



OmbudsmanSA

## DETERMINATION

### External review pursuant to *Freedom of Information Act 1991*

**Applicant:** Ms Terina Verrall  
**Agency:** Department of Education and Children's Services  
**Ombudsman reference:** 2010/01417  
**Provisional determination:** The determination of the agency is reversed

## REASONS FOR DETERMINATION

### Background

1. In a letter dated 7 November 2008, the Rose Park Primary School (RPPS; **the school**) principal, Mr Brett Darcy, and the agency's Acting Eastern District Director, Mr Chris Dolan, informed the school community that there would be an independent evaluation of the Family Unit. Mr Doug Moyle was appointed and, following consultation with the school community, provided his evaluation to the agency on 13 May 2009 (**the original evaluation**).
2. It is my understanding that following completion of the original evaluation, a series of consultations between Mr Moyle and officers of the agency ensued.
3. On 17 July 2009 the agency's Chief Executive, Mr Chris Robinson, provided an amended version of the evaluation to the Rose Park Governing Council for review on a 'confidential basis'. Following further amendments, the Chief Executive released the 'final' version of the evaluation to the Rose Park school community on 30 July 2009 (**the final evaluation**). The final evaluation is a 17-page document, compared with the 40-page original evaluation (with pages 23 to 30 exploring the various options in greater detail, and pages 31 to 40 representing appendices).
4. In September 2009 the applicant sought access to a copy of Mr Moyle's report 'as submitted to the Chief Executive, without alteration or changes made by officers of DECS or the Chief Executive' (**the 2009 application**) under the *Freedom of Information Act 1991* (**the FOI Act**). This was the subject of a previous external review by my office.<sup>1</sup> The applicant applied to my office for an external review of the agency's refusal to release a document it had erroneously assessed as being within scope of the application. I say erroneously, because during my review I discovered:

that there was one version of the Evaluation which was solely authored by Mr Moyle 'without alteration or changes made by officer[s] of DECS or the Chief Executive' and that was the version dated 13 May 2009. However ... this version has not been submitted to the Chief Executive of the agency.
5. Following my 2009 external review, I therefore concluded 'that no document exists which strictly fits within the wording of the applicant's FOI request'.<sup>2</sup>
6. This prompted the applicant to seek access to the 'Independent Evaluation into the Family Unit at Rose Park Primary School by Mr Doug Moyle... as submitted by Mr Moyle on 13 May

<sup>1</sup> My reference: 2010/00121; the agency's reference: DECS09/10377.

<sup>2</sup> My determination dated 9 April 2010 sets out further details.

2009' under the FOI Act on 1 April 2010 (**the 2010 application**). This underpins my current external review.

7. The agency failed to actively determine the 2010 application and is therefore deemed to have refused access to the original evaluation by reason of section 19(2)(b) of the FOI Act. On 4 May 2010 the applicant sought external review by my office of the agency's 'deemed determination'.

### Preliminary issue

8. Having regard to section 29(6) of the FOI Act I consider that the agency's deemed refusal was made by or at the direction of the agency's principal officer (also the Chief Executive). My conclusion is based on an agreement reached between Mr Shane Richardson of the agency and Ms Megan Philpot of my office on 31 March 2010, as set out in paragraph 23 of my determination dated 9 April 2010, that:

- The applicant is able to lodge a fresh FOI request at no fee or charge for access to the 13 May 2009 document - as this is the only document which is solely the work of Mr Moyle.
- *The Chief Executive of the agency will make the determination, and thus avoid the need for an internal review* [my emphasis] ...

### External review process

9. On 10 May 2010 I advised the agency's Chief Executive of my external review, and my view that an internal review was not a pre-requisite in this instance. In addition, I asked that he provide the following information to me by 24 May 2010:

1. The application for access
2. The agency's determination (if one has been made belatedly)
3. The document within the scope of the application for access. (If exemption is claimed over part of the document, please clearly identify the parts that have been released to the applicant)
4. Any further correspondence or file notes recording communication between your agency and the applicant relevant to the application
5. Any internal communications, or communications between your agency and any other party (other than my Office), relevant to the application (documentation relevant to consultations undertaken by the agency, or legal advice, for example).

