Act to extend the time for making an application for external review.
6. I am mindful that the application for external review was received only one day out of time. Having regard to the minimal delay, and the numerous public holiday days falling within the 30 day period to apply for external review, I am satisfied that if I were to refuse to accept the application, this would unfairly prejudice the applicant.

Provisional determination

7. I provided my tentative view about the agency's determination to the parties, by my provisional determination dated 14 April 2022. I informed the parties that subject to my receipt and consideration of submissions from the parties I proposed to vary the agency's determination.
8. I received responses from the applicant, the agency and a number of the interested parties. Of relevance, the agency provided substantial submissions have persuaded me to alter my provisional views. To ensure all parties were afforded the opportunity to comment on my revised views I considered it necessary to issue a revised provisional determination.
9. I provided my revised tentative view about the agency's determination to the parties, by my revised provisional determination dated 29 June 2022. I informed the parties that subject to my receipt and consideration of submissions from the parties I proposed to vary the agency's determination.
10. I received responses from the applicant, the agency and one of the interested parties. The applicant has generally submitted that:

- disclosure of the documents is necessary for the applicant to be sure that the investigation was properly conducted and relevant evidence was accurately recorded and considered
 - the public interest favours transparency and accountability for elected officials and public servants
 - it appears that the investigation was not properly carried out as:
 - the Premier's findings as recorded in Hansard do not address the actual allegations put forward
 - it is not clear that an impartial and independent investigation was actually carried out.
11. As to the final submission, whilst I understand that the applicant's concerns around the conduct of the investigation explains her interest in disclosure of the documents, it is not for me to comment on the manner in which the investigation was conducted in the context of an external review.
12. As to the first two dot points, I agree with those submissions and confirm my view that in relation to the documents in issue the public interest generally favours disclosure. However, my revised view is that the majority of the documents are exempt on the basis of clause 10(1). Clause 10(1) simply requires that the documents are subject to legal professional privilege. Where privilege is established, the exemption applies regardless of where the public interest lies.
13. I advise the applicant that section 39(12) of the FOI Act states that where I am satisfied that a document is exempt, I may not make a determination to the effect that the document be disclosed.
14. As the applicant has not disputed my assessment of clause 10(1), I maintain my revised view as to its applicability.
15. I advise that I intend to address the submissions of the agency and interested party in the body of this determination.
16. I observe that the agency has requested that the content of its submissions be confidential. I have considered whether the submissions themselves ought to be treated as exempt, and to that extent will not disclose the contents of the submissions. I do however consider that a portion of the submissions can be disclosed and that it is appropriate for me to do so to ensure that I comply with my obligation to give reasons for my determination.

Relevant law

17. A person has a legally enforceable right to be given access to an agency's documents in accordance with the FOI Act.¹
18. 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.

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

19. The following clauses of Schedule 1 of the FOI Act are relevant to my external review:

6—Documents affecting personal affairs

(1) A document is an exempt document if it contains matter the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead).

(2) A document is an exempt document if it contains allegations or suggestions of criminal or other improper conduct on the part of a person (living or dead) the truth of which has not been established by judicial process and the disclosure of which would be unreasonable.

(3) A document is not an exempt document by virtue of subclause (1) or (2) merely because it contains information concerning the person by or on whose behalf an application for access to the document is made.

7—Documents affecting business affairs

(c) if it contains matter—

(i) consisting of information (other than trade secrets or information referred to in paragraph (b)) concerning the business, professional, commercial or financial affairs of any agency or any other person; and

(ii) the disclosure of which—

(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.

(3) A document is not an exempt document by virtue of this clause if it is a contract entered into by the Crown or an agency after the commencement of this subclause.

9—Internal working documents

(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) the disclosure of which would, on balance, be contrary to the public interest.

10—Documents subject to legal professional privilege

(1) A document is an exempt document if it contains matter that would be privileged from production in legal proceedings on the ground of legal professional privilege.

12—Documents the subject of secrecy provisions

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

(2) A document is not an exempt document by virtue of this clause unless disclosure of the matter contained in the document, to the person by or on whose behalf an application for access to the document is made, would constitute such an offence.

13—Documents containing confidential material

(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.

16—Documents concerning operations of agencies

(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
 - (iii) to have a substantial adverse effect on the management or assessment by an agency of the agency's personnel; or
 - (iv) to have a substantial adverse effect on the effective performance by an agency of the agency's functions; or
 - (v) to have a substantial adverse effect on the conduct of industrial relations by an agency; and
- (b) would, on balance, be contrary to the public interest.

17–Documents subject to contempt etc

A document is an exempt document if it contains matter the public disclosure of which would, but for any immunity of the Crown—

- (a) constitute contempt of court; or
 - (b) contravene any order or direction of a person or body having power to receive evidence on oath; or
 - (c) infringe the privilege of Parliament.
20. Under section 48, the onus is on the agency to justify its determination 'in any proceedings'. This includes the external review process.
21. 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

22. The agency initially identified 179 documents within the scope of the application and determined that 12 documents are partially exempt, 122 documents are fully exempt, and the remaining 45 documents can be released in full.
23. In response to my provisional determination the agency advised that a further 4 documents had been identified as falling within scope. Those documents are identified as documents 180-183. The agency claims all 4 documents to be fully exempt on the basis of clause 10(1).

Issues in this review

24. Having regard to the agency's submissions and the exemption clauses provided in Schedule 1 of the FOI Act, it is for me to determine whether to confirm, vary or reverse the agency's determination in regard to the documents in issue in this external review.

Consideration

The agency's determination and submissions

25. I consider it appropriate to first provide some general commentary about the agency's initial submissions and my assessment of same.
26. The agency's initial determination spans four pages, however when not taking into account the portions dedicated to summarising the FOI application, quoting the relevant exemption clauses and the agency's explanation of the applicant's review rights, the agency has effectively dedicated approximately one and a half pages to justifying its initial position that 122 documents are fully exempt and a further 12 documents are partially exempt. Additionally, much of this page and a half is used to simply assert that the requirements of the claimed clauses are met without actually explaining how this is the case. The agency has also repeated portions of its determination for documents partially exempt and documents fully exempt.

27. The agency did not provide any further explanation in its internal review determination and the initial submissions to my Office merely repeated the explanation in the initial determination.
28. I would expect that in taking such an access-averse stance, the agency would provide a more thorough explanation of how the documents are exempt in order to discharge its obligation under section 48 to justify its determination. I accept that it would not be practical for the agency to address 134 documents individually in its determination, however the agency could certainly have made its general submissions about each exemption clause more thorough.
29. In particular, my external review was initially restricted due to the agency's inadequate explanation for its reliance upon clause 10(1). Despite the agency claiming exemption over several documents which, on their face, do not meet the basic requirements of legal professional privilege, the agency simply submitted that:

Under clause 10(1) of Schedule 1 to the FOI Act, information is exempt from disclosure if it would be privileged from production on the ground of legal professional privilege. These documents contain legal advice provided to the government by its legal advisor, the Crown Solicitor, information which is subject to legal professional privilege.
30. A substantial number of the relevant documents do not contain legal advice, nor do they comprise communications between a client and a solicitor. Absent any meaningful submissions from the agency, my provisional views could only be formed based on the contents of the documents and the publicly available contextual information. I provisionally concluded that a large number of the documents in issue were not exempt on the basis of clause 10(1).
31. In response to my provisional determination the agency provided a further 27 pages of submissions, the majority of which was focused on the agency's reiterated reliance upon clause 10(1). The additional information provided me with sufficient context to be satisfied that I ought to substantially alter my provisional views. Accordingly, it became necessary for me to issue a revised provisional determination to ensure all parties had an appropriate opportunity to comment on my revised views.
32. Had the agency provided its more thorough submissions to me upon first request, I would have had sufficient information before me to reach an informed provisional view, avoiding the need to issue a revised provisional determination.
33. Due to the large number of documents in issue, and to ensure that I avoid disclosing material claimed to be exempt by the agency,² my determination will address the agency's submissions and the claimed exemption clauses generally. The specific application of each clause to each document will be stipulated in Appendix Two.
34. I also consider it appropriate to advise that I have observed a substantial amount of duplication in the documents. I do not consider this to be a matter warranting criticism, but hold the view that it is appropriate to advise the applicant of the duplication in order to manage her expectations as to the actual number of distinct documents found to fall within the scope of the access application.
35. In response to my provisional determination the agency acknowledged this duplication and advised that in future it will consider whether there may be an alternative approach which reduces such duplication. I reiterate that the duplication itself is not problematic; I

² *Freedom of Information Act 1991*, section 39(15).

have mentioned it merely to ensure the applicant held an accurate expectation as to the number of separate and distinct documents in issue.

Information in the public domain

36. As is evident from the terms of the FOI application, the documents in issue relate to the investigation of complaints of bullying against Minister Wingard by the applicant. I consider it relevant to first note the amount of information on this topic which is already in the public domain.
37. The subject of the FOI application has been extensively publicised, and a large number of articles currently remain in the public domain.³ Amongst other things, the following information remains publicly available:
 - the applicant lodged a complaint with the Premier about the behaviour of Minister Wingard and his senior staffer during a meeting with the applicant and the president of Sport SA (the name of the Minister's senior staffer has been publicly released)
 - the complaint was referred to the Commissioner for Public Sector Employment (**the Commissioner**)
 - the investigation of the complaint was contracted out to a private investigator, Andrew Hill Investigations (**AHI**)
 - the applicant was told not to attend a Zoom meeting attended by Minister Wingard and others after she raised the bullying allegations
 - the Premier received advice from the Crown Solicitor regarding the conduct of the Minister and from the Commissioner regarding the conduct of his senior staffer
 - the Commissioner advised that there was no reasonable or proper basis for allegations of misconduct to be put to the Minister's senior staffer
 - the Premier was advised by the Crown Solicitor that he was able to form the view that Minister Wingard did not engage in conduct in breach of the Ministerial Code of Conduct.
38. There is also a letter available on the Sport SA website to its members outlining the contents of the outcome letter provided to the applicant, and advising the applicant's views about same.
39. Whilst the fact that information is in the public domain is not, alone, sufficient to conclude that a document containing that information is not exempt, it is extremely persuasive, particularly where a public interest test is required or in instances where I must assess whether legal professional privilege is established.⁴ I have considered the practical impact of the publicly available information in my consideration below.

Clause 6(1)

40. The agency determined that:

These documents consist of information relating to the personal affairs of third parties. Under clause 6(1) of Schedule 1 to the FOI Act, a document is exempt if its disclosure would involve the 'unreasonable disclosure of information concerning the personal affairs of any person'. This information fall within the definition of personal affairs under the Act and is therefore exempt from release pursuant to clause 6(1).

³ *Wingard cleared of bullying misconduct*, InDaily, 10 September 2021; *SA Sport Minister Corey Wingard cleared of intimidating Sport SA boss as separate bullying allegations aired*, ABC News, 9 September 2021; *External investigator to probe Wingard claims*, InDaily, 30 July 2021.

⁴ Noting that confidentiality is a crucial aspect to the maintenance of legal professional privilege.

41. No further explanation for the agency's reliance upon clause 6(1) was initially provided, despite the agency applying clause 6(1) to 64 documents.
42. The FOI Act defines 'personal affairs' as including a person's financial affairs, employment records and personal qualities or attributes. It is clear from the terms of the FOI application alone that some of the documents will touch on the personal qualities or attributes of people other than the applicant. It is also clear that many of the documents will satisfy the initial requirements of clause 6(2) being that they contain allegations or suggestions of improper conduct.
43. Noting that the allegations made by the applicant relate to behaviour which occurred in a professional context, I also accept that the documents may concern personal affairs by virtue of containing information which might appear in a person's employment records. Although I consider there to generally be a distinction between personal affairs and professional affairs, it is clear that certain documents may fall within both categories. I have considered the following excerpt from the matter of *Priebe v SA Police*:

In the context of employment, the words "record" and "records" do not have the same meaning. For example, a prospective employer may ask a previous employer about a job applicant "What's his record". Usually, neither of them would expect the answer to be contained within the applicant's employment records. It seems to me that "employment records" means that information, however preserved and stored, which pertains to the constable's status or position as an employee of SAPOL. That is, they relate to the fact of employment, not to the way in which the constable performed his or her duties during the course of employment.

