

Determination

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

Applicant	Dr Dominik Stepien
Agency	Southern Adelaide Local Health Network
Ombudsman reference	2018/10751
Agency reference	A1081390
Determination	The determination of the agency is varied.

REASONS

Application for access

1. By application under the *Freedom of Information Act 1991 (the FOI Act)* the applicant requested access from the agency to:
 1. All contracts and agreements between Australian Medical Placements Pty Ltd and SALHN Hospitals for the years 2010 - 2017;
 2. The "Terms and Conditions of Business with Australian Medical Placements Pty Ltd" between Australian Medical Placements Pty Ltd and SALHN Hospitals;
 3. All contracts and agreements between medical locum agencies and SALHN Hospitals for the years 2010 – 2017;
 4. Documents which record the number of medical locum shifts available at SALHN Hospitals for medical practitioners for the years 2010 - 2017, and how many of these vacancies were filled;
 5. The current fee structure practiced [sic] between SALHN Hospitals and the different Medical locum agencies.

Background

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

Jurisdiction

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

Provisional determination

4. I provided my tentative view about the agency's determination to the parties to this external review and four interested parties, including Australian Medical Placements Pty Ltd (**AMP**), by my provisional determination dated 22 March 2019. I informed the parties that subject to my receipt and consideration of submissions from the parties I proposed to vary the agency's determination.

5. The agency and each of the interested parties provided a response. The agency and interested party one made no objection to my provisional determination and provided no further submissions. Interested party two provided submissions relevant to document 30. Interested party three and AMP provided responses to my provisional determination.
6. I have considered these submissions in this determination. The applicant did not provide submissions in response to my provisional determination.

Relevant law

7. A person has a legally enforceable right to be given access to an agency's documents in accordance with the FOI Act.¹
8. The FOI Act provides that upon receipt of an access application, an agency may make a determination to refuse access where the documents are 'exempt'. Schedule 1 lists various exemption clauses which may be claimed by an agency as a basis for refusing access.
9. Under section 48, the onus is on the agency to justify its determination 'in any proceedings'. This includes the external review process.
10. In its determination, the agency claimed that clauses 7(1)(a), 7(1)(b), and 13(1)(a) were relevant to the 33 documents that had been identified and to which access was refused. 23 of these documents were also considered by the agency to be exempt pursuant to clause 6(1).
11. In a letter to my Office dated 25 January 2019, the agency:
 - also claimed that documents 1 and 3 - 24 were also exempt pursuant to clause 13(1)(b)
 - withdrew the claimed exemption under clauses 7(1)(a), 7(1)(b) and 13(1)(a) for documents 2, 25, 26, 27, 28, 31 and 32 and stated that it considered those documents to be exempt under clause 16(2).
12. In response to my provisional determination, interested party two claimed that the document on which they had been consulted contained information that was exempt pursuant to clauses 7(1)(b), 7(1)(c), 13(1)(b) and 16(1)(a)(iv).²
13. Clauses 6, 7, 13 and 16 are set out here:

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 living person 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.

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

² Email from interested party two to my officer on 30 April 2019.

7 – Documents affecting business affairs

- (1) A document is an exempt document—
 - (a) if it contains matter the disclosure of which would disclose trade secrets of any agency or any other person; or
 - (b) if it contains matter—
 - (i) consisting of information (other than trade secrets) that has commercial value to any agency or any other person;
 - (ii) the disclosure of which—
 - (A) could reasonably be expected to destroy or diminish the commercial value of the information; and
 - (B) would, on balance, be contrary to the public interest.
 - (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
 - (B) would, on balance, be contrary to the public interest.
- (2) A document is not an exempt document by virtue of this clause merely because it contains matter concerning the business, professional, commercial or financial affairs of the agency or other person by or on whose behalf an application for access to the document is made.
- (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.

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.
- (2) A document that is a contract entered into by the Crown or an agency after the commencement of this subclause is not an exempt document by virtue of subclause (1) unless –
 - (a) it contains matter the disclosure of which would, under a term of the contract, constitute a breach of the contract or found an action for breach of confidence; and

- (b) that term of the contract has been approved by –
 - (i) in the case of a contract entered by the Crown – a Minister; or
 - (ii) in the case of a contract entered into by a State Government agency – the responsible Minister for the agency; or
 - (iii) in the case of a contract entered into by an agency that is not a State Government agency – the agency
- (3) Subject to subclause (4), a Minister may, by instrument in writing, delegate the power to approve a term of a contract under subclause (2) to a specified person or to the holder of a specified office.
- (4) A delegation under subclause (3) may be made subject to such conditions and restrictions as the Minister thinks fit and specifies in the instrument of delegation.
- (5) A delegation by a Minister under subclause (3) is revocable at will, and does not derogate from the power of the Minister to act personally in any matter.
- (6) If a Minister or agency approves of a term of a contract in accordance with subclause (2), the Minister or agency must, as soon as practicable, notify the Minister administering this Act, in writing, of that fact.
- (7) The Minister administering this Act must, in report under section 54, state the number of contracts containing terms approved in accordance with subclause (2) during the period to which the report relates.

16 – Documents concerning operations of an agency

- (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 the agency; or
 - (iii) to have a substantial adverse effect on the management or assessment by an agency of an agency’s personnel; or
 - (iv) to have a substantial adverse effect on the effective performance by an agency of an 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.
- (2) A document is an exempt document if –
 - (a) it related to an agency engaged in commercial activities; and
 - (b) it contains matter the disclosure of which could prejudice the competitiveness of the agency in carrying out those commercial activities.

14. The claimed application of these clauses to the documents in issue is detailed in the table below.

15. 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

16. The agency identified 33 documents within the scope of the application and refused access to 32. Document 29 was released in part to the applicant.
17. The following documents are in issue in my external review:

Document in issue	Description	Date of document	Exemptions claimed by the agency or interested parties
1	Notice of rate increase	1 February 2016	7(1)(a), 7(1)(b) 13(1)(a), 13(1)(b)
2	Terms and Conditions of Business	29 April 2014	7(1)(a), 7(1)(b) 13(1)(a), 13(1)(b) 16(2)
3	Invoice for services	15 April 2015	6(1) 7(1)(a), 7(1)(b) 13(1)(a), 13(1)(b)
4	Invoice for services	29 April 2014	6(1) 7(1)(a), 7(1)(b) 13(1)(a), 13(1)(b)
5	Invoice for services	26 August 2014 ³	6(1) 7(1)(a), 7(1)(b) 13(1)(a), 13(1)(b)
6	Invoice for services	18 November 2014	6(1) 7(1)(a), 7(1)(b) 13(1)(a), 13(1)(b)
7	Invoice for services	6 October 2015	6(1) 7(1)(a), 7(1)(b) 13(1)(a), 13(1)(b)
8	Invoice for services	29 December 2016	6(1) 7(1)(a), 7(1)(b) 13(1)(a), 13(1)(b)
9	Invoice for services	26 September 2016	6(1) 7(1)(a), 7(1)(b) 13(1)(a), 13(1)(b)
10	Invoice for services	6 February 2018	6(1) 7(1)(a), 7(1)(b) 13(1)(a), 13(1)(b) Excluded by the applicant
11	Invoices for services	3 September 2014	6(1) 7(1)(a), 7(1)(b) 13(1)(a), 13(1)(b)
12	Invoice for services	9 September 2014	6(1) 7(1)(a), 7(1)(b) 13(1)(a), 13(1)(b)

³ In my provisional determination, the date for document five was incorrectly listed as 29 April 2014.

Document in issue	Description	Date of document	Exemptions claimed by the agency or interested parties
13	Invoice for services	17 September 2014	6(1) 7(1)(a), 7(1)(b) 13(1)(a), 13(1)(b)
14	Invoice for services	23 September 2014	6(1) 7(1)(a), 7(1)(b) 13(1)(a), 13(1)(b)
15	Invoice for services	1 October 2014	6(1) 7(1)(a), 7(1)(b) 13(1)(a), 13(1)(b)
16	Invoice for services	29 December 2014	6(1) 7(1)(a), 7(1)(b) 13(1)(a), 13(1)(b)
17	Invoice for services	8 January 2015	6(1) 7(1)(a), 7(1)(b) 13(1)(a), 13(1)(b)
18	Invoice for services	20 January 2015	6(1) 7(1)(a), 7(1)(b) 13(1)(a), 13(1)(b)
19	Invoice for services	27 January 2015	6(1) 7(1)(a), 7(1)(b) 13(1)(a), 13(1)(b)
20	Invoice for services	3 February 2015	6(1) 7(1)(a), 7(1)(b) 13(1)(a), 13(1)(b)
21	Invoice for services	17 June 2015	6(1) 7(1)(a), 7(1)(b) 13(1)(a), 13(1)(b)
22	Invoice for services	16 June 2016	6(1) 7(1)(a), 7(1)(b) 13(1)(a), 13(1)(b)
23	Invoice for services	16 May 2017	6(1) 7(1)(a), 7(1)(b) 13(1)(a), 13(1)(b)
24	Invoice for services	20 February 2018	6(1) 7(1)(a), 7(1)(b) 13(1)(a), 13(1)(b) Excluded by the applicant
25	Updated Terms and Conditions of Business	29 February 2016	7(1)(a), 7(1)(b) 13(1)(a), 13(1)(b) 16(2)
26	Terms and Conditions of Business	6 April 2018	7(1)(a), 7(1)(b) 13(1)(a), 13(1)(a) 16(2) Excluded by the applicant
27	Terms and Conditions of Business	29 February 2016	7(1)(a), 7(1)(b) 13(1)(a), 13(1)(a) 16(2)

Document in issue	Description	Date of document	Exemptions claimed by the agency or interested parties
28	Terms and Conditions of Business	10 April 2018	7(1)(a), 7(1)(b) 13(1)(a), 13(1)(a) 16(2) Excluded by the applicant
29	Medical Locums usage	2014/2015	Released in part 7(1)(b) 13(1)(a), 13(1)(b)
30	Internal emails	26 May 2016	7(1)(a), 7(1)(b) 13(1)(a) 7(1)(c) and 16(1)(a)(iv) also claimed by interested party two
31	Terms and Conditions of Business	Undated	7(1)(a), 7(1)(b) 13(1)(a), 13(1)(b) 16(2)
32	Terms and Conditions of Business	Undated	7(1)(a), 7(1)(b) 13(1)(a), 13(1)(b) 16(2)
33	Internal emails	Undated	6(1) 7(1)(a), 7(1)(b) 13(1)(a) 16(2)

18. In an email dated 11 December 2018, the applicant clarified that the relevant dates for points two and five of his application were between 2010 and 2017. I have taken this to exclude the documents that fall outside of this date range.⁴ The applicant also advised that he was prepared to exclude the names of individual locums⁵ and the contact details of agency staff⁶ from this external review. By email dated 27 February 2019, the applicant further advised that he was prepared to exclude the specific hospital locations from documents 3 – 23 in order to further de-identify the individual locums.⁷

19. I am therefore of the view that documents 10, 24, 26, and 28 need not be provided to the applicant as those documents are not within the date range of the application. The names of locums and locations where their services were provided, and the contact details of agency staff, where they appear in documents 30 and 33, should also not be provided to the applicant.

