

## DETERMINATION

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

Applicant:	Hon Rob Lucas MLC
Agency:	Department of the Premier and Cabinet
Ombudsman reference:	2010/04805
Agency reference:	DPC09/2497
Determination:	The determination of the agency is reversed

## REASONS FOR DETERMINATION

### Background

1. On 29 October 2009 the applicant applied to the Department of the Premier and Cabinet under the *Freedom of Information Act 1991* (the **FOI Act**) for access to:  

[s]ince October 2008, copies of all documents, including emails, and notes of telephone conversations, that includes [sic] reference to the body "SA Progressive Business".
2. SA Progressive Business (**SAPB**) is the fund-raising arm of the South Australian branch of the Australian Labor Party (**ALP**).
3. The agency located 34 documents within the scope of the application. On 24 June 2010, although well outside of the 30-day timeframe stipulated by the FOI Act, Ms Randall, an accredited FOI officer of the agency, determined to release 27 of the 34 documents in full and five documents (numbered 17, 20, 24, 30 and 32) in part. She refused access to documents 21 and 26 in full. Ms Randall relied on clause 7(1)(c) (documents 17, 21 and 26) and clause 6(1) of Schedule 1 to the FOI Act (document 30). In addition, she masked parts of documents 20, 24 and 32 considered 'not relevant to the application'. Ms Randall claimed that some adverse effect could flow from disclosure of the names of attendees in document 17, and that documents 21 and 26 'contain commercially sensitive material relating to the business affairs of a third party ... who has objected to disclosure'.
4. On 19 July 2010 the applicant sought an internal review.<sup>1</sup> In response to the agency's claim regarding document 17, the applicant submitted that such 'information has been released in the past by your agency and others, and there is a public interest argument to be made by the release'.
5. On 10 August 2010, Mr Chris Eccles, the agency's principal officer, varied the original determination by allowing greater access to document 24. In all other respects, Mr Eccles confirmed Ms Randall's determination.
6. On 9 September 2010 the applicant applied to my office for external review.

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<sup>1</sup> Although the application was erroneously addressed to the Premier, rather than the Chief Executive Officer of the agency, the agency accepted and dealt with it.

## External review process

7. The documents within the scope of my external review may be described as follows:
  - 17 'SA Progressive Business - Forum Day Introduction' dated 23 July 2009.
  - 20 Emails between Mr Lachlan Parker, Ms Jill Bottrall and Mr Michael Owen about 'The Australian inquiry' dated 3 August 2009.
  - 21 Correspondence between Mr Patrick Tapper of Internode and the Hon Mike Rann MP about 'Internode and SA ICT' dated 4 August 2009.
  - 24 Emails between Mr Parker and Mr Owen about a 'Statement from the Premier' dated 5 August and 6 August 2009.
  - 26 Correspondence between Mr Tapper and Mr Rann regarding 'Internode and SA ICT' dated 12 August 2009.
  - 30 'SA Progressive Business Incorporated A39291 Attachment to Document 29'
  - 32 'Speech - Notes for Trish White Farewell Dinner' dated 4 September 2009.<sup>2</sup>
8. The majority of the above information was provided by the agency to my office and the applicant in the form of a schedule of documents.
9. Following a written request from me to do so, the agency consulted with the 17 third parties referred to in documents 17, 21 and 26 (**third parties**). At the same time, I referred the agency to a previous external review involving a request made by the applicant in the same terms to the Minister for Health,<sup>3</sup> in which I determined to release the names of a number of attendees at SAPB functions.
10. Briefly stated, eight third parties consented to disclosure, six objected and three failed to respond. Following receipt of the responses, the agency refused to release any further information to the applicant.
11. I will provide a list to the agency, linking the names of the third parties to the number I have ascribed to them. I will not provide a copy of the list to the applicant, as it contains information that the agency and some of the third parties claim is exempt.<sup>4</sup>
12. The following is a summary of the positions of the various third parties referred to in the relevant documents:
  - (a) Third parties 1, 7, 8, 11, 12 13, 15 and 16, or a representative of the organisation they are associated with, consented to disclosure
  - (b) Third parties 2, 3, 5, 6, 10 and 17, or a representative of the organisation they are associated with, objected to disclosure
  - (c) Third parties 4, 9 and 14 did not respond to the letter of consultation.
13. On 22 December 2010, in response to a query from Ms Tonia Nielsen of my office, Mr Chris Gregerson, one of the applicant's assistants, indicated that the applicant did not wish to pursue access to the information claimed exempt in document 30. As such, I

<sup>2</sup> Ms White is a former South Australian Member of Parliament. She held the seat of Taylor from 1994 to 2010.