10. On 25 May 2010, Ms Tonia Nielsen of my office spoke to a briefing officer with the Chief Executive's office, who advised that information was being compiled with a view to obtaining legal advice. Although I was not aware of the nature of the legal advice the agency intended to seek at the time, I was mindful that Mr Richardson had foreshadowed the agency's intention to obtain legal advice as at 31 March 2010 about the claim of exemption (under clause 9(1) of Schedule 1 to the FOI Act) over the evaluation.<sup>3</sup>

11. Having not received a response to my request of 10 May 2010 and given the ongoing delays attributable to the agency, on 28 May 2010 I made a provisional determination. In so doing I had regard to what I understood to be a copy of the original evaluation (as

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<sup>3</sup> This occurred during a discussion with my Deputy, Ms Philpot, in the context of my previous external review.

attached to an email from Mr Richardson to Ms Philpot dated 15 March 2010), and submissions provided by the agency and the applicant in the context of my previous external review. I invited submissions from the applicant, the agency, Mr Moyle (the author of the original evaluation), and Mr Darcy (the Principal of the Rose Park Primary School). I received responses from the applicant, the agency, and Mr Moyle.

## Parties' submissions

### *The agency*

12. In response to my provisional determination, the Chief Executive of DECS sent a 5-page letter dated 22 June 2010. Briefly stated, Mr Robinson is of the view that the document 'should not be released to the applicant' by reason of clause 9 of Schedule 1 to the FOI Act. If I do not accept this claim, Mr Robinson has asked that I consider releasing the report after deleting literacy and numeracy results that he considers to be exempt under clauses 6(3a), 13(1)(a) or 13(1)(b), and 'personalised comments' he considers to be exempt under clause 9(1).<sup>4</sup> DECS' letter included the following:

3. The need for the report arose as a result of the ventilation of a number of issues within the school community that had brought into focus a conflict between the two groups of parents at the school, that is those parents of so called mainstream students and the parents of the Family Unit students. In considering these matters I considered it was necessary to formally address the following:

- claims of poor academic performance of the Family Unit in their NAPLAN tests
- claims the Family Unit was being provided with resources at the expense of the mainstream student body
- claims the Family Unit students were not subject to school rules and this was causing disruption and disharmony within the student body
- claims the Family Unit had additional and over entitlement space and physical facilities
- claims the enrolment numbers were reducing.

4. ... At no time did I intend to give the impression that Mr Moyle would write a review report that would be provided to the community without having been through a process of scrutiny and amendment if necessary by myself and my officers. Mr Moyle himself in a letter to me dated 6 June 2010 states his understanding of his task as follows:

***"... The report was to be confidential and would serve as a working paper from which a report would be provided to the Chief Executive of DECS [bold in the original] ..."***

5. Mr Moyle's understanding of his task is clearly one that foresees the approach taken by myself and my officers. That is, we would be provided with a paper from Mr Moyle that details his independent response to the terms of reference for development into a report that I would then release to the community.

6. This I believe is an approach reflected in my public statements. Furthermore, it would be very unusual to consider the development of a report by a consultant to be a report that would be adopted in full by myself without some form of quality control.

7. Clearly as the commissioning body it is my responsibility to ensure the report does not contain falsehoods, misrepresentations and material that may be defamatory. This responsibility formed the basis for the amendments and changes that were necessary. In some instances I also called for the removal of material that set out options the government would not or could not adopt.

<sup>4</sup> Parts of pages 3, 6, 7, 9, 11, 13, 18, 19, 21, 25, 26 and 27.

...

9. As you know, the Family Unit located at the site of the RPPS, has been the subject of significant debate within the RPPS community and between the Department and that community. Furthermore it has become very difficult to maintain harmonious relations between the two disputing groups at RPPS.
10. More recently, the long term governance of the Family Unit by the Parkside Primary School ("Parkside") Principal and Governing Council, and the Unit's possible longer term re-location to Parkside have also been the subject of significant debate. Much of this debate has also been the subject of significant media attention, in the Messenger and the Advertiser.
11. Amidst this, the ongoing needs of the students of RPPS and in the Family Unit and, from the commencement of the 2010 school year, of the Parkside students, have been of paramount importance. Although every attempt has been made to minimise the impact of the current arrangements for the Unit on staff, students and parents, there have been inevitable complexities and tension attached to the day to day activities at the Unit. In particular, practical difficulties concerning the sharing of resources and space have had to be resolved.

...