Issues in this review

20. The issue to be determined is whether the agency has justified the determination to refuse access to the documents in issue.

⁴ Notice of this intention was provided in my provisional determination.

⁵ Email from the applicant to my Office dated 11 December 2018.

⁶ Email from the applicant to my officer dated 11 June 2019.

⁷ Email from the applicant to my Office dated 27 February 2019.

Consideration

Agency submissions

21. In claiming the exemption clauses outlined in the table above, the agency made the following submissions:
- the disclosure of information contained in each of the documents in issue could reasonably be expected to damage the commercial interests of external parties and be contrary to confidentiality agreements agreed upon between the agency and those parties
 - the release of the documents could reasonably be considered to impact future commercial negotiations with other agencies should the agency not abide by their agreed terms of confidentiality
 - that SA Health was, at the time of the agency's determination, undertaking evaluations in preparation for a tender process in relation to locum services and the release of documents could compromise that process
 - the release of documents 2, 25, 26, 27, 28, 31, 32 could reasonably be expected to impact and prejudice the current business relationship with AMP, as the company provides extensive locum services to the agency.
22. The agency provided a copy of its consultation with SA Health (**interested party three**).⁸ I note that while the agency claimed that the documents in issue are exempt pursuant to clause 7(1)(a) and 7(1)(b), the agency did not claim that the documents in issue contain matter concerning trade secrets of interested party three or information that has commercial value to interested party three. The agency did not directly link any particular information contained in the documents to the processes of interested party three. Having regard to the submissions by interested party three to the agency, particularly concerning the preliminary status of the tender process, I am satisfied that disclosure would not adversely affect that process.
23. The agency made no further submissions in response to my provisional determination.

AMP's submissions

24. The agency advised my Office of its consultation with AMP, and AMP's strong objection to the release of documents 1, 2, 25, 26, 27, 31 and 32 in particular.⁹
25. In an email to my Office on 11 April 2019, a representative of AMP stated:
- I was wondering if the Ombudsman is aware that this information that has consistently been requested is from our direct competitor. The previous ruling¹⁰ has resulted in that company being privy to information that are part of our quality Management system... That company are now replicating our documents either partial or in their entirety.
- This company... has a footprint here in SA. We have lost significant business due to this ruling.
- Perhaps we should give any and all competitors a password to our software and save everyone time?
26. My officer requested further information from AMP in support of the claims above. AMP provided no further submissions.

⁸ While I would ordinarily avoid disclosing the identify of an interested party, the applicant was informed of the substance of this consultation in the agency's internal review determination.

⁹ Letter from the agency to this Office dated 25 January 2019.

¹⁰ I understand that this email refers to my earlier unpublished determination that involved AMP and the applicant in this matter.

27. In *Re Pope and Queensland Health*, the Queensland Information Commissioner at the time considered that while an applicant bore no formal legal onus, they must nevertheless ensure that they present sufficient information to the appropriate review body to substantiate their submissions.¹¹ I consider that this expectation also applies to interested parties seeking to claim exemption over information that may concern their personal or business affairs.

Interested party two's submissions

28. In an email to my Office on 30 April 2019, interested party two claimed the application of clauses 7(1)(b), 7(1)(c), 13(1)(b) and 16(1)(a)(iv) in relation to a portion of document 30. I shall consider those submissions where I consider that document.

Terms and conditions of business

29. Documents 2, 25, 27, 31 and 32 are titled 'Terms and Conditions of Business' between the agency and AMP. Documents 2, 25 and 27 are signed by representatives of the agency. Document 31 is partially completed and document 32 is unsigned.
30. I am satisfied that the signed documents are best characterised as contracts.
31. The agency did not claim that the documents were exempt by virtue of clause 6(1) but I note for completeness that I do not consider that the signed documents contain the personal affairs of the officers of the agency who completed those documents.
32. While the definition of personal affairs in the FOI Act includes 'employment records', distinction has been drawn between personal affairs and information relating to the performance of employment duties.¹²
33. In *Re Williams and Registrar of the Federal Court of Australia*, Beaumont J considered that information concerning the work capacity and performance of a person is not private in the ordinary meaning afforded to personal affairs.¹³
34. In *University of Melbourne v Robinson*, Eames J stated:
- The reference to "personal affairs of any person" suggests to me that a distinction has been drawn by the legislature between those aspects of an individual's life which might be said to be of a private character and those relating to or arising from any position, office or other public activity with which a person occupies his or her time.¹⁴
35. In *Commissioner of Police v The District Court of New South Wales and Perrin*, Kirby P as he then was, commented that:
- ... the name of any officer or employee doing no more than the apparent duties of that person could not properly be classified as information concerning the personal affairs of that person.¹⁵
36. I find this reasoning persuasive and as such, do not consider that the signed documents contain the personal affairs of agency staff.
37. My officer enquired with the agency as to the status of documents 31 and 32 as contracts between the agency and AMP. The agency stated that 'in all likelihood the

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

¹² *Re Williams and Registrar of the Federal Court D107* [1985] AATA 226, 8 ALD 219; *Young v Wicks* 13 FCR 185; *Department of Social Security v Dyrenfurth* [1988] FCA 148, 80 ALR 533.

¹³ [1985] AATA 226, 8 ALD 219 at 221.

¹⁴ [1995] VicRp 67; [1993] 2 VR 177 (31 March 1993).

¹⁵ (1993) 31 NSWLR 606 at 625, cited with approval in *Murphy and Queensland Treasury* (1995) 2 QAR 744, [30].

contracts were entered into'.¹⁶ As such, I take the view that the documents are best characterised as contracts.

38. In correspondence with my Office, the agency accepted that clauses 7(1)(a), 7(1)(b), 13(1)(a) and 13(1)(b) did not apply to the documents in issue as a result of the operation of clauses 7(3) and 13(2) respectively.¹⁷

Clause 7

39. Clause 7(3) provides that a document is not an exempt document by virtue of clause 7 if it is a contract entered into by the Crown or an agency after the commencement of this subclause. As the subclause commenced on 1 January 2005, it is clear that documents 2, 25 and 27 were entered into after the commencement of the subclause. Having regard to the agency's clarification, I am satisfied that documents 31 and 32 were also entered into after the commencement of the subclause.
40. My provisional determination provided that I was tentatively satisfied that the documents concern the business affairs of AMP. Having considered AMP's submissions in response to my provisional determination, I nevertheless take the view, consistent with the agency's revised submissions, that documents 2, 25, 31 and 32 are not exempt by virtue of clause 7.

Clause 13

41. Clause 13(2) provides that a document that is a contract is not an exempt document by virtue of clause 13(1) unless it contains matter the disclosure of which would, under a term of the contract, constitute a breach of contract or found an action for a breach of confidence and relevantly, that term has been approved by a Minister. No information has been provided to my Office to suggest that the agency staff members that signed the documents held the appropriate delegation from the Minister.¹⁸ Consistent with the agency's revised submissions and clarification, I take the view that documents 2, 25, 27, 31 and 32 are not exempt by virtue of clause 13(2).
42. My consideration therefore turns to whether the documents are exempt pursuant to clause 16(2).

Clause 16(2)

43. For a document to be exempt pursuant to clause 16(2), it must be established that the document:
- relates to an agency engaged in commercial activities; and
 - contains matter the disclosure of which could prejudice the competitiveness of the agency in carrying out those commercial activities.
44. The term 'commercial activities' is not defined in the FOI Act. I have had regard to the ordinary meaning of the word 'commercial' as provided by the Macquarie Dictionary, which defines commercial as 'engaged in commerce; capable of returning a profit, preoccupied with profits or immediate gains'.¹⁹
45. The agency did not provide submissions to confirm that it is engaged in commercial activities.

¹⁶ Email from the agency to my Office dated 8 February 2019.

¹⁷ Letter from the agency dated 25 January 2019.

¹⁸ *Freedom of Information Act 1991*, clause 13(3).

¹⁹ *Macquarie Dictionary*, 3rd edition.

46. South Australian local health networks, including the agency, are described on the SA Health website as being responsible for the management and delivery of public hospitals and other community based health services.²⁰ The networks were established as incorporated hospitals²¹ under the *Health Care Act 2008*. The Health Care Act provides:

31 – General powers of incorporated hospital

- (1) An incorporated hospital is a body corporate with perpetual succession and a common seal, and, subject to any determination of the Minister—
- (a) is capable of holding, acquiring, dealing with, and disposing of, real and personal property (including the power to enter into a lease); and
 - (b) is capable of acquiring or incurring other assets, rights or liabilities; and
 - (c) is capable of entering into contracts; and
 - (d) is capable of suing and being sued; and
 - (e) is able to promote the formation of a company under the *Corporations Act 2001* of the Commonwealth and to hold shares or other interests in any body corporate; and
 - (f) is capable of administering any property on trust or accepting gifts (and, if any gift is affected by a trust, is empowered to carry out the terms of the trust); and
 - (g) has the functions, rights, powers, authorities, duties and obligations conferred, imposed or prescribed under this or any other Act (and including such powers necessary or expedient for, or incidental to, the performance of any function).
- (1a) Without limiting subsection (1), an incorporated hospital may undertake the following functions:
- (a) to undertake or facilitate—
 - (i) the commercial exploitation of knowledge arising from its activities; or
 - (ii) the commercial development of its services, functions or expertise;
- ...