...

Employment records may well include, if a constable has acted improperly and has been cautioned or reprimanded, a record of that fact.⁵

44. I am also mindful that the term 'personal affairs' has also been held to involve 'matters of private concern to an individual'⁶ and the 'composite collection of activities personal to the individual concerned'.⁷ Very clearly a document containing or assessing allegations about a person would be of private concern to that individual.
45. In light of the above, I am satisfied that a large portion of the documents in issue concern the personal affairs of people other than the applicant. I now turn to consider whether disclosure would be unreasonable.
46. Unreasonableness has 'at its core, public interest considerations',⁸ such as the protection of personal privacy. To this point, I note that the objects of the FOI Act states that openness and accountability within government will be achieved by:

(b) conferring on each member of the public and on Members of Parliament a legally enforceable right to be given access to documents held by government, subject only to such restrictions as are consistent with the public interest (including maintenance of the effective conduct of public affairs through the free and frank expression of opinions) and the preservation of personal privacy [emphasis added]⁹

47. The above excerpt makes clear that the right to access to documents is not absolute and can be outweighed by the need to preserve personal privacy. That said, other

⁵ [2007] SADC 119.

⁶ *Commissioner of Police v District Court of New South Wales* (1993) 31 NSWLR 606, 625, citing *Re Williams and Registrar of Federal Court of Australia* (1985) 8 ALD 219 and *Young v Wicks* (1985) 13 FCR 85 at 88-89.

⁷ *Commissioner of Police v District Court of New South Wales* (1993) 31 NSWLR 606, 625, citing *Re Wong and Department of Immigration and Ethnic Affairs* (1984) 2 AAR 208 at 210.

⁸ *Colakovski v Australian Telecommunications Corporation* (1991) 29 FCR 429 per Lockhart J at 438.

⁹ *Freedom of Information Act 1991*, section 3(2)(b).

factors may indicate that disclosure would not be unreasonable, such as the importance of ensuring transparency and accountability within government and enabling members of the public to access information relevant to them.

48. In a previous determination in which I assessed a claim of exemption over documents relating to allegations about a person other than the applicant, I observed that:

To this point, it is noted that the documents in issue relate to matters which occurred several years ago, and for which the relevant people have already been held accountable. I consider that, at some point, it must become unreasonable for those peoples' privacy to continue to be infringed in pursuit of information about this matter.

I am also mindful that there is already substantial information within the public domain about the relevant matter... I consider that the relevant people have already been subjected to sufficient public scrutiny and that, given the amount of time which has passed, it would be unreasonable to continue to infringe on those people's privacy in relation to these matters.

49. I consider that the current circumstances warrant a different approach. Firstly, the allegations the subject of the documents in issue are approximately 12 months old, which is relatively recent.
50. Secondly, and perhaps more relevantly, the opportunity for public scrutiny has been substantially hindered by the limited amount of publicly available information regarding the investigation outcome. I consider it is also relevant to observe that the final investigation findings were made by the same government that the alleged perpetrators were a part of.
51. I accept that the 2022 change of government is relevant to the unreasonableness of disclosure as any scrutiny enabled by disclosure will be of Minister Wingard individually rather than as a member of the Government of the Day. That said, I consider that the subject matter is recent enough that such scrutiny is appropriate; the applicant's right to access should not be entirely eroded by the timing and outcome of the election.
52. The importance of enabling public scrutiny around the investigation is further heightened by the seniority of the people the subject of the complaints, in particular Minister Wingard. Ministers are expected to conduct themselves to an exceptionally high standard; when it is alleged that that standard has not been met, it is my view that scrutiny of such an allegation ought to be high.
53. Finally, I consider that the substantial amount of information within the public domain is particularly relevant. Given that the general nature of the complaints and the outcome of the investigation are publicly known, it is my view that while disclosure of information would enable public scrutiny, the infringement on the personal privacy of the relevant individuals would be minimal.
54. I note that a number of documents contain information concerning the personal affairs of people other than the applicant and the people about whom the allegations have been made. Whilst disclosure of that information may help to clarify the outcome of the investigation, I consider that the preservation of the personal privacy of those people ought to be given substantial weight.
55. It is important to be clear that my assessment of whether disclosure would be unreasonable varies based on the nature of the information, the roles of the relevant people affected by disclosure and the extent to which disclosure would enable accountability and scrutiny. I have applied my assessment to each of the documents in Appendix Two.

56. I acknowledge that the attitude of the people affected by disclosure is relevant to my consideration of unreasonableness,¹⁰ and confirm that I have conducted consultation as required by sections 26 and 39(10) of the FOI Act.
57. Although I conducted consultation with 5 interested parties pursuant to section 26 of the FOI Act,¹¹ I received only one response. I have taken the lack of response from the other parties as indicating that they hold no objection to disclosure of information concerning their personal affairs.
58. The interested party who did provide me with a response advised on 13 May 2022 that they did not object to disclosure of the documents that the agency had allowed them to view, but noted that the agency had only allowed access to 6 of the documents in issue. The interested party advised that without being able to view further documents, they objected to disclosure of any other documents which may concern their personal affairs.
59. This response raises two concerns. First, that the agency did not properly facilitate consultation with the interested parties but secondly and perhaps of greater concern, that the agency has since provided me with submissions implying a consultation process contrary to what actually occurred.
60. On 1 April 2022 my Legal Officer advised the agency of my intent to conduct consultation. Due to the large number of documents in issue and the agency having claimed exemption over the vast majority of those documents, it was proposed that I would not release any documents to the interested parties, but would instead advise the parties that access to the relevant documents should be negotiated directly with the agency. On 5 April 2022 the agency provided a response acknowledging this process.
61. The relevant interested party has confirmed that they were able to view documents 7, 41, 43, 63, 64 and 71. At no stage has the agency claimed exemption over documents 7 and 43 and it is my understanding that both documents have already been released to the applicant. It is therefore unclear why those documents were included in the consultation process.
62. Of greater concern however is the number of additional documents which concern the personal affairs of the relevant interested party which the agency has not granted access to or provided an explanation of, an obvious example being document 1. Whilst I acknowledge that the agency may object to full access due to the potential applicability of other exemption clauses, the interested party's submission appears to suggest that no indication was given by the agency that other documents might concern their personal affairs.
63. This is particularly confusing when considered against the agency's response to my provisional determination that:
- I don't press this exception [sic] over the entirety of [document 1], noting:
- ...
- your intention is to conduct consultation with the persons whose personal information would be disclosed if you decide that no other exemptions apply.
64. The agency has abandoned a claim of clause 6(1) over document 1 on the basis that consultation was being conducted, but then declined to allow one of the interested

¹⁰ *Treglown v SA Police* [2011] SADC 139, at [133].

¹¹ Further consultation was undertaken with one other interested party pursuant to section 27 of the FOI Act.

parties the opportunity to access, understand or even be aware of document 1 for the purpose of consultation, effectively undermining the agency's submissions.

65. Although I hold the view that the agency has neglected to afford the interested party a meaningful opportunity to provide a consultation response, in light of my revised views regarding the other claimed exemption clauses I do not consider it necessary to pursue this issue.
66. In response to my revised provisional determination the agency has addressed my above criticisms, primarily submitting that:
 - the email from my Legal Officer on 2 April 2022 was expressed in 'weak terms' and did not expressly articulate that if the agency could not provide the interested parties access to relevant documents, it should instead provide a summary or other such information to facilitate consultation
 - to provide the interested parties access to the relevant documents would be contrary to the agency's maintained claim of exemption, and it would not be possible to provide only partial access in any meaningful way.
67. I reject the first submission. The agency is bound by the same consultation requirements as myself or indeed any other agency. I do not accept that, absent an express stipulation of what the agency was expected to do to facilitate a consultation process, the agency could not have known how to respond to a request to view documents. In any event, regardless of the wording used, I am satisfied that the intention of my Legal Officer's email was clear.
68. I do accept the agency's submission that it was not appropriate to provide the interested parties access to partial or entire documents due to the other exemption clauses claimed to be applicable, however as the agency has acknowledged, a proper consultation process could easily be achieved in other ways.
69. Having reviewed the additional information provided by the agency to an interested party in response to my revised provisional determination, I am satisfied that the additional steps taken by the agency were appropriate. I therefore do not consider it necessary to address this point further.
70. I do consider it appropriate however to briefly address document 39. The agency submits that exemption is not pressed noting that I consulted with people affected by disclosure of information constituting personal affairs. I advise the agency that I did not conduct consultation in relation to document 39 as I am not satisfied that the information constitutes personal affairs.
71. I also consider it appropriate to briefly address documents 40 and 41 specifically. Both documents were determined to be partially exempt and although I am mindful of my obligation to avoid disclosing exempt material, I am satisfied that the nature of the material is discernible from the released portions of the documents; the redacted information in document 40 consists of email addresses and the redacted information in document 41 consists of 'P numbers' and role classifications.
72. Assuming that the 'P numbers' are phone extensions, I am not satisfied that the numbers constitute personal affairs. I do however accept that the role classifications and a large number of the email addresses constitute personal affairs.
73. That said, due to the number of people concerned, I am of the view that it is simply not reasonably practicable to conduct consultation in relation to documents 40 and 41.

74. Considering the terms of the FOI application and the applicant's role in the subject investigation, in my provisional determination I speculated that the applicant would not take issue with the redactions to these documents. The applicant responded to my provisional determination on 20 April 2022 advising that she had no further submissions to make. I therefore maintain the view that the applicant does not take issue with the redactions to documents 40 and 41.
75. On this basis, I conclude that disclosure would be unreasonable.
76. In addition to the agency's submissions above that it would not press exemption over document 1, the agency further submits that exemption under clause 6(1) is not pressed in relation to documents 20, 21, 25, 26, 117, 118, 119, 121, 145, 146, 149, 150, 172, 173, 178 and 179 on the basis that the majority of the contents are within the public domain. I acknowledge the agency's revised position and observe that the agency does however maintain exemption under clause 9(1) which will be addressed below.
77. Finally, the agency has reiterated its claim of exemption under clause 6(1) as follows:
- I submit that this exception [sic] is applicable to all of the document [sic] referred to in paragraph 140 (namely **11, 18, 24, 27, 28, 113, 116, 127, 169 and 175**), and document **131**, and the public interest weights [sic] in favour of non-disclosure for the same reasons explained in respect of clause 9(1) and 13(1)(b).
78. Contrary to the agency's submissions, exemption under clause 6(1) requires the agency to establish that disclosure would be unreasonable rather than contrary to the public interest. As already outlined, I accept that unreasonableness has public interest considerations, however the two are not interchangeable.
79. Although I have considered whether the agency's submissions in relation to clauses 9(1) and 13(1)(b) raise issues of unreasonableness, I remain satisfied that the agency has not justified its views for the following reasons:
- the agency did not dispute any aspect of my assessment of unreasonableness
 - the agency did not identify any factors indicating that disclosure would constitute an unreasonable disclosure of information concerning a person's personal affairs¹²
 - the relevant interested parties were consulted but declined to provide any submissions in response, which suggests that they do not object to disclosure.
80. I consider this final factor to be particularly persuasive; it is difficult to see how the agency could justify a position that disclosure would be unreasonable when the people affected by disclosure did not dispute my provisional findings, and my revised provisional findings, that the documents are not exempt.

Clause 7(1)(c)

81. Although the agency has not relied upon clause 7(1)(c), in light of my assessment of the other exemption clauses relied upon, I consider it appropriate to address whether the clause applies to documents 3, 98 and 103, as well as a portion of document 67.
82. I am satisfied that the information relates to the business affairs of AHI and is 'not merely derived from a business or concerning it or have some connection with it'.¹³ That

¹² It is noted that in response to my revised provisional determination the agency now submits that disclosure would constitute an unreasonable disclosure of personal affairs, but has not provided any explanation directly applicable to clause 6(1).

¹³ *Croom and Accident Compensation Commission* (1989) 3 VAR 441; The President's view regarding the Interpretation of business affairs' was upheld on appeal to the Full Court of the Supreme Court (*Accident Compensation Commission v Croom*) [1991]2VR322).

said, I note that a large portion of the information in documents 3, 98 and 103 is available publicly available via AHI's website. It is therefore difficult to see how disclosure could reasonably be expected to adversely affect the business.