13. Clause 6(3a)/Clause 13 - statistics about groups within the Unit

Whilst NAPLAN results are, at school level, published on the MySchool website, only the school and parents of students are provided with an individual student's results. It is the case that some breakdown of NAPLAN results appears in the second (provided to the Governing Council) and third (provided to the school community) versions of the Evaluation report. However, the breakdown of the NAPLAN results by further category of result, by year Group and by calendar year is, in my view, so specific, with the numbers in each of those groupings being so small as to amount to an unreasonable disclosure of their personal affairs (under s4 this includes a person's personal qualities or attributes) having regard to the students' welfare. If this information is disclosed, I have real concern that, as is common in the school environment, favourable comparisons between individuals will be made in a way that is damaging to a young student.

It is the case that no student is named, however the numbers in the unit are so small as to permit past and present students to be identified by those who have knowledge of the school community, including other students and students' parents. It is also the case that the main school cohort is identified however these groups are much larger and, in my view, do not permit identification of students so readily.

Further, individual student's NAPLAN results are confidential. I am concerned that the student cohort identified is so small that the students in question can be individually identified and, as such, the release would found an action for breach of confidence, as contemplated by clause 13(1)(a). Alternatively, the text is exempt under clause 13(1)(b).

There is ongoing controversy over participation in these tests, and many parents are reluctant to have their children participate in them for the very reason that their children's individual results will be made available.

I say that release might reasonably be expected to prejudice the future supply of the information if these children and possibly others who may lose confidence in the ability to keep their individual results confidential, refuse to participate in the tests in the future.

Although there is public interest in demonstrating the value of the Family Unit and its methodologies, given there is already general information about the results in the public

versions of the report, on balance, I say that it would be contrary to the public interest to release the further more specific text.

14. Clause 9 - personalised comments

I note that, in your provisional determination you accept that the document is the type of document to which clause 9 applies. I therefore only propose to address the public interest requirement in clause 9.

Each version of the report contains a number of opinions expressed by persons who were interviewed principally about the Principal of RPPS, "Unit Parents", "mainstream parents". The first report contains personalised comments that were provided to Mr Moyle in, as is obvious from their content, in a frank and candid manner.

In asking you to determine that this text is exempt, I have considered the factors for disclosure against those for non-disclosure, and on balance say that their release is contrary to the public interest. The factors supporting disclosure include:

- as you have pointed out, those set out in s3(2)(a) of the Act, ie promoting accountability and public participation in government
- the first report does include a more detailed breakdown of the matters in the second and third versions of the report and in this regard the school community may have a real interest in its contents
- the subject matter of the report, ie the Family Unit, is the subject of ongoing debate and decision-making.

However, against this is the following:

- the people and groups about whom the personalised comments have been made have not been given an opportunity to respond to them
- some of the comments are opinions, expressed to Mr Moyle after some months of disagreement
- the harmonious interaction between the Family Unit and RPPS at the RPPS site, is very much a current and ongoing necessity, for the wellbeing of students, staff and students' parents
- release of the personalised comments may well damage or further damage relationships thus leading to disharmony
- the comments may detract from objective debate about the Family Unit
- *the Chief Executive did not have a copy of this version of the report prior to its amendment and based his decision on the more general views expressed in the second and third versions of the report*
- the nature of the comments are such that those who made them in a frank and candid manner may, if they are made public, refuse to participate in such reviews in the future. In this regard, I refer to the statement on the acknowledgements page of the report which states ....<sup>5</sup>

13. On 28 June 2010 the agency provided a copy of the legal advice it had obtained from the Crown Solicitor's office dated 17 June 2010.

***The applicant***

14. The applicant provided detailed submissions in her application for external review dated 10 November 2009 regarding the 2009 application. Her submissions included the following rebuttals of claims made by the agency:

<sup>5</sup> The agency has asked me not to disclose the factors it has cited as against release to the applicant or consulted parties, particularly the second to the fourth dot-points. I have deleted the quote from the last dot-point as this matter is claimed exempt (although I note that relevant information has been released to the school community). I am not otherwise satisfied that there are sound reasons for further acceding to the agency's request.