47. While the Health Care Act provides that a Local Health Network may undertake commercial activities in the manner described above, I am not satisfied that the agency does indeed engage in commercial activities in the engagement of medical locums.
48. In reaching this conclusion, I have had regard to the reasoning of the primary judge, considered with approval by Tamberlin, Mansfield and Emmett JJ in the Full Federal Court decision of *Secretary, Department of Workplace Relations & Small Business v The Staff Development and Training Centre Pty Ltd*. That decision concerned a Commonwealth agency that provided a governmental service through contracted private sector organisations.

²⁰ SA Health, Our Local Health Networks (2012) <<https://www.sahealth.sa.gov.au/wps/wcm/connect/Public+Content/SA+Health+Internet/About+us/Our+Local+Health+Networks/>> (accessed 27 February 2019).

²¹ SA Health, Our Local Health Networks (2012) <<https://www.sahealth.sa.gov.au/wps/wcm/connect/Public+Content/SA+Health+Internet/About+us/Our+Local+Health+Networks/>> (accessed 27 February 2019).

It does not become involved in carrying on business merely because it provides those governmental services in a sequence of contractual arrangements with the private service providers, each of which operates only for a limited period.

His Honour considered that there was a distinction between government functions and trading commercial functions and that that distinction holds true even though government may deliver its governmental functions to interested members of the public in a commercial format, for example, by *outsourcing* them to private sector service providers. If it adopts that method of governmental service delivery, it is still engaged in the function of government, not in the business of trade activity.

His Honour concluded that the Department, in letting contracts as described above, is nonetheless engaged in governmental, that is, non-commercial functions. That a government department may procure goods or services from private suppliers as a means of performing government function does not necessarily mean that procurement becomes a commercial activity of the department, even though the sale and purchase of similar goods or services are the subject of trade among private sector suppliers and consumers...²²

49. As the functions described in section 13(1a)(a) of the Health Care Act are available to a local health network but do not appear to be a core function of those networks, and the provision of government services through private organisations does not appear to be a commercial activity in and of itself, I take the view that clause 16(2)(a) is not satisfied.
50. Nevertheless, if the agency were to be considered as engaging in commercial activities in the engagement of medical locums, my consideration would then turn to whether the documents contain matter disclosure of which could prejudice the competitiveness of the agency in carrying out those commercial activities.
51. I note that the exemption clause does not require that the prejudice be reasonably expected. Nevertheless, I consider that there must be some basis for an opinion that prejudice would result from disclosure.
52. In its additional submissions, the agency claimed that the documents were exempt by virtue of clause 16(2) and provided that:

[I]t is considered that the release of this information could reasonably be expected to impact and prejudice the current business relationship with AMP. The use of locums is paramount to our core business and this company currently provides an extensive service to SALHN.²³
53. I am not satisfied that possible prejudice to the business relationship between the agency and AMP constitutes prejudice to the agency's overall competitiveness in carrying out commercial activities, if the agency is engaged in such activities. Furthermore, I am not satisfied that disclosure of the terms and conditions of business would damage the agency's commercial negotiations with other parties.
54. I therefore conclude that documents 2, 25, 26, 31 and 32, as contracts between the agency and AMP, are not exempt pursuant to clause 16(2).

Invoices for locum services and Document One

55. Document one is a letter between the agency and AMP concerning rates for locum services.

²² [2001] FCA 1375 (28 September 2001), [25] - [27].

²³ Letter from the agency to this Office dated 25 January 2019.

56. Documents 3 - 9 and 11 - 23 are invoices provided by AMP to the agency for the services of locums (**the invoices**). The documents include the following information:
- the hospital to which the invoice was directed
 - the surname of the locum who provided the service
 - the unit in which these services were provided
 - the date and time at which the services were provided
 - the rate payable to the locum and the total fee accrued
 - any additional fees, including the percentage charged by AMP for the service provided and any relevant callout fees.
57. I have considered the documents together as I consider that their primary purpose is the communication of pricing and payment information between the agency and AMP. While document one reveals, in isolation, a broader picture of the rate structure between the parties, I consider that a rate structure could also be gleaned from the invoices, particularly when they are considered together. I do not consider that the individual invoices contain information that would make it necessary to consider them separately from each other, other than those already excluded by the applicant.
58. In correspondence with my Office, the agency submitted that the invoices were not within the scope of the application.²⁴ Having regard to point 5 of the application – ‘the current fee structure practiced [sic] between SALHN Hospitals and the different Medical locum agencies’ – the agency submitted that while individual invoices may suggest a fee structure, they were not documents of that nature or purpose.²⁵
59. I am unable to consider issues of scope in an external review.²⁶ My consideration is confined to the determination as it was made by the agency.²⁷ As such, my external review is of the agency’s determination over the documents originally considered to be within scope.
60. The agency originally claimed that the invoices were exempt by virtue of clauses 6(1), 7(1)(a), 7(1)(b), 13(1)(a) and 13(1)(b). Save for clauses 6(1), the agency claimed that document one was exempt pursuant to the same clauses.

Clause 6(1)

61. Personal affairs is inclusively defined in the FOI Act and includes a person’s financial and employment records.²⁸ The term has also been held to involve ‘matters of private concern to an individual’²⁹ and the ‘composite of activities personal to the individual concerned’.³⁰
62. The invoices contain the surnames of locums, the date and period of time for which they worked, the location where they worked, the relevant payment rate, and the total amount due.
63. Document 14 does not contain the name of any locums, and document one does not contain the name of any individuals outside of their work capacity. I am satisfied that these two documents do not contain the personal affairs of any individuals.

²⁴ Telephone conversation between my Officer and an agency officer on 14 January 2019 and letter from the agency to my Office dated 25 January 2019.

²⁵ Telephone conversation between my Officer and an agency officer on 14 January.

²⁶ *El Shafei and Central Adelaide Local Health Network* [2017] SACAT 5 (13 April 2017).

²⁷ This was confirmed by the agency by email dated 22 January 2019 prior to its revised submissions.

²⁸ *Freedom of Information Act 1991*, section 4(1).

²⁹ *Commissioner of Police v District Court of New South Wales* (1993) 31 NSWLR 606, 625, citing *Re Williams and Registrar of Federal Court of Australia* (1985) 8 ALD 219 and *Young v Wicks* (1986) 13 FCR 85 at 88-89.

³⁰ *Commissioner of Police v District Court of New South Wales* (1993) 31 NSWLR 606, 625.

64. As noted above, the applicant is prepared to exclude the names of the individual locums and the specific hospital where they were employed from the documents in issue.
65. My consideration therefore turns to whether the disclosure of the de-identified invoices (**the residual information in issue**) would unreasonably disclose information concerning the personal affairs of those individual locums.
66. The residual information in issue concerns the employment of locums at a particular time and date, the fee that the locum accrued as a result of those services, and the additional rates charged by AMP to the agency for the provision of the locum's services.
67. The Queensland Information Commissioner in *Alsop and Redland City Council* considered that:

In some instances, an individual's identity is clear on the face of the documents, for example, an individual's name or photograph or a detailed description of a particular individual. Where a document does not contain information that obviously identifies an individual, an individual may be reasonably identifiable through additional information. The following factors will influence where an individual's identity can be reasonably ascertained:

- how available the additional information is
- how difficult it is to obtain
- how many steps are required to identify the individual
- how certain the identification will be
- whether it will identify one specific individual or a group of people; and
- whether the individual receiving the information can use it to identify the individual.³¹

68. The residual information still concerns the personal affairs of those locums, but without their names or the locations where they worked, I consider that disclosure of the documents would not involve the unreasonable disclosure of their personal affairs. As such, I am satisfied that the documents are not exempt by virtue of clause 6(1).

Clause 13(1)(a)

69. For a document to be exempt by virtue of clause 13(1)(a), it must contain matter the disclosure of which would found an action for a breach of confidence. The term 'would' should be read as 'could'.³²
70. As the documents in issue are not contracts, subclause 13(2) does not operate to prevent the application of clause 13.
71. In *Re Callejo v Department of Immigration and Citizenship*,³³ the Administrative Appeals Tribunal had cause to consider section 45(1) of the *Freedom of Information Act 1982* (Cth), which is in substantially similar terms to clause 13(1)(a) of the South Australian FOI Act. Therein, Deputy President Forgie determined that an action for breach of confidence can only mean an action for equitable breach of confidence.³⁴ In my view, this decision is persuasive.
72. An equitable obligation of confidence is a duty not to disclose information because the information was given and received in circumstances which would make it

³¹ *Alsop and Redland City Council* [2017] QICmr 27 (2 August 2017), [21].

³² *Bray and Smith v Workcover* (1994) SASR 218, 226 - 227.

³³ [2010] AATA 244.

³⁴ *Re Callejo v Department of Immigration and Citizenship* [2010] AATA 244, [163].

unconscionable for the confidant to disclose the information in a way that the confider has not authorised.

