

Determination

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

Applicant	Mr Andrew Hough
Agency	Renewal SA
Ombudsman reference	2015/03435
Agency reference	DPC15/0475
Determination	The determination of the agency is confirmed.

REASONS

Application for access

1. By application under the *Freedom of Information Act 1991* (**the FOI Act**) the applicant requested access from the Attorney-General's Department (**AGD**) to '[a] copy of report on CCTV review in the Central Business District undertaken by the department and Adelaide City Council'.
2. AGD transferred the application to the Department of the Premier and Cabinet (**DPC; the department**). DPC determined the application.
3. The Capital City Committee (**the Committee**) was subsequently transferred from DPC to Renewal SA as part of a machinery of government change. Renewal SA (**the agency**) is the agency for the purposes of my external review.

Background

4. For ease of reference, the procedural steps relating to the application are set out in the appendix.

Jurisdiction

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

Provisional determination

6. I provided my tentative view about the agency's determination to the parties by my provisional determination dated 19 January 2016. I informed the parties that subject to my receipt and consideration of submissions from the parties I proposed to confirm the agency's determination. In addition, I indicated my intention to make a comment in accordance with section 39(12) of the FOI Act.
7. Neither the applicant nor the agency provided submissions in response.

Relevant law

8. A person has a legally enforceable right to be given access to an agency's documents in accordance with the FOI Act.¹
9. The FOI Act provides that upon receipt of an access application, an agency may make a determination to refuse access where the documents are 'exempt'. Schedule 1 lists various exemption clauses which may be claimed by an agency as a basis for refusing access.
10. Under section 48, the onus is on the agency to justify its determination 'in any proceedings'. This includes the external review process.
11. 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.
12. DPC relied on section 18(1)(a) of the *City of Adelaide Act 1998* (the **CA Act**) to refuse access to the document in its entirety. The relevant parts of section 18 of the CA Act provides as follows:
 - (1) The following will be taken to be exempt documents for the purposes of the *Freedom of Information Act 1991*:
 - (a) a document that has been specifically prepared for submission to the Capital City Committee (whether or not it has been so submitted)...
 - (2) A document is not an exempt document under subsection (1) if—
 - (a) it merely consists of factual or statistical material that does not disclose information concerning any deliberation or decision of the Committee; or
 - (b) it is within a class of documents excluded from the operation of subsection (1) by the regulations.
 - (3) The Crown and the Adelaide City Council are entitled to access to—
 - (a) a document referred to in subsection (1); and
 - (b) any other document in the possession or control of the Committee under this Act.
 - (4) However—
 - (a) access to a document is not available under subsection (3) in breach of a duty of confidence; and
 - (b) access to a document under subsection (3) may be given on conditions determined by the Committee.
 - (5) In this section, a reference to the Committee includes a reference to a subcommittee or delegate of the Committee acting under this Act.

Document in issue

13. DPC identified one document within the scope of the application, the *Closed Circuit Television (CCTV) System Review* dated October 2013 (the **document**). The document is comprised of a report (pages 1 to 40) and 14 appendices, totalling 71 pages. Pages 1 to 40 are marked 'confidential'. The document was prepared by the Capital City Committee Directorate.

Issues in this review

14. It is for me to consider whether the agency has justified its determination to refuse access to the document.

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

Parties' submissions

DPC and the agency

15. DPC's reasons for refusing access to the document, set out in its original determination and confirmed following internal review, are as follows:

The Closed Circuit Television (CCTV) System Review was specifically prepared for submission to the Capital City Committee. Section 18(1)(a) of the *City of Adelaide Act 1998* states that documents prepared specifically for submission to the Capital City Committee are taken to be exempt documents for the purposes of the *Freedom of Information Act 1991*...

16. In support of its determination, DPC provided minutes of meetings of the Committee, a joint initiative of the Government of South Australia and the Adelaide City Council, dated 24 October 2012 and 22 October 2013.
17. I understand that the agency relies on DPC's submissions.

The applicant

18. When applying for internal review, the applicant submitted that the:

... document is in the public interest and should be released as it deals with the safety of the CBD and the adequacy of the monitoring system. We believe the public interest test outweighs any exemption while similar CCTV reports undertaken by the Adelaide City Council have been released.

19. By letter dated 13 May 2015, my Office invited the applicant to provide submissions and documentation showing that the document was not 'specifically prepared for submission to the Capital City Committee'.

20. The applicant submitted as follows:

In the relevant public documents that announced details of the review and later reported it - including a government issued press release, news stories and the Adelaide City Council's annual report ... - there is no reference [to] it being specifically conducted for the committee.

The Department's annual report ... states that while the Committee had made a recommendation, it was the capital city program that "led a system review of CCTV in the CBD, examining opportunities to make improvements and to overcome barriers". It continued: "Adelaide City Council and the Government of South Australia will work together on the outcomes of the review during 2013-14 (supports T17)." There is no evidence it was commissioned *for* the committee.

Given the review was publicly announced, drew extensive media coverage and relates to public safety, we argue there is also a strong public interest in its release.