83. I do however accept that disclosure of the service prices might adversely affect the business affairs of AHI as this could result in competitors altering their prices to be seen as a more attractive option. Additionally, it is unknown whether the prices in the documents are standard prices or special prices specifically offered for government work, or somehow otherwise tailored to the subject investigation. In the case of the latter, disclosure might unreasonably result in other customers demanding the same prices.
84. That said, in the circumstances it appears to me that clause 7(3) would prevent the application of clause 7(1) to documents 3, 98 and 103. Clause 7(3) states that:
- (3) A document is not an exempt document by virtue of this clause if it is a contract entered into by the Crown or an agency after the commencement of this subclause.
85. Having particular regard to the wording at the end of page 2 of the documents, it appears to me that although the documents have been characterised by the agency as each being a 'Letter' the documents also ultimately comprise the contract between AHI and the agency. Accordingly, the documents cannot be exempt on the basis of clause 7(1)(c).
86. A small portion of document 67 relays some of the pricing contained in documents 3, 98 and 103. Although document 67 is not itself a contract, it is my view that clause 7(3) indicates a clear parliamentary intention that information contained within a government contract should not be exempt on the basis of clause 7(1). Noting also that the same information is proposed to be released in documents 3, 98 and 103, I am satisfied that disclosure would not be contrary to the public interest.
87. In response to my provisional determination, AHI advised by email on 5 May 2022 that it had no further submissions to make.

Clause 9(1)

88. The agency determined that:

These documents contain advice and recommendation prepared for the decision making of the OCPSE and the Premier. I acknowledge that there is a strong public interest around the government's decision making. In my view, however, this is outweighed by the need to ensure that public servants can provide advice without inhibiting frankness and candour. Disclosure of these documents would hinder free communication and would, in turn, impede the agency and the Premier's deliberative process. I have therefore exempted this information pursuant to clause 9(1)(a)(i) of the FOI Act.

89. I accept that the majority of the documents contain opinion, advice and recommendations which were obtained, prepared or recorded in the course of the agency's decision-making functions. In terms of the public interest, I also agree that there is a strong public interest in transparency around government decision making.
90. In my provisional determination I referred to comments from the matter of *Re Lianos and Secretary to the Department of Social Security (Lianos)* regarding weighing the public interest under clause 9(1):

Relevant matters include matters such as the age of the documents; the importance of the issues discussed; the continuing relevance of those issues in relation to matters still

under consideration; the extent to which premature disclosure may reveal sensitive information that may be 'misunderstood or misapplied by an ill-informed public'; the extent to which the subject matter to the documents is already within public knowledge; the status of the persons between whom and the circumstances in which the communications passed; the need to preserve confidentiality having regard to the subject matter of the communication and the circumstances in which it was made. Underlying all these factors is the need to consider the extent to which disclosure of the documents would be likely to impede or have an adverse effect upon the efficient administration of the agency concerned ...¹⁴

91. In response to my provisional determination the agency apparently declined to consider the comments made in Lianos, instead turning its mind to the applicability of the public interest considerations set out in *Re Howard and Treasurer of the Commonwealth (the Howard factors)*:
- (i) the higher the office of the persons between whom the communications pass and the more sensitive the issues involved in the communication, the more likely it will be that the communication should not be disclosed;
 - (ii) disclosure of communications made in the course of the development and subsequent promulgation of policy tends not to be in the public interest;
 - (iii) disclosure which will inhibit frankness and candour in future pre-decisional communications is likely to be contrary to the public interest;
 - (iv) disclosure, which will lead to confusion and unnecessary debate resulting from disclosure of possibilities considered, tends not to be in the public interest;
 - (v) disclosure of documents which do not fairly disclose the reasons for a decision subsequently taken may be unfair to a decision-maker and may prejudice the integrity of the decision-making process.¹⁵
92. It is unclear to me why the agency would decline to consider the factors outlined in Lianos and instead rely upon the Howard factors when the latter has been treated with caution in various other matters. Although the agency acknowledges that the Howard factors have been characterised as 'general indicators' of where the public interest may lie,¹⁶ I consider it relevant to note that the Supreme Court has determined that they are not mandatory considerations required to be taken into account. The list of factors is neither definitive nor exhaustive.¹⁷
93. The agency has referenced a quote which appeared in the matter of *Attorney-General for South Australia v Seven Network (Operation) Ltd (Seven Network)* which appears to support an adoption of the Howard factors. However Seven Network then went on to depart from that quote and take a different approach.¹⁸
94. Additionally, I query the meaningfulness of the agency having acknowledged that the Howard factors are general indicators only, noting that it has then gone on to form the majority of its submissions based on those factors. In any event, I have considered the submissions put forward by the agency.
95. The agency submits that the seniority of the officials involved in the relevant communications is 'most notable'. In my provisional determination I acknowledged the seniority of the officials between whom the communications passed, but considered that this factor is equally balanced by the increased public interest in disclosure

¹⁴ *Re Lianos and Secretary to the Department of Social Security* [1985] AATA 38, [8].

¹⁵ *Re Howard and Treasurer of the Commonwealth* [1985] AATA 100, at [20].

¹⁶ *South Australia v Brokenshire MLC* [2015] SADC 68, at [43].

¹⁷ *Attorney-General for the State of South Australia v Seven Network (Operations) Ltd* [2019] SASFC 36, at [132].

¹⁸ [2019] SASACFC 36 referencing *Secretary, Department of Justice v Osland* [2007] VSCA 96.

stemming from the seniority of the persons about whom the allegations were made. As outlined above, Ministers are held to a high standard of conduct.

96. In any event, I consider that in the circumstances the seniority of the officials between whom the communications passed ought to be given little weight. By their very nature, documents of this kind will routinely pass between officials of seniority. It is my view that this particular factor is intended to apply in unusual circumstances warranting senior involvement rather than circumstances in which a senior official is simply fulfilling their usual obligations. This is supported by the fact that the FOI Act expressly applies to documents held by Ministers, many of which could reasonably be expected to contain high level but routine communications.
97. The agency submits that the investigation, and by extension a number of the documents in issue, are highly sensitive, and that:
- The provisional determination does not appear to deal with the sensitivity point. That the fact of the complaint and the investigation were in the public domain does not detract from the sensitivity of the investigation or the issues it raised.
98. The issue of sensitivity was in fact considered, however I had concluded that this was not a particularly persuasive public interest factor, largely due to my rejection of the latter portion of the agency's submissions.
99. Sensitive information is that which calls for a level of tactful, careful or cautionary treatment.¹⁹ I acknowledge that such treatment may have been required while the investigation was ongoing to ensure its integrity. I also accept that information regarding a finalised investigation has the capacity to remain sensitive. However I reject the assertion that information already within the public domain can be said to require ongoing careful or cautionary treatment.
100. It is publicly known that the applicant's allegations have been investigated and that the matter is considered to be closed. A substantial amount of information about the subject matter of the documents is publicly known.
101. It may well be that the information contained within the documents is considered to be sensitive to the relevant individuals, however I consider that this speaks more directly to a clause 6(1) argument. In the context of balancing the public interest under clause 9(1), it is my view that 'sensitivity' needs to be assessed based on the contents of the information rather than an individual's attitude to the information.
102. I remain satisfied that the majority of the information contained in the relevant documents can no longer be characterised as being 'sensitive'. I also consider that the extent to which the information already exists within the public domain is sufficient for me to be satisfied that disclosure would not cause misunderstanding to the public.
103. In relation to the agency's initial submission about ensuring the provision of frank and candid advice, I noted in my provisional determination the following quote from the matter of *Treglown v SA Police*:²⁰

Similar issues were under discussion in the matter of *Pemberton and The University of Queensland*²¹ where the Information Commissioner, referring to an earlier decision, commented at [126] that claims:

¹⁹ *Merriam-Webster*, definition of 'sensitive', accessed online 8 June 2022.

²⁰ [2011] SADC 139 at [157].

²¹ [1984] QICmr 32

... that the public interest would be injured by the disclosure of particular documents because candour and frankness would be inhibited in future communications of a similar kind ... should be disregarded **unless a very particular factual basis is laid for the claim that disclosure will inhibit frankness and candour in future deliberative process communications of a like kind, and that tangible harm to the public interest will result from that inhibition.**

104. In my provisional determination I advised that I agree with this view and do not consider it likely that the prospect of disclosure would be sufficient to deter a senior government official from properly carrying out their functions. I concluded that absent any particular factual basis for making this claim, I was not inclined to accept the agency's submission on this point.

105. In response to my provisional determination the agency submits that the comments made in the matter of *Pemberton and The University of Queensland* (**Pemberton**) were made in the context of consideration as to whether 'loss of candour' might constitute a substantial adverse effect:

Given that the relevant quote arose in the context of the Commissioner needing to be satisfied that a 'substantial adverse effect' would arise, its direct applicability to the present case is significantly reduced.

106. I strongly disagree with this view. Although in *Pemberton* the above quote appeared in the context of determining whether disclosure could cause a substantial adverse effect, *Pemberton* is not the original source of the quote. In *Pemberton* the Queensland Information Commissioner was quoting *Re Eccleston*, one of their own previous decisions.²²

107. In their original context, the comments were made in the process of considering the third Howard factor (loss of candour) and are therefore directly applicable to the present case and the agency's submissions. Even if that were not the case, the South Australian District Court clearly saw fit to consider those comments in the context of weighing the public interest under clause 9(1) when it referred to them in *Treglown v SA Police*.

108. The agency has referred to the following further quote from *Treglown v SA Police*:

It appears to me that whilst it may be presumed that the prospect of disclosure will not ordinarily inhibit candour such as to be contrary to the public interest, that presumption is rebuttable and that, indeed, different considerations may apply in respect of persons called upon to express opinions or consult in circumstances where, for example, they may not be duty-bound to do so or where they may be so bound but where the particular circumstances might inhibit complete frankness or where, as in *Pemberton*, the broader public interest was found to justify the protection of certain referee material generated by known persons carrying significant responsibilities, for the purpose of higher university appointments. It would be idle to speculate as to the range of circumstances which might fall outside of that presumption: each case must be considered on its merits.

109. I accept that the presumption that the prospect of disclosure will not ordinarily inhibit candour such as to be contrary to the public interest can be rebutted, however the fact remains that the agency is yet to provide me with a factual basis for doing so. It is unclear to me how disclosure of the specific documents over which exemption under clause 9(1) is claimed could inhibit the frankness and candour of voluntary participants to the investigation as those documents objectively relay the facts of the investigation without identifying what was said by any specific person.

²² *Re Eccleston and Department of Family Services and Aboriginal and Islander Affairs* [1993] QICmr 2, at [132].

110. Alternatively the agency may be suggesting that disclosure would diminish the frankness and candour of the Commissioner. I am not inclined to accept that potential disclosure would deter the Commissioner from properly fulfilling her functions under the *Public Sector Act 2009*.
111. Whilst I acknowledge that there is a distinction between disclosure of information in the public interest and information of interest to the public, I consider that the high community interest in the subject matter of the documents is certainly relevant to identifying where the public interest lies.
112. I consider that there is also substantial public interest in promoting transparency and accountability around government decision-making, particularly in relation to a topic as high profile as a Minister's conduct. That said, I do however accept that the public interest in the accountability of Minister Wingard is arguably lowered following the 2022 state election.
113. The agency submits that the information already made public, in particular the Premier's statements in Parliament on 9 September 2021, already achieves the right balance between the public interest in transparency and the public interest in not compromising the ability of the Commissioner to properly investigate similar matters in the future:
- It cannot be said that this is a case where the public may reasonably have doubts as to whether the allegations were properly and independently investigated, and as to whether the conclusions reached were legal sound.
114. I reject this assertion for several reasons. First and foremost, it is my view that there is simply not enough information within the public domain for the public to be entirely satisfied that the allegations were properly and independently investigated. The publicly available information is largely focused on the essence of the allegations and the outcome of the investigation. Very little information regarding the process of the investigation and the evidence considered is publicly known.
115. Secondly, the mere fact that the investigation documents are the subject of an FOI application would indicate that questions remain around to the investigation processes. I acknowledge the agency's submission that the existence of an FOI application, alone, is not an indication of the public interest, and that otherwise this would render any public interest test redundant. I do not disagree, however the existence of the FOI application is only one reason I have rejected one of the public interest factors put forth by the agency; it is not by any means definitive.
116. I remain satisfied that the fact that the applicant saw fit to pursue this matter is indicative that there is insufficient information available for the public to be satisfied that the allegations were properly and independently investigated. This is further evidenced by the applicant's submissions in response to my revised provisional determination.
117. Finally, I observed in my revised provisional determination that the findings of the investigation were received with skepticism as evidenced by social media posts. I note that the agency submits that social media is a poor barometer of the public interest, but again reiterate that this is simply one reason I have rejected the agency's submission above. I have also had regard to numerous comments made in response to articles published about this matter.
118. I remain satisfied that I should reject the agency's submission as above.
119. As a tangential comment, it is curious to me that the agency asserts that there can be no doubt that the matter was 'independently investigated' noting other submissions
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from that AHI's investigation were limited to an information gathering role, and the final findings were made by the Commissioner and the Premier.