73. In *Re Callejo*, the Deputy President endorsed the four step test to determine whether there are grounds for an action for breach of confidence, as set out by Gummow J in *Corrs Pavey Whiting & Byrne v Collector of Customs, Victoria (Corrs Pavey Whiting & Byrne)*.³⁵ The following criteria must be satisfied:
- the information must be capable of being identified with specificity
 - the information must have the necessary quality of confidence
 - the information must have been received in circumstances which import an obligation of confidence
 - there must be an actual or threatened misuse of the information.
74. Justice Gummow also discussed a possible fifth criterion: that disclosure would be to the detriment of the confider.³⁶
75. In *Smith Kline & French Laboratories (Aust) Ltd v Secretary of Community Services & Health*,³⁷ Gummow J commented that the question of whether detriment is an essential element 'remains an open one' but said that he held the view that '...equity intervenes to uphold an obligation and not necessarily to prevent or recover a loss ... The obligation of conscience is to respect confidence'.
76. This sentiment appears to have been shared by the South Australian Supreme Court in *N P Generations Pty Ltd v Feneley*.³⁸ I am of the view that on the present authorities, detriment has not been held to be an essential element.
77. I will therefore consider whether the four criteria of founding an equitable breach of confidence can be established.
78. I am satisfied that the information is capable of being identified with specificity. The information may be identified as the residual information in issue and, in document one, the rates paid by the agency for the provision of AMP's services.
79. I am satisfied that the information is not common knowledge, nor has it entered the public domain. While the information would have been known to other parties, such as the locums employed by AMP, I am satisfied that the information is not common knowledge and therefore has the necessary quality of confidence.
80. My consideration turns to whether the residual information in issue was received in circumstances which import an obligation of confidence. I consider that this requires an assessment of whether:
- there is an express or implied obligation of confidence
 - the scope of the obligation, if one exists, between the parties.
- This assessment should consider the whole of the circumstances.³⁹
81. In its determination, the agency stated:
- The agreement between each party is that all information is to be handled confidentially and in accordance with Australian Privacy Law ... The provision of locum services to public health services is a highly competitive market and the commercial transactions agreed between AMP and SALHN state that neither party may use or disclose information of the

³⁵ [1987] 14 FCR, endorsed by Deputy President Forgie at [165] and followed in *Ekaton Corporation Pty Ltd v Chapman & Department of Health* [2010] SADC 150 at [17].

³⁶ [1987] FCA 266; 14 FCR 434 at 443.

³⁷ (1990) 22 FCR 73.

³⁸ [2001] SASC 185 at [21].

³⁹ Moira Paterson, *Freedom of Information and Privacy in Australia: Information Access 2.0*, (Lexis Nexis Buttersworth, 2nd ed, 2009), 439.

other party without the consent of the other party. Disclosure is therefore contrary to the confidentiality terms agreed to by SALHN.

82. AMP did not provide submissions in support of the claimed exemption under clause 13(1)(a) but I have had regard to the privacy policy that is available on AMP's website.⁴⁰
83. While the agreement between the two parties does contain a statement to the effect that all information exchanged between the parties is to be handled confidentially, this appears in a clause concerned with privacy and the *Privacy Act 1988* and the statement is directly followed by another to that effect. Following the receipt of advice concerning the Privacy Act, I now consider that the obligation of confidence referred to at the start of the privacy clause between the parties is concerned with the protection of individual privacy and the confidential treatment of all information related to individual locums. I consider this to be consistent with the apparent intention of AMP's privacy policy.
84. I accept that a written contract or agreement is not a prerequisite to establishing an equitable obligation of confidence. That said, I am not satisfied that the circumstances in which the agency received document one and the invoices imported an obligation of confidence in the requisite sense.
85. Commercial relationships do not automatically give rise to an obligation of confidence. In addition, expectations of confidentiality are 'always subject to the provisions of the FOIA and cannot be affected by any representation ... that greater confidentiality might be accorded to material than properly reflects the effect of the FOIA'⁴¹
86. As such, I consider it appropriate to revise my provisional opinion about the application of clause 13(1)(a) as I am not satisfied the terms of the agreement between the agency and AMP are sufficient to give rise to such an obligation where the information in issue does not concern individual privacy. As the applicant has agreed to exclude the information concerning individual locums, I do not consider that the remaining information in documents invoices is properly exempt pursuant to clause 13(1)(a).

Clause 13(1)(b)

87. In order to be exempt by virtue of cause 13(1)(b), the documents must contain matter 'received under an express or inferred understanding that [they] would be kept confidential'⁴² the disclosure of which
- might reasonably be expected to prejudice the future supply of such information to the agency
 - would, on balance, be contrary to the public interest.
88. I am not satisfied that the circumstances between the parties, including the terms of the agreement, lend themselves to an argument that the documents were obtained in confidence. While the exchange of rate and payment information may not be widely known, I do not consider that the agency necessarily received this information in confidence.
89. Furthermore, if matter was obtained in confidence, I am not satisfied that the disclosure of the information in the invoices or in document one might reasonably be expected to prejudice the future supply of such information to the agency, as the information is the

⁴⁰ Australian Medical Placements Pty Ltd, *Australian Medical Placements Privacy Policy*, Australian Medical Placements, <<https://australianmedicalplacements.com.au/privacypolicy.aspx>> (accessed 27 February 2019).

⁴¹ *Iplex Information Technology Group Pty Ltd v the Department of Information Technology Services South Australia* (1997) 192 LSJS 54, 70.

⁴² See *Re Maher and Attorney General's Department* (1985) 7 ALD 731 at 737.

kind that arises in the day to day interaction between the agency and AMP, and neither would be able to avoid the exchange of rate and invoicing information.

90. As such, I am not satisfied that document one and the invoices are exempt by virtue of clause 13(1)(b).

Clause 7(1)(a)

91. For a document to be exempt pursuant to clause 7(1)(a), it must contain matter the disclosure of which would disclose trade secrets of any agency or any other person.
92. The term 'trade secret' is not defined in the FOI Act. In *Re Organon (Australia) Pty Ltd v Department of Community Services and Health* the following criteria, though not exhaustive, was provided as a guide in determining whether information amounts to a trade secret:
- the extent to which the information is known outside the business of the owner of that information
 - the extent to which the information is known by persons engaged in the owner's business
 - measures taken by the owner to guard the secrecy of that information
 - the value of the information to the owner and to his or her competitor
 - the effort and money spent by the owner in developing the information.⁴³
93. In *Re Searle Australia Pty Ltd v Public Interest Advocacy Centre and Department of Community Services and Health*, the Full Federal Court took the view that the term 'trade secrets should be given the meaning well understood in this country' and that information did not need to be technical in nature in order to be considered a trade secret.⁴⁴
94. I am not satisfied that the information in the documents could be characterised as a trade secret of the agency's or AMP's. As such, I am not satisfied that document one and the invoices are exempt by virtue of clause 7(1)(a).

Clause 7(1)(b)

95. For a document to be exempt pursuant to clause 7(1)(b), it must be established that:
- the document contains information that has commercial value to the agency or another person
 - the disclosure of that information could reasonably be expected to destroy or diminish the commercial value of that information
 - the disclosure of that information would, on balance, be contrary to the public interest.
96. Whether or not the information has commercial value is a question of fact. In *Re Cannon and Australian Quality Egg Farms Limited*, the Queensland Information Commissioner considered the phrase and noted that there are two possible interpretations:

The first (and what I think is the meaning that was primarily intended) is that information has commercial value to an agency or another person if it is valuable for the purposes of carrying on the commercial activity in which the agency or another person is engaged. The information may be valuable because it is important or essential to the profitability or viability of a continuing business operation, or a pending 'one-off' commercial transaction...

⁴³ *Re Organon (Australia) Pty Ltd v Department of Community Services and Health* (1987) 13 ADL 588.

⁴⁴ *Re Searle Australia Pty Ltd v Public Interest Advocacy Centre and Department of Community Services and Health* (1992) 108 ALR 163, 172.

The second interpretation of 'commercial value' which is reasonably open is that information has a commercial value to an agency or another person if a genuine arms-length buyer is prepared to pay to obtain that information from that agency or person. It would follow that the market value of that information would be destroyed or diminished if it could be obtained from a government agency that has come into possession of it, through disclosure under the FOI Act...⁴⁵

97. I generally agree with this view and consider it applicable to clause 7(1)(b).
98. I am satisfied that the information in document one regarding the rates for a variety of locum services is commercially valuable to AMP. I consider that the breadth of the information contained in that document means that it is important to the profitability or viability of the continuing business operation of that party.
99. Similarly, while the invoices in isolation may only reveal a small amount of information about the rate structure of AMP, considering all of the available invoices together could reveal a similar amount of information to that contained in document one. Adopting the same approach as above, I consider that the information in the invoices is important to the profitability or viability of AMP's continuing business operation.
100. I turn to consider whether disclosure of that information could reasonably be expected to destroy or diminish the value of the information. In doing so, I have had regard to the following factors:
 - the date range of the documents and the age of the information therein
 - the breadth of the information in the documents and the fact that disclosure may reveal the bases for the pricing information contained in the documents
 - the competitive medical locum market and that disclosure of AMP's information would be to a business competitor
 - AMP's submissions, though further detail to support those submissions was not provided when requested.
101. I am satisfied that disclosure of document one and the invoices could reasonably be expected to destroy or diminish the commercial value of the information contained in those documents.
102. To succeed in claiming clause 7(1)(b) as a basis for refusing access to a document, disclosure must be contrary to the public interest. In considering the public interest, I have had regard to the following factors:

In favour of disclosure

- fulfilling the objects of the FOI Act, particularly the public interest in promoting openness and accountability of government agencies and the expenditure of public money
- that expectations of confidentiality are 'always subject to the provisions of the FOIA and cannot be affected by any representation ... that greater confidentiality might be accorded to material than properly reflects the effect of the FOIA'⁴⁶
- the age of the information.

Contrary to disclosure

- the potential effect on the ability of the agency, as a public health service provider, to deal effectively with medical locum services in the context of a competitive market environment

⁴⁵ *Re Cannon and Australian Quality Egg Farms Limited* (1994) 1 QAR 491.

⁴⁶ *Iplex Information Technology Group Pty Ltd v The Department of Information Technology Services South Australia* (1997) 192 LSJS 54, 80.