21. He included the text of an article,² along with the following links:

http://www.premier.sa.gov.au/images/news_releases/12_10Oct/cctvreview.pdf
<http://www.adelaidenow.com.au/news/south-australia/adelaides-cbd-to-get-extra-closed-circuit-television-cameras-to-monitor-citys-streets/story-e6frea83-1226502708372>
<http://www.adelaidenow.com.au/news/south-australia/new-cctv-cameras-to-create-monitored-corridor-between-adelaide-oval-and-gouger-st/story-fni6uo1m-1226792076391>
<http://www.adelaidenow.com.au/news/south-australia/cctv-all-set-to-go-digital-in-adelaides-cbd-in-bid-to-fight-crime/story-e6frea83-1226494732906>

² David Nankervis, 'Closer eye on safety in city', *The Advertiser* (South Australia) 25 October 2012, page 3.

<http://www.news.com.au/national/south-australia/cctv-and-crowdmonitoring-software-will-reduce-the-risk-of-crime-around-adelaide-oval/story-fnii5yv4-1226700014806>
http://dpc.sa.gov.au/sites/default/files/pubimages/documents/annual-reports/AR-DPC_2012-13.pdf (pages 18-19)
http://www.adelaidecitycouncil.com/assets/documents/annual_report_2012-13-mobile.pdf

Consideration

22. Section 18(1) of the CA Act does not include a public interest test.
23. The word 'specifically' is not defined in the CA Act or the *Acts Interpretation Act 1915*. As such, it should be accorded its ordinary meaning.
24. Whether a document has been prepared for submission to the Committee is to be ascertained by reference to the events at the time the document was created.³
25. I note that the document was prepared by the Capital City Committee Directorate.
26. I am satisfied that the document was prepared specifically for submission to the Capital City Committee.
27. In saying this, I have had particular regard to the timeline of events; the minutes provided by DPC; and the 'Executive Summary' and the 'Introduction' contained in the document. Under section 39(15) of the FOI Act, I should avoid disclosing in my reasons for a determination any claimed exempt matter. Accordingly, I cannot discuss the contents of the document or the minutes.
28. In my view, none of the exceptions in section 18(2) of the CA Act apply.
29. I am satisfied that the document is exempt under the FOI Act pursuant to section 18(1)(a) of the CA Act.
30. In my view section 20(4) of the FOI Act has no application in this instance, because of the way section 18(1) of the CA Act is worded.⁴

Determination

31. In light of my views above, I confirm the agency's determination.

Comment - section 39(12) of the FOI Act

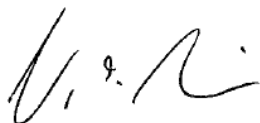
32. Section 39(12) of the FOI Act provides that if I am satisfied that a document is an exempt document, I do not have the power to make a determination to the effect that access is to be given to the document. I may however, if I think fit, offer reasons why the agency might give access to a document despite its exempt status.
33. My view is that the following reasons exist as to why the agency might give access to the document notwithstanding its exempt status:
 - there is a strong public interest in members of the public being aware of the bases for agencies' decisions

³ *Re Fisse and Department of Treasury* (2008) 101 ALD 424, 434. This case considered the Cabinet document exemption in the *Freedom of Information Act 1982* (Cth). I consider that the test is also applicable to section 18(1) of the *City of Adelaide Act 1998*.

⁴ Section 18(1) of the *City of Adelaide Act 1998* provides that 'a document that has been specifically prepared for submission to the ... Committee...' will be 'taken to be [an] exempt document... for the purposes of the *Freedom of Information Act 1997*'. This is in contrast to a number of exemption clauses within the *Freedom of Information Act 1997* that provide that '[a] document is an exempt document *if it contains...*' [my emphasis].

- more than two years has elapsed since the document was created
- the document contains information in the public domain.

34. In my view, access to such information would enhance public participation in discussions about CCTV in Adelaide, and would be consistent with the objects of the FOI Act of promoting openness and accountability, as well as the principles of administration.

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

Wayne Lines
SA OMBUDSMAN

10 February 2016



APPENDIX - 2015/03435

Procedural steps

Date	Event
5 February 2015	The Attorney-General's Department (AGD) received the FOI application dated 28 January 2015.
6 February 2015	AGD transferred the application to the Department of the Premier and Cabinet (DPC).
9 February 2015	DPC received the application from AGD.
6 March 2015	DPC determined the application.
19 March 2015	DPC received and acknowledged the internal review application dated 6 March 2015.
2 April 2015	DPC confirmed the determination.
8 April 2015	DPC sent its determination following internal review to the applicant.
8 May 2015	The Ombudsman received the applicant's request for external review via the Ombudsman SA website.
11 May 2015	Ombudsman SA notified DPC of the application by telephone and requested preliminary information.
	DPC responded to Ombudsman SA by email.
13 May 2015	Ombudsman SA advised DPC's principal officer of the external review and requested submissions and documentation.
	Ombudsman SA acknowledged the application and invited the applicant to provide submissions.
28 May 2015	Ombudsman SA received submissions from the applicant.
1 July 2015	The Capital City Committee was transferred from DPC to Renewal SA.
28 August 2015	DPC provided the Ombudsman with its submissions and documentation.
24 November 2015	Ombudsman SA sought further information from DPC and Renewal SA, including about whether they objected to certain information being included in the Ombudsman's reasons.

15 December 2015	By telephone, Renewal SA provided some of the information requested in Ombudsman SA's email dated 24 November 2015.
14 January 2016	Renewal SA provided further information in response to Ombudsman SA's email request dated 24 November 2015.
19 January 2016	The Ombudsman issued his provisional determination to the parties.