120. I note that many of the documents claimed to be exempt on the basis of clause 9(1) are identified as being drafts. I advise the agency that the draft status of a document will not, alone, attract exemption. I consider it necessary to consider not only the contents of the documents, but also the extent to which they differ from their final version.
121. Finally, the agency has referred me to the matter of *Aly v Limestone Coast Local Health Network* in which it was found that disclosure of selected documents generated in the course of an investigation would be contrary to the public interest. In that matter it was noted that Dr Aly had been provided all documents that formed part of the formal investigation processes, but that documents relating to internal deliberations and discussions and proposed draft correspondence was exempt.²³
122. I accept that the nature of the documents over which the agency claims a clause 9(1) exemption can be likened to the documents found to be exempt in *Aly v Limestone Coast Local Health Network*, however it is my view that there are several circumstances differing in this matter which justify my reaching an alternative conclusion.
123. Firstly, the relevant parties have not been given all documents that formed part of the formal investigation process, most notably the investigation report which substantially informed the outcome. Additionally the high profile nature of the investigation and the amount of information already publicly available tilt the public interest more heavily towards disclosure.
124. In all of the circumstances I remain of the view that the factors in favour of disclosure generally outweigh those contrary to disclosure, although I acknowledge that various factors carry different weight in relation to each of the documents. I have applied my consideration of the public interest to each document in Appendix Two.

Clause 10(1)

125. The agency determined that:

Under clause 10(1) of Schedule 1 to the FOI Act, information is exempt from disclosure if it would be privileged from production on the ground of legal professional privilege. Sections of these documents contain legal advice provided to the government by its legal advisor, the Crown Solicitor, information which is subject to legal professional privilege. I have therefore determined to exempt these sections pursuant to clause 10(1).

126. Similar to the agency's reliance upon clause 6(1), the agency initially failed to provide any further explanation for its reliance upon clause 10(1), despite the clause having been applied to 73 documents. In response to my provisional determination, and then my revised provisional determination, the agency has now provided me with substantial further submissions regarding the application of clause 10(1). In light of these submissions I am persuaded to alter my provisional views.
127. In future matters I would expect the agency to provide more detailed submissions upon initial request to avoid the need for a revised provisional determination to be issued; had the additional information been available to me earlier my provisional determination would have been substantially different.

²³ *Aly v Limestone Coast Local Health Network* [2021] SACAT 50.

128. In the matter of *Esso Australia Resources Limited v The Commissioner of Taxation (Esso)* the High Court held that a document is privileged from production if it is a confidential communication between a client and their solicitor that was created for the dominant purpose of obtaining or giving legal advice; or if it is a confidential communication made for the dominant purpose of use, or obtaining material for use in, pending or anticipated legal proceedings.²⁴
129. Legal professional privilege can be separated into separate categories of advice privilege and litigation privilege. Having reviewed the relevant documents, it does not appear that legal proceedings were either pending or anticipated at the time of the documents being created. I am therefore satisfied that my assessment of clause 10(1) can be limited to a consideration of whether advice privilege has been established.
130. A claim of legal professional privilege is contingent upon a number of requirements being met:
- has there been a communication between a client and their solicitor?
 - is the communication confidential?
 - was the dominant purpose of the communication obtaining or giving legal advice?
 - if privilege is established, has it been waived?
131. I accept that privilege attaches not to a specific document, but rather the communication. I therefore accept that a document which does not directly reflect a communication between a client and their solicitor might be privileged if it relays a privileged communication.
132. As already outlined, it has been publicised that the investigation of the applicant's allegations was outsourced to AHI, however in light of the agency's further submissions I consider it is more accurate to state that AHI's investigation was limited to gathering evidence to inform an internal investigation. This distinction is important to better understanding the involvement of the Crown Solicitors Office (CSO) in this matter, and therefore assessing whether certain documents are subject to legal professional privilege.

Third party communications

133. While it has long been accepted that litigation privilege can be extended to third party communications,²⁵ I must assess whether the same can be said of advice privilege.
134. In 2004, contrary to the existing case law on this topic and reversing the prior decision of the Federal Court,²⁶ the Full Federal Court held that confidential communications originating from a third party expert were privileged.²⁷ In that matter the client, a company, sought a report from a firm of accountants with a view to using that report in drafting instructions for the company's solicitor.
135. The decision of the Full Federal Court has received mixed responses, with the Federal Court of Australia following the decision²⁸ but the New South Wales Court of Appeal criticising it²⁹ and the Full Family Court departing from it.³⁰ Although the decision has

²⁴ [1979] FCA 33.

²⁵ See *Daniel v Western Australia* (1999) 94 FCR 537; *Mitsubishi Electric Australia Pty Ltd v Victorian WorkCover Authority* (2002) 4 VR 322.

²⁶ *Commissioner of Taxation v Pratt Holdings Pty Ltd* (2003) 195 ALR 717.

²⁷ *Pratt Holdings Pty Ltd v Commissioner of Taxation* (2004) 207 ALR 217.

²⁸ Most recently in the matter of *Roberts-Smith v Fairfax Media Publications Pty Ltd (No 23)* [2021] FCA 1460.

²⁹ *Metyard v Love* (2005) 65 NSWLR 36.

³⁰ *Strahan v Strahan* (2013) 50 Fam LR 434.

not yet been confirmed or departed from in a South Australian case, I have given regard to the following excerpt from the matter of *Douglas v Morgan*:

... It is difficult to identify a rationale for applying a different approach when the purpose of the provision of the document to lawyers is to provide advice, or non-litigious advice, as opposed to legal representation in proceedings. In formulations of the rule, albeit at a general level, by the High Court, such as the formulation quoted at [41] above, there is no suggestion of such a distinction. However, this question does not arise on the present appeal because Ms Douglas does not contend on appeal that the purpose of obtaining the Investigation Report was for provision to solicitors for advice.³¹

136. In the absence of a more directly applicable South Australian authority, I am inclined to adopt the position that a distinction should not be drawn between advice privilege and litigation privilege when assessing whether privilege extends to a third party communication. I therefore accept that, subject to the other elements of privilege being satisfied, communications between the agency's solicitor and AHI is capable of being privileged.
137. In my provisional determination I advised my view that further documents or correspondence involving AHI but not the agency or its solicitor were unlikely to be privileged. In light of the additional information now provided by the agency regarding the role of AHI and the involvement of the CSO I am persuaded that further documents between AHI and other parties might be capable of attracting privilege.

Confidential communication

138. I now turn to whether the relevant communications are confidential, noting the following observation by McLelland J:

It seems to me to be an essential element in a claim for legal professional privilege that the material, disclosure of which is sought to be precluded is, so far as the person from whom disclosure is sought is concerned, confidential.³²

139. An objectively observable fact cannot be privileged as there can be no confidentiality in such an observation, even if the observation is made by a solicitor.³³ It has also been observed that confidentiality is a characteristic which can be lost; the moment confidence ceases, privilege also ceases.³⁴
140. The agency submits that legal advice will often set out a factual background and that while it may not be unusual for such factual information to be publicly known, this is not sufficient for the communication to lose the characteristic of being confidential. I agree with this view. Although the background information may be widely known, it forms part of a communication which by its very nature is confidential. Additionally, disclosure of publicly available information might nevertheless reveal something not widely known, such as the mere fact that legal advice was obtained.
141. That said, in this particular matter I advise that the question of whether privilege has been waived is also relevant to portions of the information which are now publicly available. I will address this further below.
142. I do however consider that the issue of confidentiality might arise in relation to documents which are, in themselves, inherently non-confidential, such as:

³¹ [2019] SASFC 76 at [48].

³² *Ritz Hotel Ltd v Charles of the Ritz Ltd (No 22)* (1988) 14 NSWLR 132, at [133].

³³ *National Crime Authority v S* (1991) 29 FCR 203 at [218].

³⁴ *Parkhurst v Lowten* (1818-19) 2 Swans 194 at [216].

...documents which constitute or evidence transactions (such as contracts, conveyances, declarations of trust, offers or receipts) even if they are delivered to a solicitor or counsel for advice or for use in litigation.³⁵

143. In this regard the publicised involvement of AHI in the investigation process is relevant. While the report of AHI itself may be considered to be confidential, in circumstances in which the engagement of AHI is publicly known, the fact that a report was transmitted could not be said to be confidential.

Dominant purpose test

144. Now turning to the dominant purpose test, I again turn my mind to the abovementioned 2004 decision of the Full Federal Court, in which it was observed that while advice privilege is capable of extending to third party communications, there may inevitably be great difficulty in establishing the required dominant purpose.³⁶
145. In my provisional determination I had regard to the matter of *Gaynor King*, in which Fair Work Commissioner Nicholas Wilson rejected the argument that a workplace investigation report prepared by Minter Ellison was subject to legal professional privilege. In that matter, the City of Darwin engaged Minter Ellison to conduct an investigation into a complaint of bullying. Minter Ellison conducted the investigation and advised the City of Darwin of the outcome. The City of Darwin subsequently claimed the outcome report to be subject to legal professional privilege.
146. Commissioner Wilson was not satisfied that the dominant purpose of the investigation report was for the City of Darwin to obtain legal advice because, inter alia:
- the City of Darwin employees involved in the investigation knew about the complaints
 - the employees involved knew there would be an investigation
 - all the employees involved in the investigation were informed of its outcome
 - the City of Darwin did not characterise the investigation report as being for the purpose of legal advice.
147. I agree with Commissioner Wilson's approach and in my provisional determination observed that the facts above appeared to be analogous to the matter before me based on the fact that the employees involved in the subject investigation knew about the applicant's complaints and the investigation, and were informed of the investigation outcome.
148. While the dominant purpose test is an objective one, the subjective purpose is also relevant.³⁷ Whilst normally the relevant subjective purpose will be that of the person who created the relevant document, in the current circumstances the relevant intention is that of the solicitor rather than AHI.³⁸
149. In response to my provisional determination the agency submits that the matter of *Gaynor King* is distinguishable from the current circumstances and has provided me with substantial further information as to the sequence of events and the true role of AHI in the investigation process.
150. Having reviewed the agency's additional submissions I am persuaded to alter my views such that I ought to depart from the reasoning in *Gaynor King*, particularly noting that:

³⁵ *Baker v Campbell* (1983) 153 CLR 52, at [86].

³⁶ *Pratt Holdings Pty Ltd v Commissioner of Taxation* (2004) 207 ALR 217 at [45]-[47].

³⁷ *Esso Australia Resources Ltd v Federal Commissioner of Taxation*, [1979] FCA 33 at [207].

³⁸ *Mitsubishi Electric Australia Pty Ltd v Victorian Workcover Authority*

- the agency has provided further details indicating that a solicitor-client relationship existed before AHI was engaged (as opposed to the solicitor merely performing administrative tasks on behalf of the client)
- contrary to the language in the documents and the information made public, AHI did not conduct a full investigation and make findings. Rather, AHI's investigation was limited to gathering the information necessary for the Commissioner and the Premier to make findings
- very limited information was conveyed to the employees involved, and what was relayed is largely findings rather than content extracted from AHI's report
- the agency submits that the purpose of obtaining the report from AHI was always to inform legal advice.