- the age of the information and the incomplete picture it paints of medical locum expenditure, disclosure of which could create confusion thereby minimising the information's usefulness in aiding transparency of expenditure
 - the objections to disclosure raised by the agency and AMP
 - assumptions of confidentiality held by the agency and AMP
103. I recognise that the factors above are finely balanced and a number of competing factors have a considerable weight. However, I consider that the potential effect on the ability of the agency to operate effectively in a competitive market, and the potential for confusion arising from an incomplete picture of medical locum expenditure outweigh the factors in favour of disclosure, including the strong public interest in promoting transparency and accountability in the use of public funds.
104. As such, I am satisfied that document one and the invoices are properly exempt by virtue of clause 7(1)(b).
105. I note, for completeness, that while I had considered that the redacted information in the invoices still contained the personal affairs of individual locums, and that the invoices are not properly exempt by virtue of clause 6(1), I do not consider it necessary to consult with those individuals as I do not propose the release of the documents.⁴⁷

Document 29

106. Document 29 provides a list of locum service usage by the agency between 2014 and 2015.
107. The document was provided in part to the applicant. In the schedule of documents provided to this Office,⁴⁸ the agency noted that the redacted portions of the document (**the redacted information**) were considered to be exempt pursuant to clause 7(1)(b), 13(1)(a) and 13(1)(b).
108. The redacted information includes details about the provision of locum services at particular locations for particular periods, as well as the total amount charged for each service provision.

Clause 7(1)(b)

109. For a document to be exempt pursuant to clause 7(1)(b), it must be established that:
- the document contains information that has commercial value to the agency or another person
 - the disclosure of that information could reasonably be expected to destroy or diminish the commercial value of that information
 - the disclosure of that information would, on balance, be contrary to the public interest.
110. Whether or not the information has commercial value is a question of fact. I have again had regard to the reasoning of the Queensland Information Commissioner in *Re Cannon and Australian Quality Egg Farms Limited*.⁴⁹
111. I am not satisfied that the redacted information is commercially valuable in the sense that it is important or essential to the profitability or viability of AMP's continuing business operation. In reaching this conclusion, I have had regard to the following:

⁴⁷ *Freedom of Information Act 1991*, section 26(2) requires such consultation when it is considering providing access to documents to which clause 6(1) applies.

⁴⁸ Two schedules were provided to this Office by the agency; the first with the agency's submissions dated 30 October 2018 and the second with the agency's revised submissions dated 29 January 2019.

⁴⁹ *Re Cannon and Australian Quality Egg Farms Limited* (1994) 1 QAR 491.

- the time that has passed since the redacted information was in use by the parties
- the provision of such information arises in the normal course of business and could not reasonably be avoided by either party
- the fact that the information provides the total amount charged but not the bases for these amounts.

112. I have also had regard to AMP's submissions in response to my provisional determination which stated that my earlier determination of a different external review by the same applicant involving information relating to AMP had resulted in loss of business for that company. However, no further information was provided by AMP in response to enquiries by my officer in regards to this claimed loss and the information in issue in *this* external review.
113. Furthermore, as considered at paragraphs 47 and 48, I am not satisfied that the agency's engagement of AMP for the provision of locum services could be characterised as a commercial activity *of the agency*.
114. Accordingly, I am not satisfied that the redacted information in issue is exempt by virtue of clause 7(1)(b).

Clause 13(1)(a)

115. For a document to be exempt by virtue of clause 13(1)(a), it must contain matter the disclosure of which would found an action for a breach of confidence. I note again that the term 'would' should be read as 'could'.⁵⁰
116. As the document is not a contract, subclause 13(2) does not operate to prevent the application of clause 13.
117. Adopting the criteria endorsed by Gummow J in *Corrs Pavey Whiting & Byrne*, I will consider whether:
- the information is capable of being identified with specificity
 - the information has the necessary quality of confidence
 - the information was received in circumstances which import an obligation of confidence
 - there is an actual or threatened misuse of the information.
118. I am satisfied that the redacted information in document 29 is capable of being identified with specificity. Furthermore, I consider that the information is not common knowledge, nor has it entered the public domain.
119. My consideration then turns to whether the redacted information in issue was received in circumstances which import an obligation of confidence. In doing so, I have had regard to the agency's submissions and the relevant clause of the Terms and Conditions of Business between the agency and AMP.⁵¹
120. While I am satisfied that the wording of the contract may import an obligation of confidence over information concerning individual locums provided to the agency by AMP, I am not satisfied that the redacted information in *this document* was received in such circumstances. In reaching this conclusion, I have had regard to the nature of the redacted information, in that:
- it is not possible to identify any individual locums to whom the information may relate

⁵⁰ *Bray and Smith v Workcover* (1994) SASR 218, 226 to 227.

⁵¹ Document 2.

- it does not disclose the rates charged by AMP but provides broader figures of the total charge accrued by the agency
- it includes details that I consider would be held by the agency without necessarily having been received from AMP.⁵²

121. Furthermore, having regard to the information in document 30, document 29 appears to have been created by the agency for internal purposes.

122. On the information available, I consider that the redacted information was not received in circumstances which imported an obligation of confidentiality that may have existed between the parties. I therefore conclude that disclosure of the redacted information would not give rise to a breach of confidence, and that the exemption provided by clause 13(1)(a) does not apply.

Clause 13(1)(b)

123. In order to be exempt by virtue of cause 13(1)(b), the documents must contain matter obtained in confidence the disclosure of which

- might reasonably be expected to prejudice the future supply of such information to the agency
- would, on balance, be contrary to the public interest.

124. As described above, on the information available, it does not appear that the redacted information in issue was obtained by the agency in confidence. However, for the sake of completeness, I shall also consider the remaining elements of clause 13(1)(b).

125. While I have had regard to the agency's submission that 'the use of locums is paramount to [its] core business' and disclosure would damage the agency's commercial negotiations with other parties,⁵³ I am not satisfied that the disclosure of the redacted information might reasonably be expected to prejudice the future supply of such information to the agency.

126. In reaching this conclusion, I consider that the redacted information arises out of the normal course of business, and neither party would be in a position to avoid the exchange of this information. In my view, businesses that have a financial interest in dealing with government agencies are unlikely to be deterred from contracting with the South Australian Government or agencies in the future as a result of the disclosure of the redacted information.

127. Accordingly, I am not satisfied that the redacted information is exempt by virtue of clause 13(1)(b).

Public interest consideration for clause 7(1)(b) and 13(1)(b)

128. Clauses 7(1)(b) and 13(1)(b) also include a public interest test that I shall now consider despite my views expressed above. I have had regard to the following:

In favour of disclosure

- fulfilling the objects of the FOI Act, particularly the public interest in promoting openness and accountability in government agencies,
- public interest in decision making and financial transparency in the administration of public health services
- the time that has elapsed since the document was created by the agency

⁵² I refer in particular to the location of locum services, and the types of locums whose services were engaged.

⁵³ Letter form the agency to this Office dated 25 January 2019.

- that expectations of confidentiality are 'always subject to the provisions of the FOIA and cannot be affected by any representation ... that greater confidentiality might be accorded to material than properly reflects the effect of the FOIA'.⁵⁴

Contrary to disclosure

- the age of the information and its potentially diminished value in informing public debate
- the objections to disclosure raised by the agency and AMP
- any expectations of confidentiality by AMP.

129. I consider that there is a strong public interest in ensuring financial transparency of agencies that engage external parties in the provision of health services despite arguments in opposition to disclosure. Accordingly, I am not satisfied that the redacted information is exempt by virtue of clause 7(1)(b) or 13(1)(b).

Documents 30 and 33

130. Documents 30 and 33 are, broadly speaking, internal emails of the agency.

131. Document 30 includes:

- an attachment from another party (**interested party three**) requesting certain information (**the attachment**)
- subsequent emails within the agency, preparing a response to the attachment.

132. At one point, the attachment briefly refers to a third party (**interested party one**). The subsequent emails refer to information concerning AMP and another third party (**interested party two**).

133. Document 33 relates to the procurement of locum services and includes the following:

- a chain of internal agency emails regarding the placement of a particular locum (**page one**)
- the final page of a dated and signed 'Terms and Conditions of Business' document (**page two**)
- a statement of financial performance by revenue and expenditure, appearing to be for a particular unit of the agency (**page three**)
- a chain of internal agency emails appearing to relate to the procurement of another particular locum (**page four**).

134. The agency claimed that document 30 is exempt by virtue of clauses 7(1)(a), 7(1)(b) and 13(1)(a), and that document 33 is exempt by virtue of clauses 6(1), 7(1)(a), 7(1)(b) and 13(1)(a).

135. As the second page of document 33 is a portion of a signed Terms and Conditions of Business document between the agency and AMP, I consider that clauses 7(3) and 13(2) negate the application of clauses 7(1)(a), 7(1)(b) and 13(1)(a) respectively. Furthermore, returning to my consideration of the signatures of agency staff, provided above at paragraphs 32 to 36, there does not appear to be any information on the face of this portion of the document that discloses the personal affairs of any person. As such, I consider that the second page of document 33 is not exempt by virtue of clauses 6(1), 7(1)(a), 7(1)(b) or 13(1)(a).

136. It is unclear on the face of document 33 whether page three is within the scope of the application. The agency advised my Office that document 33 is as it appears in the

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

agency's records.⁵⁵ The agency also submitted that it now considers documents 30 and 33 to be out of scope.⁵⁶ As noted at paragraph 59, I am unable to consider issues of scope in an external review,⁵⁷ and am confined to the determination as it was made by the agency.