<sup>3</sup> My reference: 78185D01. See <http://www.ombudsman.sa.gov.au/freedom-of-information/Lucas.pdf>.

<sup>4</sup> Section 39(15) of the FOI Act provides that I should avoid disclosing claimed exempt matter in the reasons for my determination.

have excluded document 30 from further consideration. At the same time, Mr Gregerson confirmed the applicant's interest in obtaining access to the remaining parts of documents 20, 24 and 32 'as he is of the opinion that the release of this information is in the public interest'.

### Relevant exemption clauses and submissions

14. The agency relies on clause 7(1)(c) of Schedule 1 to the FOI Act. Some of the third parties have raised clauses 7(1)(b), 13(1)(a) and 13(1)(b) of Schedule 1 to the FOI Act, expressly or by implication. I have considered all of these clauses.

#### *Clause 7(1)(b) and 7(1)(c)*

15. Clause 7(1)(b) and 7(1)(c) provide:

- (1) A document is an exempt document-
  - (b) if it contains matter-
    - (i) consisting of information (other than trade secrets) that has a commercial value to any agency or any other person; and
    - (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; or
  - (c) if it contains matter-
    - (i) consisting of information (other than trade secrets or information referred to in paragraph (b) ['information (other than trade secrets) that has a commercial value to any agency or any other person']) concerning the business, professional, commercial or financial affairs of any agency or any other person; and
    - (ii) the disclosure of which-
      - (A) could reasonably be expected to have an adverse effect on those affairs or to prejudice the future supply of such information to the Government or to an agency; and
      - (B) would, on balance, be contrary to the public interest.

16. To justify a claim that a document is exempt pursuant to clause 7(1)(b), each of the following criteria must be satisfied:

- (a) The document contains information (other than trade secrets) that has a commercial value to any agency or person.

The term 'commercial value' is not defined in the FOI Act, and should be accorded its ordinary meaning.

- (b) Disclosure of that information could reasonably be expected to destroy or diminish the commercial value of the information.

- (c) The disclosure of the matter would, on balance, be contrary to the public interest.

The public interest has many facets. For example, there is a public interest in the objects of the legislation being satisfied; in ensuring just, accountable, effective and efficient administration, and the public's ability to scrutinise it; and in the proper working of the government and its agencies.

17. To justify a claim that a document is exempt pursuant to clause 7(1)(c), it is necessary to demonstrate that:
- (a) Information in the document consists of information (other than trade secrets or information that has a commercial value to any agency or any other person) concerning the business, professional, commercial or financial affairs of an agency or person.
  - (b) Disclosure of that information could reasonably be expected to either:
    - (i) have an adverse effect on those affairs.
 

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 minimus [sic] that it would be properly regarded as inconsequential... It will be sufficient if the adverse effect is produced by that document in combination with other evidence...<sup>5</sup>
    - (ii) prejudice the future supply of such information to the government or to an agency.
  - (c) Disclosure of the information would, on balance, be contrary to the public interest.

***Clause 13(1)***

18. 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.
19. 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, and ‘would’ should be read as ‘could’.<sup>6</sup>
20. 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 information must be capable of being identified with specificity.

<sup>5</sup> *Ipex Information Technology Group Pty Ltd v The Department of Information Technology Services South Australia* (1997) 192 LSJS 54 at 65.

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

<sup>7</sup> *Ekaton Corporation Pty Ltd v Chapman & Department of Health* [2010] SADC 150 (Unreported, Judge Brebner, 9 December 2010) at [38] affirming the test from *Corrs Pavey Whiting & Byrne v Collector of Customs (Vic)* (1987) 14 FCR 434 at 443.

- (b) The information must have the necessary quality of confidence.
- (c) The information must have been received in circumstances which import an obligation of confidence.
- (d) There must be actual or threatened misuse of the information.

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> If detriment is an essential element, my view is that it is easily established.

21. 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.

### Other relevant provisions

22. 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'.
23. Under section 20(1)(a) of the FOI Act, 'an agency may refuse access to a document if it is an exempt document'.
24. Section 48 of the FOI Act places the onus on the agency to justify its determination in my external review. The third parties bear no formal legal onus. That said, where their claims of exemption extend beyond those of the agency, my view is that it is incumbent on them 'to ensure that there is material before ... [me] from which I may be satisfied that all elements of the exemption provision relied upon ... are established.'<sup>10</sup>
25. 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>11</sup> Section 3 of the FOI Act provides:

### 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:

<sup>8</sup> See, however, *Trevorrow v State of South Australia* (2005) 94 SASR 44.