151. Although I am now satisfied that the reasoning in *Gaynor King* ought not to be applied in this matter, I maintain my view that a strong argument could be made that the report of AHI and the documents which informed that report do not constitute confidential communications and do not satisfy the dominant purpose test.

152. In the matter of *Trade Practices Commission v Ampol Petroleum (Victoria) Pty Ltd and Others* the Federal Court of Australia considered whether the transcripts produced in the context of an examination under the *Trade Practices Act 1974* (Cth) were privileged. Relevantly, it was held that:

However, in an examination under s 155, the element of a confidential communication is absent. Information given by an examinee in the course of an examination is not given in confidence. It is given under coercion... The examination proceeds with the threat of prosecution if the examinee does not respond to the questions asked.

...

The TPC does not conduct examinations under s 155 solely for the purposes of obtaining legal advice but rather does so in pursuance of its statutory functions which include gathering information and evidence with respect to contraventions or possible contraventions of the Act.³⁹

153. The Commissioner has a statutory function under the *Public Sector Act 2009* to investigate or assist in the investigation of matters in connection with public sector employee conduct or discipline. Having regard to the Commissioner's power to compel a person to participate in an examination or respond to questions, I consider that an argument could be made that the above case is applicable to the current circumstances.

154. That said, I am mindful that in the current matter the Commissioner did not exercise those functions and that the responses provided to AHI and subsequently to the Commissioner were provided voluntarily and in line with the Code of Ethics for the South Australian public sector.

155. I am also mindful that in the above matter the Federal Court applied the sole purpose test rather than the dominant purpose test, the latter having significantly broadened the potential application of legal professional privilege. Accordingly, although I consider the above matter to be substantially similar to the current case, the application of the dominant purpose test in this matter is sufficient for me to reach a different conclusion.

156. A further consideration required of the dominant purpose test, is whether the advice sought or provided was in fact legal advice and not merely administrative or operational advice. Relevantly:

³⁹ (1994) ALR 533.

... it is essential to ensure, particularly in the government context, that the purpose for which a document was brought into existence was one which related to legal advice as opposed to operational, administrative or policy matters.⁴⁰

157. In my provisional determination I observed that, whilst this is not always an easy distinction to draw, it appeared to me that at least some of the advice provided to the agency could not be characterised as being legal advice. Merely addressing queries to a solicitor 'does not necessarily cloak all of the matters discussed, or all of the documents then produced, with immunity'.⁴¹
158. In light of the additional information provided by the agency, particularly the submissions which go towards establishing that a solicitor-client relationship existed at a very early stage in the investigation process, I accept that the majority of the continuum of communications between the agency, the CSO and AHI satisfy the dominant purpose test. Although very clearly some of those communications do not explicitly relay instructions or legal advice, they are peripheral to such communications or made 'with a view to obtaining or giving legal advice'.⁴²
159. The agency has provided the following submissions regarding the dominant purpose test and parts of documents:

Legal professional privilege attaches to communications, and not a document itself. One view is that, where a document brought into existence for a dominant privileged purpose contains information extraneous to that purpose, privilege nevertheless attaches to the whole document. However, there is authority for the proposition that, in such a situation, portions of the document containing privileged communications should be blanked out or severed from the rest of the document.

Key to this will be whether the document contains more than one 'communication'. As Stone J said in *Australian Crime Commission v Stewart*:

It is, of course, possible for one document to contain multiple communications some of which have the relevant dominant purpose and some of which do not. There may be some differences of opinion concerning whether in such a case it is possible to sever or redact the privileged part of the document and allow the remainder to be inspected: see Pratt at [17]-[18] where Kenny J discussed but did not need to decide the issue.

Theoretically I do not see that there should be much difficulty provided that one keeps in mind that legal professional privilege attaches to communications not documents. If there is only one communication, albeit having multiple purposes, then the issue is the dominant purpose of that communications. If the dominant purpose is such as to attract privilege then the whole of that communication must be privileged and no question of severance arises. If there is more than one communication in the document then the same test must be applied to each. If the communications are sufficiently independent as to be characterised as two communications then it is unlikely that there will be much difficulty in redacting or otherwise maintaining the confidentiality of one and retaining the other.

Thus, if severance is not possible because the document is one communication, it may be necessary to characterise the whole document as privileged. [references omitted]

160. I do not disagree with the agency's submissions on this point and advise that I do not propose to sever the documents in issue based on an application of the dominant purpose test. I do however consider these submissions to be relevant to my consideration of whether privilege has been waived.

⁴⁰ *WorkCover Authority (NSW) (General Manager) v Law Society of NSW* (2006) 65 NSWLR 52, at [94].

⁴¹ *Osland v Secretary, Dept of Justice* (2008) 234 CLR 275 at [85].

⁴² *Trade Practices Commission v Sterling* (1979) 36 FLR 244 at [245].

Waiver

161. Where legal professional privilege has been established, I have considered whether that privilege has been waived. Waiver may be express or implied, but essentially:

Waiver occurs where the party entitled to privilege performs an act which is inconsistent with the confidence preserved by it.⁴³

162. In my provisional determination I advised my view that the Premier's statement in Parliament on 9 September 2021 was sufficient to waive privilege over some communications, the making of that statement in a public fashion being inconsistent with a claim that privilege is maintained. To this point, the agency submitted that:

While these words, spoken in another context, may amount to a waiver of privilege, the statement was made in parliament and the protection afforded by parliamentary privilege must therefore be considered.

...

Therefore, I submit it is not open to you to find that there has been a waiver of legal professional privilege on the basis of the Premier's statement in parliament, as this would require an impermissible examination of and drawing an inference from parliamentary proceedings. It is not open, in the same way that the Premier's statement in parliament could not be accepted in evidence before a Court for the purpose of proving that legal professional privilege has been waived over advice and to seek an order for discovery over such advice.

163. In response to my revised provisional determination, the agency has elaborated on this point by referring me to the matter of *British American Tobacco Australia Ltd v Secretary, Department of Health and Ageing*. The Full Court of the Federal Court considered whether a document tabled in the Commonwealth Senate, which contained reference to legal advice, was exempt on the grounds of legal professional privilege and concluded:

If one looks at this issue in the round, rather than as one question in a sequence of separate questions, one can see that the appellant is confronted by a dilemma. To avoid the threat presented by s 16(3) of the PP Act, the appellant is driven to say that it seeks to refer to the tabling of the Government Response in the Senate only to show that the words were published. However if one does not go further and invite the inference that the reference reveals an inconsistency in the position of the respondent in now seeking to maintain legal professional privilege, then there can be no basis for the conclusion that the privilege has been waived. If the appellant seeks to show the inconsistency necessary to make good its waiver argument, it must be gored by s 16(3) of the PP Act.

In our opinion, it is not possible to avoid the conclusion that the appellant does indeed seek to make use of the tabling of the Government Response to permit the drawing of an inference adverse to the government. Since inconsistency in maintaining the privilege is the point on which waiver turns, for the appellant to succeed it must persuade the Court that the conduct of the respondent in insisting upon the privilege is inconsistent with the publication of the Government Response by tabling it in the Senate. That is precisely the kind of reflection which may not be made upon the conduct of those whose published statements are within the protection of s 16(3) of the PP Act.

164. I am satisfied that the common law position with respect to parliamentary privilege in South Australia is sufficiently similar to section 16(3) of the *Parliamentary Privileges Act 1987* such that I should have regard to the above matter.

⁴³ *Mann v Carnell* (1999) 201 CLR 1, see also *Osland v Secretary, Department of Justice* (2008) 234 CLR 275.

165. Although the Premier's statement was made in a public forum, and remains publicly available through Hansard, for the reasons provided in my assessment of clause 17(c) I am satisfied that the statement is nevertheless subject to parliamentary privilege, and therefore cannot be relied upon as a basis for establishing that legal professional privilege has been waived.
166. I have applied my assessment of whether privilege is established, and maintained, for each of the relevant documents in Appendix Two.

Clause 16(1)(a)(iv)

167. The agency determined that:

These documents contain information that relates to a function of OCPSE in receiving and assessing complaints made in relation to the Public Sector. Disclosure of such information would be detrimental to the integrity and effectiveness of OCPSE's capacity to appropriately assess these matters and prejudice the flow of information from complainants in the future because the risk of having those complaints made public would discourage any full or frank disclosures being made to government.

I acknowledge that there is a strong public interest in the openness and accountability of government to the public. In my view, however, this is outweighed by the need to ensure the integrity and the ability of the OCPSE to handle highly sensitive matters is not undermined. Disclosure of these documents would hinder free communication and would, in turn, impede the agency's deliberative process.

168. In the circumstances I am not satisfied that disclosure would discourage the provision of information from complainants to the agency. As outlined above, the knowledge of the subject complaint is within the public domain and the applicant has in fact made some of that information public herself. Further, it appears to me that the applicant is in fact dissatisfied that further information about the complaint and subsequent investigation has not been made public. It is difficult to see how disclosure of information with the apparent consent of the complainant would deter future complainants from providing information to the agency.
169. Additionally, I do not accept that disclosure could reasonably be expected to impact the effectiveness of the Commissioner's capacity to assess complaints as the Commissioner is able to compel the provision of information in accordance with section 18 of the *Public Sector Act 2009*.
170. In my provisional determination I concluded that I was not satisfied that the agency had established that the initial requirements of clause 16(1)(a)(iv) are met. I did however consider that a number of the relevant documents are exempt on the basis of other exemption clauses. Whilst some of those clauses have been discussed above, I considered that clauses 12(1) and 13(1)(b) are both relevant despite not having been relied on by the agency.
171. As the agency has provided no further submissions regarding clause 16(1)(a)(iv), I maintain the views expressed in my provisional determination.

Clause 12(1)

172. Clause 12(1) of the FOI Act provides that a document is an exempt document if it contains matter the disclosure of which would constitute an offence against an Act. I am aware that the information in the documents relates to a specific South Australian Act

(the relevant Act), however to ensure I comply with my obligation to avoid disclosing exempt material,⁴⁴ I do not consider it appropriate to identify the relevant Act.

173. The relevant Act provides that it is an offence to disclose information in relation or connected with a matter that is subject to the relevant Act. I am satisfied that documents 57, 58, 92-94, 99 and the relevant portions of documents 72 and 80 fall within this category. I am also satisfied that none of the legislated exceptions to the offence are applicable.
174. Given that I am unsure whether any of the information within the documents is known to the applicant, a question arises as to whether it would be an offence to disclose information under the relevant Act if the information was already known to individuals seeking the information under the FOI Act.
175. In my view, regardless of whether or not the information is known to a person, or whether certain information has already been revealed, in the circumstances of this matter, I consider that any disclosure of information would be an offence against the relevant Act.
176. In reaching this view, I have given regard to the matter of *Ward v Courts Administration Authority*⁴⁵ (Ward). In that matter, the District Court considered clause 12(1) of the FOI Act and the confidentiality provisions of the since repealed *Children's Protection Act 1993*.
177. The Children's Protection Act provided that under section 58, a person 'must not divulge' information of a certain kind, and that the act of divulging information of that kind would be an offence.
178. The District Court made the following observation in relation to the construction of what it meant to 'divulge' information of the kind captured by section 58 of the Children's Protection Act:

In my view, the plain and ordinary meaning of "divulge" is to disclose. It does not necessarily convey the imparting of that which is previously unknown.⁴⁶
179. The District Court also went on to consider the principles underlying the Children's Protection Act.
180. I consider that the observation by the District Court in Ward is relevant to the circumstances of this matter. As held by the District Court, I consider that to 'divulge' is 'disclose'. Further, having regard to the principles of the relevant Act, I consider that 'disclose' should be given a similarly broad interpretation in this case.
181. In my view, the meaning of 'disclose', in the context of the relevant Act in this matter, includes disclosure of information that may already be known to certain parties. Accordingly, I am satisfied that the documents listed above are exempt on the basis of clause 12(1), regardless of whether their contents are known to the applicant.

Clause 13(1)(b)

182. To establish exemption under clause 13(1)(b), each of the following criteria must be satisfied:

⁴⁴ *Freedom of Information Act 1991*, section 39(15).

⁴⁵ *Ward v Courts Administration Authority* [2003] SADC 18.

⁴⁶ *Ward v Courts Administration Authority* [2003] SADC 18 [57].