Consultation with interested parties

137. In my provisional determination, I considered that document 30 contained information concerning the business affairs of interested party one, interested party two, interested party three and AMP. As such, I advised those parties of my provisional view and sought their views in regards to the release of information that I considered concerned their business affairs.⁵⁸

138. Interested party one advised that:

I do not consider that portion of [document 30] is an exempt document under the FOI Act; and I do not wish to make any submission in response to the Ombudsman's tentative view.⁵⁹

139. Interested party two advised that it considered that the relevant portion of document 30 was exempt pursuant to clauses 7(1)(b), 7(1)(c), 13(1)(b) and 16(1)(a)(iv) and stated:

[In regards to clauses 7(1)(b) and 7(1)(c)]
[Our information] will be revealed if the information is released. This may diminish / destroy the commercial value of the information to the agency due to competitive advantage the applicant will receive... this could be contrary to the public interest, as obtaining [our information] may result in the applicant supplying to the agency on a cost basis and hence not concerned for the quality, safety and wellbeing of doctors / patients of the agency.

[In regards to clauses 13(1)(b) and 16(1)(a)(iv)]
[We believe] that [we] will be affected due to prejudice of future supply of such information it may cause to the agency. The applicant may receive a competitive advantage from receiving such information and hence it is possible that they may not be placing the best doctors available due to potential strategy of providing the cheapest doctors to the agency. This effectively will be contrary to the public interest as quality, safety and wellbeing of doctors / patients may be affected.⁶⁰

140. I shall consider these exemption clauses and the submissions of interested party two where relevant below.

141. Interested party three advised that it had no further submissions to make in relation to this external review.⁶¹

142. While AMP did not provide submissions in regards to document 30 in particular, I have had regard to their submissions, provided above at paragraph 25.

Clause 6(1)

143. Documents 30 and 33 contain the contact details of agency staff in their work capacity. Document 33 also contains the names of individual locums. The applicant is prepared to exclude that information from this external review.

⁵⁵ Phone call with my officer dated 13 December 2018.

⁵⁶ Letter from the agency to my Office dated 25 January 2019.

⁵⁷ *El Shafei and Central Adelaide Local Health Network* [2017] SACAT 5 (13 April 2017).

⁵⁸ *Freedom of Information Act 1991*, section 27(2).

⁵⁹ Email from interested party one to my officer dated 27 March 2019.

⁶⁰ Email from interested party two to my officer dated 30 April 2019.

⁶¹ Email from interested party three to my officer dated 30 April 2019.

144. As outlined above at paragraphs 32 to 36, I do not consider that the names and contact details of agency staff in their official capacity concern their personal affairs. Therefore the information, with the names and contact details of agency staff removed, would also not concern their personal affairs.
145. I do consider that the de-identified information concerning what was, at the time, the potential employment of an individual locum would still involve that individual's personal affairs. However, as outlined at paragraph 67 and 68, I consider that disclosure of de-identified information would not be unreasonable, and therefore, the information is not properly exempt by virtue of clause 6(1).

Clause 13(1)(a)

146. For a document to be exempt, it must contain matter the disclosure of which would found an action for a breach of confidence. As document 30 and the remainder of document 33 are not contracts, clause 13(2) does not operate to prevent the application of clause 13.
147. Adopting the criteria endorsed by Gummow J in *Corrs Pavey Whiting & Byrne*, I shall consider whether:
- the information is capable of being identified with specificity
 - the information has the necessary quality of confidence
 - the information was received in circumstances which import an obligation of confidence
 - there is an actual or threatened misuse of the information.
148. I am satisfied that the information in document 30 and 33 is capable of being identified with specificity. Furthermore, I consider that the information is not common knowledge, nor has it entered the public domain.
149. My consideration then turns to whether the information in issue was received in circumstances which import an obligation of confidence. In doing so, I have again had regard to the agency's submission, AMP's objection to disclosure, and the relevant clause of the Terms and Conditions of Business between the agency and AMP.
150. For the reasons outlined at paragraphs 83 to 86, I consider that the expectation of confidentiality between AMP and the agency is confined, as per the confidentiality clause in their agreements, to information concerning individuals.
151. The information contained in document 30 does not concern any individuals. As such, I do not consider that document 30 contains any information that was received in circumstances which import an obligation of confidence.
152. Page one of document 33 contains information concerning an individual locum and was provided by AMP directly to the agency. As such, I consider that the information was obtained in circumstances which import an obligation of confidence between the parties.
153. I am not satisfied that the attachment to document 30 or pages three and four of document 33 include any information that the agency received from AMP as:
- the attachment was provided to the agency by another party
 - page three appears to be an internal document of the agency concerning one of its units
 - page four appears to be an internal email of the agency regarding the procurement of a particular locum but that email does not appear to include information provided by AMP.

154. Having regard to the final point of Gummow J's reasoning, I conclude that the release of the information that was provided to the agency by AMP could constitute misuse if that release were to a business competitor.
155. As such, I am satisfied that only page one of document 33 is properly exempt pursuant to clause 13(1)(a). I shall not consider the other exemption clauses claimed by the agency in regards to those parts of the documents. My consideration of the remainder of documents 30 and 33 continues below.

Clause 13(1)(b)

156. In order to be exempt under clause 13(1)(b), a document must contain matter obtained in confidence the disclosure of which:
- might reasonably be expected to prejudice the future supply of such information to the agency
 - would, on balance, be contrary to the public interest.
157. In response to my provisional determination, interested party two submitted that the information in document 30 concerning its business affairs is also exempt pursuant to clause 13(1)(b).
158. Interested party two's submissions refer, in large part, to a potential competitive advantage that the applicant may gain from the disclosure of the information. It is unclear from that party's submissions whether the agency obtained that information in confidence and I have not received any submissions to support this claim.
159. I do not consider that reasons have been given for interested party two's expectation of confidence and I am not satisfied the disclosure of the information concerning that party's business affairs might reasonably be expected to have the effect suggested by the party.
160. In reaching this conclusion, I have had regard to the fact that the information appears to me to arise out of the normal course of business and neither party would be in a position to avoid the exchange of this information if they wished to engage with the other. Moreover, the information concerning interested party two is quite limited and does not disclose the basis for the information.
161. Accordingly, I am not satisfied that the information concerning the business affairs of interested party two is exempt pursuant to clause 13(1)(b).

Clause 7(1)(a)

162. For a document to be exempt pursuant to clause 7(1)(a), it must contain matter the disclosure of which would disclose trade secrets of any agency or any other person.
163. The term 'trade secret' is not defined in the FOI Act. In *Re Organon (Australia) Pty Ltd v Department of Community Services and Health* the following criteria, though not exhaustive, was provided as a guide in determining whether information amounts to a trade secret:
- the extent to which the information is known outside the business of the owner of that information
 - the extent to which the information is known by person's engaged in the owner's business
 - measures taken by the owner to guard the secrecy of that information
 - the value of the information to the owner and to his or her competitor

- the effort and money spent by the owner in developing the information.⁶²
164. In *Re Searle Australia Pty Ltd v Public Interest Advocacy Centre and Department of Community Services and Health*, the Full Federal Court took the view that the term ‘trade secrets should be given the meaning well understood in this country’ and that information did not need to be technical in nature in order to be considered a trade secret.⁶³
165. Additionally, the Court cited the following test, adopted by Staughton LJ in *Lansing Linde Ltd v Kerr*, with approval:
- the information is used in a trade or business
 - the owner must limit the dissemination of it or at least not encourage or permit widespread publication
 - if disclosed to a competitor, the information would be liable to cause real or significant harm to the owner of the secret.⁶⁴
166. I am not satisfied that the information in documents 30 and 33 is used by the agency or interested party three in the course of a trade or business.
167. While the information in the attachment refers to the business affairs of interested party one, I do not consider that the information itself is used in the course of that party’s business as the reference to that party is broad and provides very limited details. I have also had regard to the party’s submission that it does not consider the information to be exempt.
168. I accept that AMP and interested party two use the information in document 30 in the course of their businesses. However, I am not satisfied that the information constitutes trade secrets within the ordinary meaning accepted in this country.
169. Accordingly, I am not satisfied that the information in Documents 30 and 33 contains the trade secrets of the agency, AMP or interested parties one, two or three.
- Clause 7(1)(b)*
170. For a document to be exempt pursuant to clause 7(1)(b), each of the following must apply:
- the document contains information that has a commercial value to the agency or another person;
 - the disclosure of the information could reasonably be expected to destroy or diminish the commercial value of the information
 - the disclosure would, on balance, be contrary to the public interest.
171. Whether or not the information has commercial value is a question of fact.
172. Having regard to the reasoning in *Secretary, Department of Workplace Relations, Employment and Small Business v The Staff Development and Training Centre Pty Ltd*,⁶⁵ cited above at paragraph 48, I am not satisfied that the information has commercial value to the agency, the author of the attachment or the other recipients of that document as I am not satisfied that the engagement of private organisations for the provision of locum services could be characterised as a commercial activity *for those parties*. As such, I consider that documents 30 and 33 do not contain information that

⁶² *Re Organon (Australia) Pty Ltd v Department of Community Services and Health* (1987) 13 ADL 588.

⁶³ *Re Searle Australia Pty Ltd v Public Interest Advocacy Centre and Department of Community Services and Health* (1992) 108 ALR 163, 172.

⁶⁴ *Re Searle Australia Pty Ltd v Public Interest Advocacy Centre and Department of Community Services and Health* (1992) 108 ALR 163, 172.

⁶⁵ [2001] FCA 1375 (28 September 2001), [25] - [27].

has commercial value to the agency or the author of the attachment. Neither party made any submissions in respect of this view.