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

<sup>10</sup> *Re Pope and Queensland Health* (1994) 1 QAR 616 at [17] in relation to the Queensland equivalent of section 48 of the South Australian FOI Act. Although that case involved an application for review made by a third party, I consider the approach is applicable in the context of this review.

<sup>11</sup> Section 3A(1)(a) of the FOI Act.

- (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 frank expression of opinions) and the preservation of personal privacy; ...
26. 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.

### Comment

27. The agency's delay in responding to the applications is undesirable. It requires my office to expend additional resources so that I am apprised of how circumstances have changed since the applications were made. It is incumbent on the agency to ensure that it is adequately resourced to deal with applications in accordance with the FOI Act.

### Consideration of submissions and conclusion

28. I have had regard to the submissions received from the parties to the review; the views of the third parties and Ms White; the relevant documents; information in the public domain or previously released under the FOI Act; the applicable law; and the present circumstances. I provide my views below.

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

##### *The information in question*

29. In a joint submission, third parties 2 and 3 claimed that the name of each person and each organisation is exempt pursuant to clause 13(1)(a) of Schedule 1 to the FOI Act. The agency has not relied on this clause.

##### *Quality of confidentiality*

30. Third parties 2 and 3 claim that this information has the necessary quality of confidentiality as '[o]nly a very limited group of people were to have access to the information' and '[t]hose who have it are under an obligation of confidence in regard to it.'
31. I am not satisfied that the identities of third parties who attended SAPB functions, or the names of the organisations they were associated with, have the necessary quality of confidentiality. A number of people attended each function from different organisations, and attendees are no doubt aware of the identities of other attendees and participating organisations.
32. Information in the public domain is also relevant to my assessment. Searches conducted by my office have revealed information linking third parties 2, 3, 4, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17, and/or the organisations they are associated with, to SAPB and/or the ALP. My office considered references in the media and Hansard, as well as information that the agency has disclosed to the applicant in response to his

FOI application.<sup>12</sup> Publicly available information links the premises of the organisation that third parties 2 and 3 represented to an ALP fundraiser.

33. I am not satisfied that the names of these individuals and organisations have the necessary quality of confidentiality required to found an action for breach of confidence for the purposes of clause 13(1)(a) of Schedule 1 to the FOI Act. I say this notwithstanding the fact that these names were not necessarily published in the context of the function that took place on 23 July 2009. The links between the individuals and/or organisations and SAPB or the ALP are sufficient, in my view, to undermine the claim.

*Obligation of confidence*

34. Third parties 2 and 3 claim a contract existed between their organisation and SAPB, under which their names and their organisation's name would be kept confidential, and they 'participated on that basis'. They accept that there was implied consent for SAPB to disclose the information to Ministerial staff, but assert that the 'Minister's office received the information under an equitable obligation of confidence'. The claimed equitable obligation of confidence is of particular relevance to my external review.
35. There is insufficient evidence from which I may be satisfied that the relevant documents were communicated to the Premier or his office in confidence. This facet of the claim has only been raised by third parties 2 and 3. In the context of my previous external review, SAPB did not raise such a claim (SAPB asserted only that an obligation of confidence existed as between it and participating organisations).
36. Even if an obligation of confidence existed between SAPB and individual attendees/organisations about their attendance, I am not satisfied that the claimed contractual obligation of confidentiality required them to keep the identities of other participants confidential. Although third parties 2 and 3 have submitted that '[i]t is common, at the start of SAPB functions, for an MC to announce that 'Chatham House Rules' apply,<sup>13</sup> they have not submitted that the Rules applied at the relevant function, or to the names of those attending. Further and in any event, I note that publicly available information identifies various attendees at SAPB functions, including as a result of public comments made by individual attendees.<sup>14</sup>
37. In a joint submission, third parties 5 and 6 submitted that their 'attendance was business related and therefore considered commercial in confidence'. It does not necessarily follow that because individuals attended an SAPB function in a business capacity that their attendance was 'commercial in confidence'. There is insufficient evidence to satisfy me that attendance at the SAPB function in question was 'commercial in confidence'.
38. It is relevant that eight third parties (1, 7, 8, 11, 12, 13, 15 and 16) have consented to disclosure of information concerning them. Of the third parties who have objected to information concerning them being disclosed (2, 3, 5, 6, 10 and 17), or did not respond (4, 9 and 14), third parties 2, 3, 4, 9, 10, 14 and 17, or the organisations they are

<sup>12</sup> Consistent with section 39(15) I have opted not to include a list of all the sources I have considered in the reasons for my determination. I will nevertheless provide a list to the agency.