- the matter in the document must have been ‘received under an express or inferred understanding that [it] would be kept confidential’⁴⁷
- that disclosure of the information might reasonably be expected to prejudice the future supply of such information to the Government or an agency
- that disclosure of the matter would, on balance, be contrary to the public interest.

183. Having reviewed the contents of the documents, I am satisfied that the information within the documents described in the agency’s schedule of documents as ‘Transcript of interview’ was provided under an express understanding of confidence. I also consider that, although the information was initially provided to AHI, the expectation of confidentiality would extend to the agency being a recipient of the information.

184. As outlined above, I acknowledge that the Commissioner has the power to compel the provision of information for the purpose of discharging her functions, including the investigation of the conduct of a public sector employee. That said, I consider that the assurance of confidentiality is crucial to ensuring that information is not only provided on a voluntary basis, but in a frank and thorough fashion. I therefore accept that disclosure of the interview transcripts could reasonably be expected to prejudice the future supply of information to the agency.

185. I now turn my mind to assessing where the public interest lies. I consider the following factors to be relevant:

In favour of disclosure:

- furthering the objects of the FOI Act which promote disclosure of government information
- promoting transparency around the Commissioner’s legislated functions
- the community interest and highly publicised nature of the subject matter of the documents
- promoting accountability around the conduct of government officials, in particular enabling scrutiny as to whether that conduct is in line with the Code of Ethics for the South Australian Public Sector and the Ministerial Code of Conduct respectively

Contrary to disclosure:

- furthering the objects of the FOI Act which promote the importance of the preservation of personal privacy
- the clear expectation of the interviewees that the transcripts would remain confidential
- safeguarding the voluntary provision of frank and thorough information to the Commissioner
- maintaining a positive and trusting relationship between the Commissioner and public sector employees.

186. I again acknowledge that the ordinarily substantial public interest in promoting accountability around the conduct of a Minister is somewhat lessened by the recent change in government.

187. I also consider that, given the raw nature of the documents, safeguarding the voluntary provision of frank and thorough information to the Commissioner ought to be given substantial weight.

188. I am satisfied that, on balance, disclosure of the interview transcripts would be contrary to the public interest. Although I take the opposite approach in relation the transcript of

⁴⁷ See *Re Maher and Attorney-General’s Department* (1986) 7 ALD 731 [737].

the applicant's interview, this point is now somewhat moot noting that I am persuaded that the transcripts are also exempt on the basis of clause 10(1).

189. In my provisional determination I observed that:

Although other documents such as the Final Report repeat portions of the transcripts, it is my view that the public interest weighs differently in that case. Where the transcripts are a verbatim records which include a mixture of relevant and irrelevant information, the information repeated in the Final Report has been intentionally chosen by AHI as being directly relevant to the Commissioner's investigation. Additionally, a portion of the information has been re-worded or summarised in a professional manner.

In that case, I consider that promoting transparency and accountability ought to be given substantial weight. I also note that the allegations were first publicised long before any of the interviews took place. Whilst it may be reasonable for the interviewees to expect that the transcripts would remain confidential and that all information would remain confidential whilst the investigation was ongoing, I consider that a reasonable person would be aware of the possibility that information relevant to the investigation outcome may become public upon the conclusion of the investigation.

190. In response to my provisional determination the agency submits that the public interest still weighs in favour of the Final Report not being released as:

- although the Commissioner has coercive powers to compel the provision of information, the quality of evidence obtained by the use of such powers is poorer compared with evidence voluntarily obtained
- although a reasonable person would be aware that some information relevant to the investigation will become public, they would not reasonably expect the volume of information in the report to be made public
- people sometimes raise particularly sensitive complaints (for example regarding sexual harassment) and the prospect of an investigation report concerning their complaint being released would have a chilling effect on their willingness to make complaints and provide evidence.

191. The above submissions were specifically made in relation to the Final Report, however the agency has also pressed exemption over other documents 'for the same reasons articulated regarding the investigation report'. As I am now satisfied that the Final Report is exempt on the basis of clause 10(1), I have only considered the above submissions in relation to the remaining documents.

192. Unlike the Final Report, the additional documents do not specifically identify which information was provided by which employee. I consider this to be particularly relevant as anonymity would substantially reduce any 'chilling' effect which could reasonably be expected from disclosure.

193. I accept that some complaints will be more sensitive than others, but I do not consider this to be particularly relevant to this matter; a determination that information be disclosed in this context will not automatically warrant the same conclusion in other circumstances. Each access request must be assessed on its merits, and in another matter the sensitive nature of a complaint might weigh heavily against disclosure. That is not the case here.

194. In relation to the additional documents over which the agency claims exemption under clause 13(1)(b) I remain satisfied that disclosure would not be contrary to the public interest.

Clause 17(c)

195. The agency determined that:

These documents are briefing notes or draft briefing notes prepared specifically for use in Parliament, the disclosure of which would infringe the privilege of Parliament.

...

These documents are Hansard extracts, the disclosure of which would infringe the privilege of Parliament.

196. Although the agency has not properly justified its position that the briefing notes are exempt, I am satisfied that a Parliamentary Briefing Note is certainly a kind of document the disclosure of which would infringe the privilege of Parliament. Although some of the documents are in draft form, I do not consider this to be fatal to the application of clause 17(c).

197. In *Re Saffioti and Minister for Transport; Housing* the Western Australian Information Commissioner referred to a decision in which the UK Information Commissioner listed the types of information that would normally fall within the parliamentary privilege exemption, including:

- bills, amendments and motions, including those in draft, where they originate from Parliament or a Member rather than from parliamentary counsel or another government department.⁴⁸ [emphasis added]

198. I do not consider that it is the intention of clause 17(c) that only final versions of documents may be exempt and am therefore satisfied that documents 140, 142 and 154 are exempt pursuant to clause 17(c).

199. Turning now to the Hansard extracts, in my provisional determination I observed that each of the extracts appeared to be publicly available via the South Australian Parliament website. That said, I nevertheless accept that the documents are subject to parliamentary privilege.

200. The concept of Parliamentary privilege has developed from Article 9 of the *Bill of Rights 1688*, which states that 'freedom of speech and debates or proceedings in Parliament ought not be impeached or questioned in any court or place out of Parliament'. The intention behind the privilege is, inter alia, to allow Parliament to proceed with parliamentary business without undue interference.

201. Unlike the Commonwealth, an Act to regulate parliamentary privilege has not been enacted in South Australia,⁴⁹ however the privilege is preserved in South Australia by section 38 of the *Constitution Act 1934* which provides:

38—Privileges, powers etc of Council and Assembly

The privileges, immunities, and powers of the Legislative Council and House of Assembly respectively, and of the committees and members thereof respectively, shall be the same as but no greater than those which on the twenty-fourth day of October, 1856, were held, enjoyed, and exercised by the House of Commons and by the committees and members thereof, whether such privileges, immunities, or powers were so held, possessed, or enjoyed by custom, statute, or otherwise.

202. Parliamentary privilege is generally accepted to cover all words spoken in Parliament. Very clearly, Hansard extracts will fall within this category and, unlike legal professional

⁴⁸ *Re Saffioti and Minister for Transport; Housing* [2012] WAICmr 10 (11 April 2012), [32].

⁴⁹ See the *Parliamentary Privileges Act 1987* (Cth).

privilege, parliamentary privilege is absolute and cannot be waived.⁵⁰ I therefore accept that the Hansard extracts are subject to parliamentary privilege.

203. That said, clause 17(c) does not prevent the disclosure of documents merely because they are subject to parliamentary privilege, rather the document will only be exempt if disclosure would infringe that privilege. Relevantly, privilege acts to prevent material being the subject of civil or criminal action.⁵¹

204. In my provisional determination I concluded that:

Given that parliamentary privilege is absolute, I consider that the Hansard extracts would remain privileged regardless of whether they are disclosed under the FOI Act. Additionally, it is difficult to see how disclosure under the FOI Act would facilitate the material being used in a civil or criminal action given that it is already publicly available.

If the applicant were to tender the extracts in a court proceeding, this may of course infringe the privilege of parliament, however I consider that this would be a matter entirely separate from disclosure under the FOI Act. I again reiterate that the applicant could access the information regardless of this determination.

In light of the above, I am not satisfied that disclosure of published Hansard extracts would infringe the privilege of parliament.

205. In response, the agency submits that:

Documents **56** and **86** are publicly available documents - being extracts from published Hansard. They are accordingly exempt from release in accordance with section 20(1)(b) of the FOI [Act] - regardless of whether parliamentary privilege would be infringed by their release.

Documents **156 to 167** are draft versions of Hansard, and each document is marked with the words "Confidential and Subject to Revision". I understand your provisional determination that the disclosure of these document [sic] would not infringe on the privileges of parliament, was made on the basis these are "published Hansard extracts". As they are confidential drafts, I respectfully submit that the privilege of parliament would be infringed if released - as this would undermine the parliament's claim of confidentiality over these draft documents.

206. In relation to documents 56 and 86, I consider that the agency's submissions reflect a misunderstanding of the application of section 20(1)(b). Firstly, section 20(1)(b) is a grounds for refusing access to a document, its application does not render the documents exempt. Secondly and more importantly, the section applies to documents available for inspection at an agency in accordance with a legislative instrument, not merely documents which are publicly available. I am not satisfied that section 20(1)(b) is applicable.

207. As to documents 156-167, my provisional view was not based on the documents in issue specifically being 'published Hansard extracts', but rather the fact that the information contained therein appears in published Hansard extracts. Whilst the documents in issue might specifically be the 'confidential' drafts which preceded publication, the contents appear to be identical to what was ultimately published. I do however acknowledge that these contents span 449 pages and invite the agency to

⁵⁰ *Parliamentary privilege and the common law of parliament: can MP's say what they want and get away with it?*, Carren Walker, (2018); *Prebble v Television New Zealand Limited* (1994) 3 All ER 407-20 at [407]; *Report relating to the use of or reference to the records of proceedings of the House in courts*, House of Representatives Committee of Privileges, (1980), page 154.

⁵¹ *Parliamentary privilege and the common law of parliament: can MP's say what they want and get away with it?*, Carren Walker, (2018).

- alert me to any variations between the documents and the published Hansard extracts I may have inadvertently missed.
208. In response to my revised provisional determination the agency advised that it has not compared the documents as this would be an 'onerous' task, and submits that the more prudent course of action would be for me to determine that documents 156-167 are exempt. I remind the agency that it bears the onus of justifying its determination.⁵²
209. As the agency has not alerted me to any variations between the documents, and has not otherwise disputed my assessment, I maintain the views expressed in my revised provisional determination.
210. Given that the information already exists within the public domain, it would stand to reason that any use of the information which might infringe the privilege of parliament would be attributed to the publication of the information rather than a subsequent release under the FOI Act.
211. Additionally, clause 17(c) specifically refers to the 'public disclosure' of matter. In the matter of *Department of Treasury and Finance v Mullighan* the South Australian Civil and Administrative Tribunal observed that 'disclosure' means:
- ...a revelation for the first time. However, this is not to be understood to refer to the document itself but to the information. If the information, though not necessarily the document, is within the public domain, to that extent release of the document containing the information may not constitute a disclosure as there may not be a revelation.⁵³
212. Although the above comments were made in the context of a consideration of clause 1(1)(e), I consider that they can be equally applied to clause 17(c). The information in documents 156-167 cannot be 'disclosed' in the sense intended by clause 17(c) as the information has already been revealed.
213. The wording of clause 17(c) supports an interpretation that consideration be given to the contents of the documents, rather than the documents themselves as the clause refers to 'matter'.
214. Accordingly, I remain satisfied that documents 156-167 are not exempt.

Determination

215. In light of my views above and subject to my receipt and consideration of submissions from the parties, I vary the agency's determination in accordance with Appendix Two.
216. In response to my revised provisional determination the agency submitted that Appendix Two ought to be amended to reflect which exemptions the agency maintains are applicable. I consider that it is most appropriate for Appendix Two to relay the agency's position as first communicated to my Office. This will ensure that Appendix Two provides an accurate overview of the effect of my entire external review.

⁵² *Freedom of Information Act 1991*, section 48.

⁵³ *Department of Treasury and Finance v Mullighan* [2021] SACAT 28, at [94].