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- a) the original evaluation was produced after consultation with the school community
- b) the original evaluation 'was funded by the taxpayer'
- c) the original evaluation was to be an 'opportunity for the community to receive *independent* and expert advice', according to the agency's Chief Executive, with a view to 'resolving differences within the school community'. The applicant provided a copy of a letter from the Chief Executive dated 29 December 2008 indicating that he was confident that the evaluation would provide the school community with the opportunity to, among other things:
- Genuinely consult and consider the *full range* of opinions and perspectives.
  - Obtain independent and expert educational advice [my emphasis].
- d) the Chief Executive has made his decision regarding the future of the Family Unit and announced this to the school community, and future consultation is therefore unnecessary
- e) 'Mr Moyle delivered a final *independent* evaluator's report... The Department used elements of Mr Moyle's material in the development of their own 'draft'. This does not render or reduce Mr Moyle's report to a 'draft' report'
- f) the versions of the evaluation released publicly 'contain hearsay and speculative information, particularly unconfirmed unfounded information and conjecture, which DECS authored and chose to release'.
15. By email dated 4 June 2010, in response to my provisional determination, the applicant advised that she had 'no further information to provide'.
16. That said, by email dated 18 June 2010 she provided the following update:
- it is now public knowledge that Parkside Primary School governing council has unanimously rejected DECS [sic] proposal to relocate the family unit from Rose Park to the Parkside campus. This was communicated to the DECS CE and the school community last week. I find it extremely frustrating that DECS find more reasons (CSO advice?) to stall the release of a report promised to us over 2 years ago.

***Mr Moyle***

17. By letter dated 6 June 2010 Mr Moyle submitted that:
- [i]n preparing the report there was a verbal agreement that it would be confidential and would in effect be a working paper from which a report would be prepared for the Chief Executive of DECS...
- Given that the report that I prepared was to be confidential I don't believe that it has had the legal scrutiny that would have occurred if it were to be made public...
- ... I believe that it could be contrary to the best interests of the school and its community given that my report differs mainly from the public report in that it contains data, graphs and tables which are now up to 2 years out of date. I believe that by and large the community have moved on and release of my report will be a backward step in their progress. None the less I acknowledge that this is unlikely to be grounds for denying the appeal.

## Exemption clauses

### *Clause 6(3a)*

18. Clause 6(3a) of Schedule 1 to the FOI Act provides that

(3a) A document is an exempt document if it contains matter—

- (a) consisting of information concerning a person who is presently under the age of 18 years or suffering from mental illness, impairment or infirmity or concerning such a person's family or circumstances, or information of any kind furnished by a person who was under that age or suffering from mental illness, impairment or infirmity when the information was furnished; and
- (b) the disclosure of which would be unreasonable having regard to the need to protect that person's welfare.

19. To justify a claim under clause 6(3a) it is necessary to show that:

(a) The document contains:

- (i) information concerning a person who is under the age of 18 years or suffering from mental illness, impairment or infirmity; or
- (ii) information concerning the family or circumstances of a person who is under the age of 18 years or suffering from mental illness, impairment or infirmity; or
- (ii) information of any kind furnished by a person who was under the age of 18 years or suffering from mental illness, impairment or infirmity when the information was furnished; and

(b) It would be unreasonable to release the information having regard to the need to protect that person's welfare.

### *Clause 9(1)*

20. Clause 9(1) of Schedule 1 to the FOI Act provides that:

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

(a) that relates to—

- (i) any opinion, advice or recommendation that has been obtained, prepared or recorded; or
- (ii) any consultation or deliberation that has taken place,

in the course of, or for the purpose of, the decision-making functions of the Government, a Minister or an agency; and

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

21. To justify a claim that a document is exempt pursuant to clause 9(1), it must be shown that the document in question satisfies paragraphs (a) and (b) of clause 9(1). The scope of clause 9(1)(a) is wide, particularly given use of the words 'that relates to'. Clause 9(1)(b) introduces a public interest test, which limits the expansive scope of clause 9(1)(a).

### **Clause 13(1)**

22. Clauses 13(1)(a) and 13(1)(b) of Schedule 1 to the FOI Act provide that:

- (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.

23. To succeed in claiming clause 13(1)(a) it is necessary to demonstrate that the relevant document contains matter ‘the disclosure of which would found an action for breach of confidence’. The obligation of confidence may be contractual or equitable.<sup>6</sup>

An equitable obligation of confidence is a duty not to disclose information because the information was given and received in circumstances which would make it unconscionable for the confidant to disclose the information in a way the confider has not authorised. A number of criteria must be satisfied:<sup>7</sup>

- (a) The confider ‘must be able to identify with specificity, and not merely in global terms, that which is said to be the information in question’
- (b) The confider must be able to show that ‘the information was received by the ... [confidant] in such circumstances as to import an obligation of confidence’
- (c) The confider must be able to show that ‘the information has the necessary quality of confidentiality (and is not, for example, common or public knowledge)’
- (d) The confider must be able to show that ‘there is actual or threatened misuse of that information’
- (e) It may also be necessary for the confider to show ‘(at least for confidences reposed within government), that unauthorised use would be to the detriment of the ... [confider]’.<sup>8</sup>