<sup>13</sup> See [www.chathamhouse.org.uk/about/chathamhouserule](http://www.chathamhouse.org.uk/about/chathamhouserule). The Rule is clear that there should be no publication of any list of attendees of a meeting held under the Chatham House Rule. / [footnote 2 of the letter].

<sup>14</sup> For example, Roy Eccleston, 'Attack on the Premier: What happened inside the Wine Centre', *The Advertiser* (Adelaide, Australia) 3 October 2009, 14-17; Russell Emmerson and Joanna Vaughan, 'Battle Scarred Premier', *The Advertiser* (Adelaide, Australia) 3 October 2009, 1 and 14. Further sources appear in the list I will provide solely to the agency.

associated with, have been linked to SAPB or the ALP in the media or Hansard, or as a result of information disclosed by the agency.<sup>15</sup>

*Misuse of the information*

39. I accept that if the other criteria for founding an action for breach of confidence were satisfied, release under the FOI Act would constitute misuse of the information in question.

*Detriment*

40. It may be necessary to establish that unauthorised use would be to the detriment of the confider. I am not persuaded that the attendees, the organisations they represented, or SAPB could establish detriment was caused by disclosure of the information (despite the claims made by third parties 2, 3, 10 and 17). In saying this I have had regard to information that is publicly available, the consent to release given by the majority of the third parties, and general acceptance within the community that organisations lobby both the government and the opposition.

**Clause 13(1)(b)**

41. Third parties 5 and 6 claim that their 'attendance was business related and therefore considered commercial in confidence'. Based on the information before me I am not satisfied that SAPB, the Premier or the agency received information identifying them as attendees 'under an express or inferred understanding that [it] would be kept confidential'.<sup>16</sup> In my view this is fatal to a claim under clause 13(1)(b) of Schedule 1 to the FOI Act. I will nevertheless discuss the other elements required to satisfy clause 13(1)(b) in the context of clause 7(1)(c).

**Clauses 7(1)(b) and 7(1)(c)**

*Business affairs*

42. The agency, along with some of the third parties have claimed exemption over the documents by virtue of clause 7(1)(c) of Schedule 1 to the FOI Act. On the facts of this case however, I am not satisfied that the identities of the third parties, or the organisations they are associated with, constitute information concerning the business affairs of the individuals or the organisations in the context of the relevant documents. Much of the information concerns, in essence, individuals scheduled to attend a function, and reveals the organisations they were associated with at the relevant time. If I were satisfied that the relevant documents contained information concerning the business affairs of the individuals or the organisations, my views below would apply.

*Adverse effect or prejudice future supply*

43. The agency has argued that the release of documents 17, 21 and 26 would adversely affect the business affairs of the organisations that the third parties are associated with. It is claimed by the agency that:

The attendance of persons from private sector organisations at SA Progressive Business functions is commercial information attaching to those organisations, is not made public, and is often information those organisations would not wish competitors in their industries to know. I therefore consider that the disclosure of this material could be reasonably expected to have an adverse effect on those person's business affairs.

<sup>15</sup> As for footnote 12.

<sup>16</sup> See *Re Maher and Attorney General's Department* (1985) 7 ALD 731 at 737.

44. Third parties 2 and 3 claim that the release of such information would have an adverse effect on their business affairs because:

Political parties are notoriously tribal. If one party (Party A) discovered that our organisation was supporting a rival political party (Party B), this will have an adverse effect on relationships with Party A.

... Disclosure may result in Party B being less inclined to treat our organisation's submissions in a fair and objective manner. Whilst this adverse treatment may not be fair or justifiable, it is a reality of having to operate in a regulatory and political environment that is partisan and adversarial.

Further, a subset of our customers are likely to disapprove of our organisation supporting one or other of the political parties. Others may disapprove of our organisation supporting *any* political party.