217. I confirm that I have amended the title of column three to make clear that the column represents the agency's views at the commencement of my external review, and I acknowledge that those views have since changed.

A handwritten signature in black ink, appearing to read 'W. Lines', written in a cursive style.

Wayne Lines
SA OMBUDSMAN

29 July 2022

APPENDIX

Procedural steps

Date	Event
18 October 2021	The agency received the FOI application dated 18 October 2021.
15 November 2021	The agency determined the application.
17 December 2021	The agency received the internal review application dated 17 December 2021.
31 December 2021	The agency confirmed the determination.
31 January 2022	The Ombudsman received the applicant's request for external review dated 31 January 2022.
1 February 2022	The Ombudsman advised the agency of the external review and requested submissions and documentation.
15 February 2022	The agency provided the Ombudsman with its submissions and documentation.
14 April 2022	The Ombudsman issued his provisional determination and invited further submissions from the parties.
20 April 2022	The applicant advised that she had no further submissions to make.
5 May 2022	One of the interested parties advised that they had no submissions to make.
13 May 2022	One of the interested parties provided submissions in response to the provisional determination.
27 May 2022	The agency provided submissions in response to the provisional determination.
29 June 2022	The Ombudsman issued his revised provisional determination and invited further submissions from the parties.
11 July 2022	One of the interested parties provided submissions in response to the revised provisional determination.
12 July 2022	The applicant provided submissions in response to the revised provisional determination.
15 July 2022	The agency provided submissions in response to the revised provisional determination.

APPENDIX TWO

Doc. #	Description (as per agency's schedule of documents)	Agency's position at the commencement of the external review	Ombudsman's determination	Information to be released
1	Final Report	Fully exempt on the basis of clauses 6(1) and 10(1)	Fully exempt on the basis of clauses 6(1), 10(1) and 13(1)(b)	None
2	Letter	Fully exempt on the basis of clause 10(1)	Not exempt	Release in full
3	Letter	Fully exempt on the basis of clause 10(1)	Not exempt	Release in full
4	Emails	Fully exempt on the basis of clause 10(1)	Fully exempt on the basis of clauses 6(1), 9(1) and 10(1)	None
5	Email	Not exempt	Not exempt	Release in full
6	Letter	Not exempt	Not exempt	Release in full
7	Letter	Not exempt	Not exempt	Release in full
8	Letter	Not exempt	Not exempt	Release in full
9	Memorandum	Fully exempt on the basis of clause 10(1)	Fully exempt on the basis of clause 10(1)	None
10	Draft document	Fully exempt on the basis of clauses 6(1) and 9(1)	Not exempt	Release in full
11	Minute	Fully exempt on the basis of clauses 6(1) and 9(1)	Partially exempt on the basis of clause 6(1)	Release in full excepting the first sentence of the fourth bullet point under 'Other events' and the second half of recommendation 5 after the comma
12	Letter	Fully exempt on the basis of clause 10(1)	Fully exempt on the basis of clause 10(1)	None
13	Letter	Fully exempt on the basis of clauses 6(1) and 16(1)(a)(iv)	Not exempt	Release in full
14	Emails	Not exempt	Not exempt	Release in full
15	Attachment from 014 - Letter	Not exempt	Not exempt	Release in full
16	Letter	Fully exempt on the basis of	Not exempt	Release in full

		clause 6(1)		
17	Letter	Fully exempt on the basis of clauses 6(1) and 16(1)(a)(iv)	Not exempt	Release in full
18	Minute	Fully exempt on the basis of clauses 6(1) and 9(1)	Partially exempt on the basis of clause 6(1)	Release in full excepting the first sentence of the fourth bullet point under 'Other events' and the second half of recommendation 5 after the comma
19	Letter	Not exempt	Not exempt	Release in full
20	Letter - DRAFT	Fully exempt on the basis of clauses 6(1) and 9(1)	Partially exempt on the basis of clause 6(1)	Release in full excepting the second to last paragraph of the letter
21	Letter - DRAFT	Fully exempt on the basis of clauses 6(1) and 9(1)	Not exempt	Release in full
22	Letter - DRAFT	Fully exempt on the basis of clauses 6(1) and 9(1)	Fully exempt on the basis of clause 10(1)	None
23	Letter - DRAFT	Fully exempt on the basis of clauses 6(1) and 9(1)	Not exempt	Release in full
24	Minute - DRAFT	Fully exempt on the basis of clauses 6(1) and 9(1)	Fully exempt on the basis of clause 10(1)	None
25	Letter - DRAFT	Fully exempt on the basis of clauses 6(1) and 9(1)	Not exempt	Release in full
26	Letter - DRAFT	Fully exempt on the basis of clauses 6(1) and 9(1)	Not exempt	Release in full
27	Letter - DRAFT	Fully exempt on the basis of clauses 6(1), 9(1) and 10(1)	Fully exempt on the basis of clause 10(1)	None
28	Minute - DRAFT	Fully exempt on the basis of clauses 6(1) and 9(1)	Partially exempt on the basis of clause 6(1)	Release in full excepting the first sentence of the fourth bullet point under 'Other events' and the second half of recommendation 5 after the comma
29	Emails	Fully exempt on the basis of clause 10(1)	Fully exempt on the basis of clause 10(1)	None

30	Attachment to 029 - Letter	Fully exempt on the basis of clause 10(1)	Fully exempt on the basis of clauses 6(1) and 10(1)	None
31	Attachment to 029 - Letter	Fully exempt on the basis of clauses 6(1) and 10(1)	Fully exempt on the basis of clauses 6(1), 10(1) and 13(1)(b)	None
32	Attachment to 029 - Transcript of interview	Fully exempt on the basis of clauses 6(1), 10(1) and 16(1)(a)(iv)	Fully exempt on the basis of clause 13(1)(b)	None
33	Attachment to 029 - Transcript of interview	Fully exempt on the basis of clauses 6(1), 10(1) and 16(1)(a)(iv)	Fully exempt on the basis of clause 13(1)(b)	None
34	Attachment to -29 - document	Not exempt	Not exempt	Release in full
35	Letter	Fully exempt on the basis of clause 10(1)	Not exempt	Release in full
36	Attachment to 035 - Final Report	Fully exempt on the basis of clauses 6(1) and 10(1)	Fully exempt on the basis of clauses 6(1), 10(1) and 13(1)(b)	None
37	Letter	Fully exempt on the basis of clauses 6(1) and 9(1)	Not exempt	Release in full
38	Transcript of interview	Fully exempt on the basis of clauses 6(1), 10(1) and 16(1)(a)(iv)	Fully exempt on the basis of clause 13(1)(b)	None
39	Associated with 038	Fully exempt on the basis of clauses 6(1) and 16(1)(a)(iv)	Not exempt	Release in full
40	Associated with 038 - ORSR Distribution list	Partially exempt on the basis of clause 6(1)	Partially exempt on the basis of clause 6(1)	None - as per agency's determination
41	Associated with 038 - ORSR Org chart	Partially exempt on the basis of clause 6(1)	Partially exempt on the basis of clause 6(1)	The P numbers, suspected to be phone extensions
42	Transcript of interview	Fully exempt on the basis of clauses 6(1), 10(1) and 16(1)(a)(iv)	Fully exempt on the basis of clause 10(1)	None
43	Attached to document 042 - Letter	Not exempt	Not exempt	Release in full
44	Attached to document 042 - Letter	Not exempt	Not exempt	Release in full
45	Attached to document 042 - Letter	Not exempt	Not exempt	Release in full

46	Associated with 042 - Email	Not exempt	Not exempt	Release in full
47	Associated with 042 - Letter	Not exempt	Not exempt	Release in full
48	Associated with 042 - Email	Not exempt	Not exempt	Release in full
49	Associated with 042 - Email	Not exempt	Not exempt	Release in full
50	Associated with 042 - Notes	Not exempt	Not exempt	Release in full
51	Transcript of interview	Fully exempt on the basis of clauses 6(1), 10(1) and 16(1)(a)(iv)	Fully exempt on the basis of clause 13(1)(b)	None
52	Associated with 051 - Letter	Not exempt	Not exempt	Release in full
53	Associated with 051 - Letter	Not exempt	Not exempt	Release in full
54	Transcript of interview	Fully exempt on the basis of clauses 6(1), 10(1) and 16(1)(a)(iv)	Fully exempt on the basis of clause 13(1)(b)	None
55	Transcript of interview	Fully exempt on the basis of clauses 6(1), 10(1) and 16(1)(a)(iv)	Fully exempt on the basis of clause 13(1)(b)	None
56	House of Assembly Estimated Committee A	Fully exempt on the basis of clause 17(c)	Not exempt	Release in full
57	Document	Fully exempt on the basis of clause 16(1)(a)(iv)	Fully exempt on the basis of clause 12(1)	None
58	Document	Fully exempt on the basis of clause 16(1)(a)(iv)	Fully exempt on the basis of clause 12(1)	None
59	Emails	Not exempt	Not exempt	Release in full
60	Attachment o 059 - Letter	Not exempt	Not exempt	Release in full
61	Emails	Not exempt	Not exempt	Release in full
62	Attachment to 061 - Letter	Not exempt	Not exempt	Release in full
63	Emails	Partially exempt on the basis of clause 10(1)	Partially exempt on the basis of clause 10(1)	The email dated 26 July 2021 at 9:45 AM
64	Emails	Partially exempt on the basis of clause 10(1)	Partially exempt on the basis of clause 10(1)	The email dated 26 July 2021 at 9:45 AM
65	Emails	Partially exempt on the basis of clause 10(1)	Partially exempt on the basis of clause 10(1)	None
66	Attachment to 65 - Letter	Not exempt	Not exempt	Release in full
67	Emails	Fully exempt on the basis of clause 10(1)	Fully exempt on the basis of clause 10(1)	None

68	Email	Not exempt	Not exempt	Release in full
69	Email	Not exempt	Not exempt	Release in full
70	Emails	Fully exempt on the basis of clause 10(1)	Fully exempt on the basis of clause 10(1)	None
71	Emails	Partially exempt on the basis of clause 10(1)	Partially exempt on the basis of clause 10(1)	None
72	Emails	Fully exempt on the basis of clauses 10(1) and 16(1)(a)(iv)	Fully exempt on the basis of clauses 10(1) and 12(1)	None
73	Email	Fully exempt on the basis of clause 10(1)	Not exempt	Release in full
74	Email	Not exempt	Not exempt	Release in full
75	Emails	Partially exempt on the basis of clause 10(1)	Not exempt	Release in full
76	Emails	Fully exempt on the basis of clause 10(1)	Fully exempt on the basis of clauses 6(1), 9(1) and 10(1)	None
77	Email	Fully exempt on the basis of clause 10(1)	Fully exempt on the basis of clause 10(1)	None
78	Email	Not exempt	Not exempt	Release in full
79	Emails	Not exempt	Not exempt	Release in full
80	Emails	Partially exempt on the basis of clause 16(1)(a)(iv)	Partially exempt on the basis of clause 12(1)	None
81	Email	Not exempt	Not exempt	Release in full
82	Emails	Fully exempt on the basis of clause 10(1)	Fully exempt on the basis of clause 10(1)	None
83	Attachment to 082 - Letter - DRAFT Fully exempt on the basis of clauses 9(1) and 10(1)	Fully exempt on the basis of clauses 9(1) and 10(1)	Fully exempt on the basis of clause 10(1)	None
84	Email	Partially exempt on the basis of clause 6(1)	Partially exempt on the basis of clause 6(1)	None
85	Email	Not exempt	Not exempt	Release in full
86	Attachment to 085 - Minutes - House of Assembly Estimates Committee A	Fully exempt on the basis of clause 17(c)	Not exempt	Release in full
87	Emails	Fully exempt on the basis of clause 10(1)	Fully exempt on the basis of clause 10(1)	None