24. To succeed in claiming clause 13(1)(b) as a basis for refusing access to a document, each of the following criteria must be satisfied:

- (a) That the information in the document was ‘received under an express or inferred understanding that [it] would be kept confidential’<sup>9</sup>
- (b) That disclosure of the matter might reasonably be expected to prejudice the future supply of such information to the Government or an agency
- (c) That release of the document must, *on balance*, be contrary to the public interest.

<sup>6</sup> *Bray and Smith v WorkCover* (1994) 62 SASR 218 at 226 to 227.

<sup>7</sup> *Corrs Pavey Whiting & Byrne v Collector of Customs (Vic)* (1987) 14 FCR 434 at 443. The quotes set out in (a) to (e) below are also from this case.

<sup>8</sup> If detriment is an essential element, case law shows that it is easily established.

<sup>9</sup> See *Re Maher and Attorney General's Department* (1985) 7 ALD 731 at 737.

## Other relevant provisions

25. Section 12 of the FOI Act provides that 'a person has a legally enforceable right to be given access to an agency's documents in accordance with this Act'.
26. Under section 20(1)(a) of the FOI Act, 'an agency may refuse access to a document if it is an exempt document'.
27. Section 48 of the FOI Act places the onus on the agency to justify its determination in my external review.
28. One of the 'principles of administration' in the FOI Act is that the Act 'should be interpreted and applied' so as to further its objects.<sup>10</sup> Section 3 of the FOI Act includes the following:

### 3 Objects

- (1) The objects of this Act are, consistently with the principle of the Executive Government's responsibility to Parliament-
    - (a) to promote openness in government and accountability of Ministers of the Crown and other government agencies and thereby to enhance respect for the law and further the good government of the State; and
    - (b) to facilitate more effective participation by members of the public in the processes involved in the making and administration of laws and policies.
  - (2) The means by which it is intended to achieve these objects are as follows:
    - (a) ensuring that information concerning the operations of government (including, in particular, information concerning the rules and practices followed by government in its dealings with members of the public) is readily available to members of the public and to Members of Parliament; and
    - (b) conferring on each member of the public and on Members of Parliament a legally enforceable right to be given access to documents held by government, subject only to such restrictions as are consistent with the public interest (including maintenance of the effective conduct of public affairs through the free and F expression of opinions) and the preservation of personal privacy; ...
29. Section 39(11) of the FOI Act provides that in my external review, and based on the circumstances existing at the time of my review, I may confirm, vary or reverse the agency's determination.

## Consideration of submissions and provisional conclusion

### *The whole document*

30. The agency claims that the original evaluation should be exempt in full. I accept that the original evaluation falls within the broad category of clause 9(1)(a) of Schedule 1 to the FOI Act. However, in order to satisfy clause 9(1) the agency must also show that disclosure of the document would, *on balance*, be contrary to the public interest. In my view the submissions provided in support of its claim are insufficient, and frankly unhelpful. I fail to see how it would be contrary to the public interest to release information that has already been released to the school community as part of the final evaluation (without any apparent restriction), or information that is otherwise well known within the community.

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<sup>10</sup> Section 3A(1)(a) of the FOI Act.

31. Mr Moyle claims that there was 'a verbal agreement that it [the original evaluation] would be confidential'. The agency has referred to Mr Moyle's understanding, but has not corroborated the claim. There is insufficient evidence from which I may be satisfied that the original evaluation is exempt under clause 13(1)(a) or 13(1)(b).
32. I will now turn to the highlighted parts of the original evaluation that the agency claims are exempt. These may be described as literacy and numeracy results, which the agency claims are exempt under clause 6(3a), 13(1)(a) or 13(1)(b), and personalised comments, which the agency claims are exempt under clause 9(1) of Schedule 1 to the FOI Act.