173. The attachment of document 30 refers to interested party one. An email that forms a part of document 30 refers to AMP and briefly refers to interested party two.
174. In response to my provisional view, interested party two claimed that the information concerning their business affairs is exempt under clause 7(1)(b).
175. As noted at paragraph 138, interested party one did not consider that the information concerning its business affairs is exempt under any clause of the FOI Act.
176. In considering whether the information has commercial value to AMP, interested party one or interested party two, I have again had regard to the reasoning of the Queensland Information Commissioner in *Re Cannon and Australian Quality Egg Farms Limited* provided above at paragraph 89.⁶⁶ In summary, the Queensland Information Commissioner considered that information may have commercial value if:
- it is valuable, that is, essential to the profitability or viability of commercial activities or
 - a genuine arms-length buyer would be prepared to purchase the information and it would follow that the value would be destroyed or diminished if that information was released.
- I consider this reasoning persuasive.
177. I am not satisfied that the information in the attachment is commercially valuable in the sense that it is important or essential to the profitability or viability of continuing business operations of interested party one as the information only refers to that party briefly as being relevant to the subject matter of the attachment. No further details about that party are provided in the document. Moreover, the information is more than two years old.
178. The substance of interested party two's submissions in support of the claimed exemption of clause 7(1)(b) was that the information in issue had commercial value *to the agency* and not to interested party two. As described above, I do not consider that the information has commercial value to the agency.
179. I also consider that the information in document 30 that refers to AMP and interested party two is not important or essential to the profitability or viability of the continuing business operations of those parties as the information provides no explanation for its context or basis, and is more than two years old.
180. Accordingly, I am not satisfied that the information in document 30 concerning AMP or interested party two is exempt by virtue of clause 7(1)(b).

Clause 7(1)(c)

181. The agency did not claim that any parts of documents 30 and 33 are exempt pursuant to clause 7(1)(c). However, I considered in my provisional determination that it may be relevant to document 30 and page three of document 33.⁶⁷
182. For a document to be exempt pursuant to clause 7(1)(c), it must contain information concerning the business, professional, commercial or financial affairs of any agency or any other person and the disclosure of that information:

⁶⁶ *Re Cannon and Australian Quality Egg Farms Limited* (1994) 1 QAR 491.

⁶⁷ I have discretion to consider exemptions not relied upon by the agency: *Department of the Premier and Cabinet v Redford* (2005) 240 LSJS 171, [29].

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

183. In *Re Cannon and Australian Quality Egg Farms Limited*, the Queensland Information Commissioner stated:

The words 'business, professional, commercial or financial' are hardly apt to establish distinct and exclusive categories; there must in fact be substantial overlap between the kinds of affairs that would fall within the ambit of the ordinary meanings of the words 'business', 'commercial' and 'financial', in particular. The common link is to activities carried on for the purpose of generating income or profits.⁶⁸

184. I have also had regard, again, to the judgment of Tamberlin, Mansfield and Emmett JJ in *Secretary, Department of Workplace Relations & Small Business v The Staff Development and Training Centre Pty Ltd* as it relates to the provision of government services:

It does not become involved in carrying on business merely because it provides those governmental services in a sequence of contractual arrangements with private service providers, each of which operates only for a limited period.⁶⁹

185. While interested party three did not provide submissions in response to my provisional determination, I understand that the agency sought its views in the course of the original determination. I have had regard to those views, as described above at paragraphs 21 and 22.

186. I am not satisfied that document 30 contains information concerning the commercial or business affairs of the agency as the information relates to the provision of a government service through contractual arrangements with private service providers.

187. However as page three of document 33 is a statement of the broader financial performance of a unit of the agency, I am satisfied that that portion of the document contains information concerning the financial affairs of the agency. Moreover, I am satisfied that the content of the attachment constitutes the business affairs of interested party three.

188. I consider that document 30 contains information concerning the business affairs of AMP and interested parties one and two.

189. Regarding the phrase 'could reasonably be expected to have an adverse effect', the District Court has commented that:

We are in the field of predictive opinion. The question is whether there is a reasonable expectation of adverse effects... that is not fanciful, imaginary or contrived, but rather is reasonable, that is to say based on reason, namely 'agreeable to reason, not irrational, absurd or ridiculous'...⁷⁰

190. It will be sufficient:

if any adverse effect is established... However, it must be something which can be properly categorised as an adverse effect and not something so de minimis [sic] that it would be properly regarded as inconsequential... It will be sufficient if the adverse effect is

⁶⁸ *Re Cannon and Australian Quality Egg Farms Limited* (1994) 1 QAR 491, [81].

⁶⁹ [2001] FCA 1375 (28 September 2001), [25].

⁷⁰ *Ipex Information Technology Group Pty Ltd v The Department of Information Technology Services South Australia* (1997) 192 LSJS 54, applying *Re Actors Equity Association of Australia* (1985) (No 2) 7 ALD 584 at 590.

produced by that document in combination with other evidence which is before the Court on appeal.⁷¹

191. I am not satisfied that the disclosure of the information concerning the business affairs of interested party one or two could reasonably be expected to have an adverse effect on those affairs or reasonably be expected to prejudice the supply of *such information* to the Government or an agency.
192. I am satisfied that the release of the information concerning AMP's business affairs could reasonably be expected to have an adverse effect on those affairs. In comparison with the information about interested parties one and two, the information concerning AMP is broad and details a number of aspects of that party's fee structure. While the information does not fully reveal the basis for the information, I am satisfied the information is sufficiently detailed so that disclosure would have an adverse effect on those affairs.
193. As described at paragraph 167, the information concerning the business affairs of interested party one refers to that party very briefly in the overall context of the document, provides very limited details about those affairs and is more than two years old. Furthermore, that party has not claimed that the information is exempt. As such, I do not consider that the information is exempt pursuant to clause 7(1)(c).
194. The information concerning the business affairs of interested party two is similarly brief and is more than two years old. Moreover, as noted at paragraph 153, no explanation is provided for the context or basis of the information. I have had regard to that party's submissions but I am not satisfied that the release of this information could be reasonably expected to have an adverse effect on that party's business affairs, or that release would prejudice the future supply of such information to the agency.
195. Having regard to the submissions that interested party three made to the agency, and the status and date of the information contained in the attachment, I am not satisfied that the release of that information could reasonably be expected to have an adverse effect on the business affairs of interested party three, or that disclosure would prejudice future supply of such information between government agencies.
196. In contrast, despite the age of that information, I am satisfied that the disclosure of the statement of the financial performance of a unit of the agency could reasonably be expected to have an adverse effect on the financial affairs of that unit. In saying this, I note that the information in that portion of document 33 includes wide ranging information about the financial performance and expenditure of the unit. Importantly, the information goes considerably beyond the use of locum service providers.
197. Interested party two also claimed that the information in document 30 concerning their business affairs is exempt pursuant to clause 16(1)(a)(iv). As clauses 7(1)(c) and 16(1) each involve public interest tests, I shall consider relevant factors in favour and contrary to disclosure below.

Clause 16(1)(a)(iv)

198. Clause 16(1)(a)(iv) provides that a document is an exempt document if it contains matter the disclosure of which could reasonably be expected to have substantial adverse effect on the effective performance by an agency of the agency's functions. The agency did not claim the application of this clause.

⁷¹ *Ipex Information Technology Group Pty Ltd v The Department of Information Technology Services South Australia* (1997) 192 LSJS 54, 65.

199. Nevertheless, I understand that interested party two submitted that release of information concerning its business affairs in document 30 could result in the applicant adopting the 'potential strategy of providing the cheapest doctors to the agency'. While I appreciate the importance of qualified and professional locums being available to the agency for the provision of public health services (an agency function), no reason was given for this expectation and I am not satisfied that the release of *this information* could be reasonably expected to have the substantial adverse effect that interested party two describes.

Public interest consideration

200. Clauses 7(1)(b), 7(1)(c), 13(1)(b) and 16(1) also include a public interest test that I shall now consider despite my views above. I have had regard to the following factors:

In favour of disclosure

- fulfilling the objects of the FOI Act, particularly the public interest in promoting openness and accountability of government agencies and the expenditure of public money
- the public interest in ensuring that the government and government agencies have acted fairly and properly when entering into contracts with external parties
- the time that has elapsed since the document was created by the agency
- that expectations of confidentiality are 'always subject to the provisions of the FOIA and cannot be affected by any representation ... that greater confidentiality might be accorded to material than properly reflects the effect of the FOIA'.⁷²

Contrary to disclosure

- the objections to disclosure raised by the agency, AMP and the interested parties
- the age of the information in both documents
- the potential effect on the ability of the agency, as a public health service provider, to deal effectively with medical locum services in the context of a competitive market environment
- in relation to the information concerning AMP and interested party two, disclosure of incomplete information about medical locum expenditure could result in public confusion thereby minimising the information's usefulness in aiding transparency
- assumptions of confidentiality on the part of interested party two, though explanation was not given for that assumption.

201. I consider that disclosure of the information concerning AMP in document 30, and the third page of document 33, would be contrary to the public interest as the information in each is sufficiently broad that disclosure could affect the agency's approach in a competitive market environment, and that, in the context of the public health system, this is contrary to the public interest. Moreover, as the information is quite old, I do not consider that the public interest in promoting openness and accountability would necessarily be satisfied by disclosure of that information.

202. In contrast, I am not satisfied that disclosure of the remainder of document 30 and 33 would, on balance, be contrary to the public interest. I consider that disclosure of the information concerning interested party two, given the limited detail and explanation provided for its basis, would not have the effects that I have considered above. As such, I am satisfied that the public interest in openness and accountability in the expenditure of public money is persuasive.

203. In summary, I consider that the following portions of documents 30 and 33 are properly exempt:

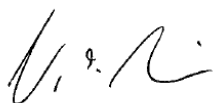
⁷² *Ipex Information Technology Group Pty Ltd v The Department of Information Technology Services South Australia* (1997) 192 LSJS 54, 80.

- the portion of document 30 that refers to the business affairs of AMP
- pages one and three of document 33

Determination

204. In light of my views above, I vary the agency's determination in the manner set out below and in appendix 2:

- documents 1, 3, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 and 23 are properly exempt by virtue of clause 7(1)(b) and should not be released to the applicant
- documents 2, 25, 27, 29, 31 and 32 are not properly exempt pursuant to the clauses claimed by the agency and should be released to the applicant in full
- documents 30 and 33 are partially exempt pursuant to clause 7(1)(c) and should be disclosed to the applicant following redaction of:
 - the contact details of agency staff in documents 30 and 33
 - the names of individual locum staff in document 33
 - the portions of the final paragraph of the second page of document 30, where the information concerns the affairs of AMP
 - the first and third pages of document 33.