88	Email	Not exempt	Not exempt	Release in full
89	Attachment to 088 - Letter	Fully exempt on the basis of clauses 6(1) and 16(1)(a)(iv)	Not exempt	Release in full
90	Attachment to 088 - Letter	Not exempt	Not exempt	Release in full
91	Attachment to 088 - Letter	Not exempt	Not exempt	Release in full
92	Email	Fully exempt on the basis of clause 16(1)(a)(iv)	Fully exempt on the basis of clause 12(1)	None
93	Document	Fully exempt on the basis of clause 16(1)(a)(iv)	Fully exempt on the basis of clause 12(1)	None
94	Email	Fully exempt on the basis of clauses 10(1) and 16(1)(a)(iv)	Fully exempt on the basis of clauses 10(1) and 12(1)	None
95	Attachment to 094 - Memorandum	Fully exempt on the basis of clause 10(1)	Fully exempt on the basis of clause 10(1)	None
96	Attachment to 094 - Letter	Not exempt	Not exempt	Release in full
97	Attachment to 094 - Letter	Not exempt	Not exempt	Release in full
98	Attachment to 094 - Letter - AHI to CSO re investigation quote [same as 003]	Fully exempt on the basis of clause 10(1)	Not exempt	Release in full
99	Document	Fully exempt on the basis of clause 16(1)(a)(iv)	Fully exempt on the basis of clause 12(1)	None
100	Attachment to 099 - Memorandum	Fully exempt on the basis of clause 10(1)	Fully exempt on the basis of clause 10(1)	None
101	Attachment to 099 - Letter	Not exempt	Not exempt	Release in full
102	Attachment to 099 - Letter	Not exempt	Not exempt	Release in full
103	Attachment to 099 - Letter - AHI to CSO re investigation quote [same as 003]	Fully exempt on the basis of clause 10(1)	Not exempt	Release in full
104	Email	Fully exempt on the basis of clause 10(1)	Fully exempt on the basis of clause 10(1)	None
105	Email	Fully exempt on the basis of clause 10(1)	Fully exempt on the basis of clause 10(1)	None
106	Attachment to 105 - Letter	Fully exempt on the basis of clause 10(1)	Fully exempt on the basis of clause 10(1)	None
107	Email	Partially exempt on the basis of clause 10(1)	Partially exempt on the basis of clause 10(1)	None

108	Email	Fully exempt on the basis of clause 10(1)	Fully exempt on the basis of clause 10(1)	None
109	Attachment to 108 - Letter	Fully exempt on the basis of clause 10(1)	Not exempt	Release in full
110	Attachment to 108 - Final Report	Fully exempt on the basis of clauses 6(1) and 10(1)	Fully exempt on the basis of clauses 6(1), 10(1) and 13(1)(b)	None
111	Attachment to 108 - Transcript of interview	Fully exempt on the basis of clauses 6(1), 10(1) and 16(1)(a)(iv)	Fully exempt on the basis of clause 13(1)(b)	None
112	Email	Fully exempt on the basis of clause 10(1)	Fully exempt on the basis of clause 10(1)	None
113	Attachment to 112 - Letter - DRAFT	Fully exempt on the basis of clauses 6(1), 9(1) and 10(1)	Fully exempt on the basis of clause 10(1)	None
114	Emails	Fully exempt on the basis of clause 10(1)	Fully exempt on the basis of clause 10(1)	None
115	Email	Fully exempt on the basis of clause 10(1)	Fully exempt on the basis of clause 10(1)	None
116	Attachment to 115 - Minute - DRAFT	Fully exempt on the basis of clauses 6(1), 9(1) and 10(1)	Fully exempt on the basis of clause 10(1)	None
117	Attachment to 115 - Letter - DRAFT	Fully exempt on the basis of clauses 6(1), 9(1) and 10(1)	Fully exempt on the basis of clause 10(1)	None
118	Attachment to 115 - Letter - DRAFT	Fully exempt on the basis of clauses 6(1), 9(1) and 10(1)	Fully exempt on the basis of clause 10(1)	None
119	Attachment to 115 - Letter - DRAFT	Fully exempt on the basis of clauses 6(1), 9(1) and 10(1)	Fully exempt on the basis of clause 10(1)	None
120	Emails	Fully exempt on the basis of clause 10(1)	Fully exempt on the basis of clause 10(1)	None
121	Attachment to 120 - Letter - DRAFT	Fully exempt on the basis of clauses 6(1), 9(1) and 10(1)	Fully exempt on the basis of clause 10(1)	None
122	Emails	Fully exempt on the basis of clause 10(1)	Fully exempt on the basis of clause 10(1)	None
123	Email	Not exempt	Not exempt	Release in full
124	Attachment to 123 - Final Report	Fully exempt on the basis of clauses 6(1) and 10(1)	Fully exempt on the basis of clauses 6(1), 10(1) and 13(1)(b)	None
125	Email	Not exempt	Not exempt	Release in full

126	Attachment to 125 - Final Report	Fully exempt on the basis of clauses 6(1) and 10(1)	Fully exempt on the basis of clauses 6(1), 10(1) and 13(1)(b)	None
127	Attachment to 125 - Minute	Fully exempt on the basis of clauses 6(1) and 9(1)	Partially exempt on the basis of clause 6(1)	Release in full excepting the first sentence of the fourth bullet point under 'Other events' and the second half of recommendation 5 after the comma
128	Email	Not exempt	Not exempt	Release in full
129	Attachment to 128 - Advertiser article	Not exempt	Not exempt	Release in full
130	Email	Fully exempt on the basis of clause 9(1)	Not exempt	Release in full
131	Attachment to 130 - DRAFT document	Fully exempt on the basis of clauses 6(1) and 9(1)	Partially exempt on the basis of clause 6(1)	Release in full excepting the first sentence of the last dot point on page 4
132	Email	Fully exempt on the basis of clause 9(1)	Not exempt	Release in full
133	Attachment to 133 - DRAFT document	Fully exempt on the basis of clauses 6(1) and 9(1)	Not exempt	Release in full
134	Email	Fully exempt on the basis of clause 9(1)	Not exempt	Release in full
135	Attachment to 133 - DRAFT document	Fully exempt on the basis of clauses 6(1) and 9(1)	Not exempt	Release in full
136	Email	Fully exempt on the basis of clauses 9(1) and 10(1)	Fully exempt on the basis of clause 10(1)	None
137	Email	Fully exempt on the basis of clause 10(1)	Fully exempt on the basis of clause 10(1)	None
138	Attachment to 137 - Letter - DRAFT	Fully exempt on the basis of clauses 6(1), 9(1) and 10(1)	Fully exempt on the basis of clause 10(1)	None
139	Emails	Not exempt	Not exempt	Release in full
140	Attachment to 139 - DRAFT - Parliamentary Briefing note	Fully exempt on the basis of clause 17(c)	Fully exempt on the basis of clause 17(c)	None
141	Email	Not exempt	Not exempt	Release in full
142	Attachment to 141 - DRAFT -	Fully exempt on the basis of	Fully exempt on the basis of	None

	Parliamentary Briefing note	clause 17(c)	clause 17(c)	
143	Email	Partially exempt on the basis of clause 6(1)	Not exempt	Release in full
144	Attachment to 143 - Letter - DRAFT	Fully exempt on the basis of clauses 6(1) and 9(1)	Not exempt	Release in full
145	Attachment to 143 - Letter - DRAFT	Fully exempt on the basis of clauses 6(1) and 9(1)	Partially exempt on the basis of clause 6(1)	Release in full excepting the second to last paragraph of the letter
146	Attachment to 143 - Letter - DRAFT	Fully exempt on the basis of clauses 6(1) and 9(1)	Not exempt	Release in full
147	Attachment to 143 - Document - DRAFT	Fully exempt on the basis of clauses 6(1) and 9(1)	Not exempt	Release in full
148	Email	Partially exempt on the basis of clause 6(1)	Not exempt	Release in full
149	Attachment to 143 - Letter - DRAFT	Fully exempt on the basis of clauses 6(1) and 9(1)	Partially exempt on the basis of clause 6(1)	Release in full excepting the second to last paragraph of the letter
150	Attachment to 143 - Letter - DRAFT	Fully exempt on the basis of clauses 6(1) and 9(1)	Not exempt	Release in full
151	Attachment to 143 - Document - DRAFT	Fully exempt on the basis of clauses 6(1) and 9(1)	Not exempt	Release in full
152	Attachment to 143 - Letter	Fully exempt on the basis of clauses 6(1) and 9(1)	Not exempt	Release in full
153	Email	Not exempt	Not exempt	Release in full
154	Attachment to 153 - Parliamentary Briefing note	Fully exempt on the basis of clause 17(c)	Fully exempt on the basis of clause 17(c)	None
155	Email	Not exempt	Not exempt	Release in full
156	House of Assembly Hansard Extract (page 6579 - 6760)	Fully exempt on the basis of clause 17(c)	Not exempt	Release in full
157	House of Assembly Hansard	Fully exempt on the basis of clause 17(c)	Not exempt	Release in full
158	House of Assembly Hansard Extract (page 6934)	Fully exempt on the basis of clause 17(c)	Not exempt	Release in full
159	House of Assembly Hansard Extract (page 6915 - 6916)	Fully exempt on the basis of clause 17(c)	Not exempt	Release in full

160	Legislative Council Hansard Extract (page 4135 - 4136)	Fully exempt on the basis of clause 17(c)	Not exempt	Release in full
161	House of Assembly Hansard	Fully exempt on the basis of clause 17(c)	Not exempt	Release in full
162	Legislative Council Hansard	Fully exempt on the basis of clause 17(c)	Not exempt	Release in full
163	Legislative Council Hansard Extract (page 4139 - 41364144)	Fully exempt on the basis of clause 17(c)	Not exempt	Release in full
164	House of Assembly Hansard Extract (page 7044 - 7046)	Fully exempt on the basis of clause 17(c)	Not exempt	Release in full
165	House of Assembly Hansard Extract (page 7058 - 7059)	Fully exempt on the basis of clause 17(c)	Not exempt	Release in full
166	House of Assembly Hansard	Fully exempt on the basis of clause 17(c)	Not exempt	Release in full
167	Legislative Council Hansard Extract (page 4191)	Fully exempt on the basis of clause 17(c)	Not exempt	Release in full
168	Email	Fully exempt on the basis of clause 10(1)	Fully exempt on the basis of clause 10(1)	None
169	Attachment to 168 - draft letter	Fully exempt on the basis of clauses 6(1), 9(1) and 10(1)	Fully exempt on the basis of clause 10(1)	None
170	Email	Fully exempt on the basis of clauses 6(1), 9(1) and 10(1)	Fully exempt on the basis of clause 10(1)	None
171	Attachment to 170 - Draft document	Fully exempt on the basis of clauses 6(1), 9(1) and 10(1)	Fully exempt on the basis of clause 10(1)	None
172	Attachment to 170 - Letter - DRAFT	Fully exempt on the basis of clauses 6(1), 9(1) and 10(1)	Fully exempt on the basis of clause 10(1)	None
173	Attachment to 170 - Letter - DRAFT	Fully exempt on the basis of clauses 6(1), 9(1) and 10(1)	Fully exempt on the basis of clause 10(1)	None
174	Email	Fully exempt on the basis of clauses 6(1), 9(1) and 10(1)	Fully exempt on the basis of clause 10(1)	None
175	Unnamed	Fully exempt on the basis of clauses 6(1), 9(1) and 10(1)	Fully exempt on the basis of clause 10(1)	None
176	Email	Fully exempt on the basis of clause 10(1)	Fully exempt on the basis of clause 10(1)	None
177	Attachment to 176 - Draft	Fully exempt on the basis of	Fully exempt on the basis of	None

	document	clauses 6(1), 9(1) and 10(1)	clause 10(1)	
178	Attachment to 176 - Letter - DRAFT	Fully exempt on the basis of clauses 6(1), 9(1) and 10(1)	Fully exempt on the basis of clause 10(1)	None
179	Attachment to 176 - Letter - DRAFT	Fully exempt on the basis of clauses 6(1), 9(1) and 10(1)	Fully exempt on the basis of clause 10(1)	None
180	Emails	Fully exempt on the basis of clause 10(1)	Fully exempt on the basis of clause 10(1)	None
181	Emails	Fully exempt on the basis of clause 10(1)	Fully exempt on the basis of clauses 10(1) and 12(1)	None
182	Emails	Fully exempt on the basis of clause 10(1)	Fully exempt on the basis of clause 10(1)	None
183	Emails	Fully exempt on the basis of clause 10(1)	Fully exempt on the basis of clause 10(1)	None