### *Literacy and numeracy results*

33. The agency has claimed that literacy and numeracy results on page 9 are exempt. I accept that the results concern people under 18 years of age, as required by clause 6(3a)(a), namely students from years 3, 5 and 7, in the main body of the school and the Family Unit in 2005, 2006 and 2007.
34. I do not accept that it would be unreasonable to release the results having regard to the need to protect the students' welfare. Individual students are not named in connection with the results. Although the number of Family Unit students is small, it is not possible to attribute specific results to individual students as they appear as averages in the table. In addition, I note that NAPLAN results were released as graphs as part of the amended evaluation released to the school community. The NAPLAN results differentiate between the main body of the school and the Family Unit, and year 3, 5 and 7 students. In any event, it is relevant in my view that Mr Moyle has qualified the statistical relevance of the results in the body of the original evaluation.
35. I am not satisfied that the literacy and numeracy results, as they appear in the original evaluation, would disclose the results of individual students. I am therefore not persuaded that their release would found an action for breach of confidence for the purposes of clause 13(1)(a), or might reasonably be expected to prejudice the future supply of such information to the Government or to an agency, as required by clause 13(1)(b)(i).

### *Personalised comments*

36. The acknowledgements page in the original evaluation lists some of the contributors and refers to the 'openness and honesty of all contributors within the confidential confines of the evaluation process',<sup>11</sup> thereby giving rise to possible claims under clause 13(1)(a) or 13(1)(b). I have considered such claims even though neither Mr Moyle nor the agency have explicitly raised them. It does not necessarily follow from Mr Moyle's comment that the people who participated in the evaluation process were promised confidentiality, or that the agency is bound by any such agreement. Further and in any event, comments in the report are generally attributed to groups rather than individuals. An important exception to is the Principal, with whom I tried to consult. It is my understanding that the Chief Executive announced that the report would be made public. In my view this would have put participants on notice as to how their contributions would be treated.
37. The agency has claimed that release of certain 'personalised comments' on pages 3, 6, 7, 11, 13, 18, 19, 21, 25, 26 and 27 would be contrary to the public interest, and would therefore be exempt under clause 9(1). Certain comments, or the substance of such comments, have been released to the school community as part of the final evaluation, or seem to be generally well-known. Other comments merely reflect Mr Moyle's opinions or his understanding of other people's views.

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<sup>11</sup> The quote appears in the final evaluation.

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### *Public interest*

38. When assessing the public interest (which is relevant to claims under clauses 9(1) and 13(1)(b)), I have had regard to the public interest in promoting openness, accountability and public participation within representative government. I note the reasons behind the preparation of the original evaluation; that the future of the Family Unit remains uncertain, notwithstanding the Chief Executive's decision; and information in the public domain. In this case, I believe that there is a strong public interest in the school community having access to the detailed original evaluation. This will allow them to see the information available to the agency before the Chief Executive made his decision regarding the future of the Family Unit, and to compare Mr Moyle's views as an independent expert to the views expressed in the final evaluation released to the school community. In my view this will likely contribute to ongoing debate about the future of the Family Unit, particularly given the recent decision of the Parkside Primary School Governing Council.
39. I have considered the factors against release submitted by the agency. The contents of the original evaluation put the document into context; it clearly identifies Mr Moyle as the author and obviously pre-dates the Chief Executive's decision regarding the future of the Family Unit. As such, I do not consider the lack of opportunity for people and groups to respond to comments about them to be a factor against release. I accept that some of the comments in the original evaluation may not be appreciated by opposing sides of the debate. However, most of the comments, or the substance of them, are in the public domain. Given this, I do not accept that release of Mr Moyle's perspective of the different views will further damage relationships. Most of the contributors to Mr Moyle's evaluation have an interest in the Family Unit's future, and therefore an interest in putting forward arguments in support of their views. Given this, the fact that comments are generally attributed to groups rather than individuals, and information already in the public domain, I am not satisfied that disclosure of the original evaluation would result in people refusing to participate in similar reviews in the future.
40. On balance, I am not persuaded that disclosure of the original evaluation would be contrary to the public interest in these circumstances.

### *Conclusion*

41. In light of my reasoning above, I **reverse** the agency's determination, pursuant to section 39(11) of the FOI Act, to enable the original evaluation to be released to the applicant.

### **Comment**

42. In my view, the agency's conduct has prolonged my external review unnecessarily. In addition, it has contributed to a deterioration of the relationship between the applicant and the agency, and a growing sense of mistrust. I note that this is not an isolated experience. I expect the agency to respond to requests from my office in a timely and efficient manner. In addition, I strongly encourage the agency to ensure that it is adequately resourced to actively deal with FOI applications in accordance with the FOI Act.

Richard Bingham  
**SA OMBUDSMAN**

5 July 2010