Wayne Lines
SA OMBUDSMAN

22 July 2019

APPENDIX 1

Procedural steps

Date	Event
14 March 2018	The agency received the FOI application dated 13 March 2018.
24 March 2018	The agency sought an extension of time for the determination until 12 June 2018
12 June 2018	The agency determined the application.
16 August 2018	The applicant received the determination dated 12 June 2018. ¹
22 August 2018	The agency received and accepted the internal review application dated 22 August 2018.
10 September 2018	The agency confirmed the determination.
9 October 2018.	The Ombudsman received the applicant's request for external review dated 9 October 2018.
12 October 2018	The Ombudsman advised the agency of the external review and requested submissions and documentation.
1 November 2018	The agency provided the Ombudsman with its submissions and documentation.
11 December 2018	The applicant clarified the date range of his application and excluded the names of individual locum staff from the determination.
25 January 2019	The agency provided the Ombudsman with additional submissions.
27 February 2019	The applicant excluded the hospital locations from documents 3 – 23.
22 March 2019	The Ombudsman issued his provisional determination and invited submissions from the parties.
27 March 2019	Interested party one provided a response to the Ombudsman's provisional determination.
3 April 2019	An interested party requested an extension of time to provide a response to the Ombudsman's provisional determination. The Ombudsman granted an extension until 30 April 2019 and all parties were notified.
11 April 2019	AMP provided a response to the Ombudsman's provisional determination.

¹ In his request for internal review in an email dated 22 August 2018, the applicant stated that he had received the determination on 16 August 2018.

16 April 2019	The agency provided a response to the Ombudsman's provisional determination.
30 April 2019	Interested party two provided submissions in response to the Ombudsman's provisional determination.
1 May 2019	Interested party three provided a response to the Ombudsman's provisional determination.
11 June 2019	The applicant excluded the contact details of agency staff from the determination.

APPENDIX 2

Document in issue	Description	Agency's determination	Ombudsman's determination	Information to be released
1	Notice of rate increase	Refused in full	Exempt pursuant to clause 13(1)(a)	No information to be released
2	Terms and conditions of business	Refused in full	Not properly exempt pursuant to clauses claimed by agency	Release to the applicant in full
3	Invoice for services	Refused in full	Exempt pursuant to clause 13(1)(a)	No information to be released
4	Invoice for services	Refused in full	Exempt pursuant to clause 13(1)(a)	No information to be released
5	Invoice for services	Refused in full	Exempt pursuant to clause 13(1)(a)	No information to be released
6	Invoice for services	Refused in full	Exempt pursuant to clause 13(1)(a)	No information to be released
7	Invoice for services	Refused in full	Exempt pursuant to clause 13(1)(a)	No information to be released
8	Invoice for services	Refused in full	Exempt pursuant to clause 13(1)(a)	No information to be released
9	Invoice for services	Refused in full	Exempt pursuant to clause 13(1)(a)	No information to be released
10	Invoice for services	Refused in full	Excluded by the applicant	
11	Invoice for services	Refused in full	Exempt pursuant to clause 13(1)(a)	No information to be released
12	Invoice for services	Refused in full	Exempt pursuant to clause 13(1)(a)	No information to be released
13	Invoice for services	Refused in full	Exempt pursuant to clause 13(1)(a)	No information to be released
14	Invoice for services	Refused in full	Exempt pursuant to clause 13(1)(a)	No information to be released
15	Invoice for services	Refused in full	Exempt pursuant to clause 13(1)(a)	No information to be released
16	Invoice for services	Refused in full	Exempt pursuant to clause 13(1)(a)	No information to be released

Document in issue	Description	Agency's determination	Ombudsman's determination	Information to be released
17	Invoice for services	Refused in full	Exempt pursuant to clause 13(1)(a)	No information to be released
18	Invoice for services	Refused in full	Exempt pursuant to clause 13(1)(a)	No information to be released
19	Invoice for services	Refused in full	Exempt pursuant to clause 13(1)(a)	No information to be released
20	Invoice for services	Refused in full	Exempt pursuant to clause 13(1)(a)	No information to be released
21	Invoice for services	Refused in full	Exempt pursuant to clause 13(1)(a)	No information to be released
22	Invoice for services	Refused in full	Exempt pursuant to clause 13(1)(a)	No information to be released
23	Invoice for services	Refused in full	Exempt pursuant to clause 13(1)(a)	No information to be released
24	Invoice for services	Refused in full	Excluded by the applicant	
25	Updated terms and conditions of business	Refused in full	Not properly exempt pursuant to clauses claimed by agency	Release to the applicant in full
26	Terms and conditions of business	Refused in full	Excluded by the applicant	
27	Terms and conditions of business	Refused in full	Not properly exempt pursuant to clauses claimed by agency	Release to the applicant in full
28	Terms and conditions of business	Refused in full	Excluded by the applicant	
29	Spreadsheet of medical locum usage	Partially released	Not properly exempt pursuant to clauses claimed by agency	Release to the applicant in full
30	Internal agency emails	Refused in full	Partially exempt pursuant to clause 13(1)(a) Contact details of agency staff excluded by the applicant	Redact the contact details of agency staff and portion of final paragraph of second page where the information concerns the affairs of AMP

Document in issue	Description	Agency's determination	Ombudsman's determination	Information to be released
31	Terms and conditions of business	Refused in full	Not properly exempt pursuant to clauses claimed by agency	Release to the applicant in full
32	Terms and conditions of business	Refused in full	Not properly exempt pursuant to clauses claimed by agency	Release to the applicant in full
33	Internal agency emails	Refused in full	Partially exempt pursuant to clause 13(1)(a) and 7(1)(c). Details of locum staff and contact details of agency staff excluded by the applicant	Redact the contact details of agency staff, names of individual locum staff, and the first and third pages of the document.

CORRIGENDUM

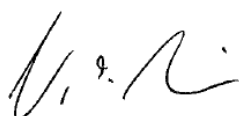
APPENDIX 2

For the existing table, *substitute*

Document in issue	Description	Agency's determination	Ombudsman's determination	Information to be released
1	Notice of rate increase	Refused in full	Exempt pursuant to clause 7(1)(b)	No information to be released
2	Terms and conditions of business	Refused in full	Not properly exempt pursuant to clauses claimed by agency	Release to the applicant in full
3	Invoice for services	Refused in full	Exempt pursuant to clause 7(1)(b)	No information to be released
4	Invoice for services	Refused in full	Exempt pursuant to clause 7(1)(b)	No information to be released
5	Invoice for services	Refused in full	Exempt pursuant to clause 7(1)(b)	No information to be released
6	Invoice for services	Refused in full	Exempt pursuant to clause 7(1)(b)	No information to be released
7	Invoice for services	Refused in full	Exempt pursuant to clause 7(1)(b)	No information to be released
8	Invoice for services	Refused in full	Exempt pursuant to clause 7(1)(b)	No information to be released
9	Invoice for services	Refused in full	Exempt pursuant to clause 7(1)(b)	No information to be released
10	Invoice for services	Refused in full	Excluded by the applicant	
11	Invoice for services	Refused in full	Exempt pursuant to clause 7(1)(b)	No information to be released
12	Invoice for services	Refused in full	Exempt pursuant to clause 7(1)(b)	No information to be released
13	Invoice for services	Refused in full	Exempt pursuant to clause 7(1)(b)	No information to be released
14	Invoice for services	Refused in full	Exempt pursuant to clause 7(1)(b)	No information to be released
15	Invoice for services	Refused in full	Exempt pursuant to clause 7(1)(b)	No information to be released

Document in issue	Description	Agency's determination	Ombudsman's determination	Information to be released
16	Invoice for services	Refused in full	Exempt pursuant to clause 7(1)(b)	No information to be released
17	Invoice for services	Refused in full	Exempt pursuant to clause 7(1)(b)	No information to be released
18	Invoice for services	Refused in full	Exempt pursuant to clause 7(1)(b)	No information to be released
19	Invoice for services	Refused in full	Exempt pursuant to clause 7(1)(b)	No information to be released
20	Invoice for services	Refused in full	Exempt pursuant to clause 7(1)(b)	No information to be released
21	Invoice for services	Refused in full	Exempt pursuant to clause 7(1)(b)	No information to be released
22	Invoice for services	Refused in full	Exempt pursuant to clause 7(1)(b)	No information to be released
23	Invoice for services	Refused in full	Exempt pursuant to clause 7(1)(b)	No information to be released
24	Invoice for services	Refused in full	Excluded by the applicant	
25	Updated terms and conditions of business	Refused in full	Not properly exempt pursuant to clauses claimed by agency	Release to the applicant in full
26	Terms and conditions of business	Refused in full	Excluded by the applicant	
27	Terms and conditions of business	Refused in full	Not properly exempt pursuant to clauses claimed by agency	Release to the applicant in full
28	Terms and conditions of business	Refused in full	Excluded by the applicant	
29	Spreadsheet of medical locum usage	Partially released	Not properly exempt pursuant to clauses claimed by agency	Release to the applicant in full

Document in issue	Description	Agency's determination	Ombudsman's determination	Information to be released
30	Internal agency emails	Refused in full	Partially exempt pursuant to clause 7(1)(c) Contact details of agency staff excluded by the applicant	Redact the contact details of agency staff and portion of final paragraph of second page where the information concerns the affairs of AMP
31	Terms and conditions of business	Refused in full	Not properly exempt pursuant to clauses claimed by agency	Release to the applicant in full
32	Terms and conditions of business	Refused in full	Not properly exempt pursuant to clauses claimed by agency	Release to the applicant in full
33	Internal agency emails	Refused in full	Partially exempt pursuant to clause 13(1)(a) and 7(1)(c). Details of locum staff and contact details of agency staff excluded by the applicant	Redact the contact details of agency staff, names of individual locum staff, and the first and third pages of the document.



Wayne Lines
SA OMBUDSMAN

9 August 2019