45. I am not persuaded that it could reasonably be expected to follow that the third parties, or organisations they represented, would be adversely affected by release of the relevant documents. In saying this I note that it is commonly understood that organisations lobby the government and the opposition alike, and that this does not necessarily mean an affiliation exists with a particular political party. Such an approach is thought to demonstrate common business practice. Furthermore, as I have previously indicated, a significant amount of information demonstrating links between SAPB or the ALP and named individuals and/or organisations is publicly available, or has previously been released to the applicant.
46. I have not been persuaded that disclosure of such information in the context of the relevant documents could reasonably be expected to adversely affect the business affairs of the third parties as required by clause 7(1)(c) of Schedule 1 to the FOI Act.
47. Third party 10 claims that the relevant documents contain 'commercially sensitive trade secrets which are of commercial value' to the company they are associated with and another company (**the other company**), and information concerning the commercial affairs of those companies. Third party 10 considers the fact of their attendance at an SAPB function, among other things, to be exempt, because it may inform competitors of their 'confidential marketing activities, business strategy and business dealings', which may in turn adversely affect the company and the future supply of the information to the agency. When consulted, third party 10 referred to an attachment to one of the documents under review. In an email dated 3 February 2011, Mr Brougham of the agency advised that the agency does not hold a copy of that document. Given this, it is outside the scope of my external review.
48. In my view, the relevant documents contain information of a general nature. I am not satisfied that they contain 'commercially sensitive trade secrets' as required by clause 7(1)(b) of Schedule 1 to the FOI Act. Neither do they appear to demonstrate an unusual or novel commercial approach. Having regard to information available to the applicant, and the contents of the relevant documents, I am not satisfied that their disclosure would adversely affect the company to which third party 10 is directly associated, or the other company. I note that the relevant documents do not even refer to the other company.
49. Third party 17 has not relied on a particular exemption clause, but has raised concerns about the possible effect of disclosure of their identity in response to the FOI application. In support, they have referred to having been targeted by groups within the community. Their response suggests, however, that they have been targeted because of the nature of their business, and not because their identity has been disclosed *per se*. In my view, there is insufficient evidence to show that disclosure of information *in the relevant documents* would adversely affect third party 17's affairs.

50. I am prepared to accept that release of the relevant documents could reasonably be expected to result in SAPB not providing seating plans and lists of attendees for its functions to the agency (and possibly other agencies) in the future. To this extent I am prepared to accept that clause 7(1)(c)(ii)(A) of Schedule 1 to the FOI Act has been satisfied. However, I make the following comments regarding the public interest.

*Public interest*

51. I have balanced the submissions raised by the agency and selected third parties, against the public interest in promoting the objects of the FOI Act. The objects of the FOI Act include to promote 'accountability of Ministers' and to facilitate public participation within representative government.

52. In my view, there is a public interest in people knowing who has had access to the Premier and Ministers at SAPB functions, given that SAPB itself claims to provide:

opportunities for its members to hear directly the government's views and intentions across the entire spectrum of its activity. This is an invaluable tool in ensuring your business is "in sync" with government direction.

53. Such an approach appears to be favoured by the Premier. In response to Queensland Premier Anna Bligh's move to ban her 'ministers from exclusive business fundraisers', Premier Rann is reported to have said that '[t]here is a different corporate culture in Queensland. And what we do is disclose everything and that is the difference.'<sup>17</sup> The Premier is further quoted for his commitment in 2002 to 'lift standards of honesty, accountability and transparency in government':

Secrecy can provide the cover behind which waste, wrong priorities, dishonesty and serious abuse of public office may occur. A good government does not fear scrutiny or openness.<sup>18</sup>

54. The possibility that disclosure of the relevant documents would adversely affect the organisations that the third parties represented and SAPB may be a public interest factor against disclosure of information about them. For the reasons set out above, however, I consider this possible outcome to be unlikely. My view is that if any of the organisations consider that disclosure of the relevant documents would result in less favourable outcomes for proposals they have submitted to the government, this represents a factor in favour of disclosure. The claimed obligation to keep information confidential is also a factor against releasing such information. This is so even though I am not satisfied that disclosure of the relevant documents would found an action for breach of confidence for the reasons set out above.

55. I acknowledge the limited obligation under the *Commonwealth Electoral Act 1918* to publicly disclose the names of people who have made political donations over a certain amount. The *Commonwealth Electoral Act 1918* does not displace the FOI Act, however.

56. I have borne in mind the apparent public interest in there being transparency in political fundraising, as reflected in the media and associated public comments, including as recently as 2 February 2011, and the objects of the FOI Act.<sup>19</sup>

<sup>17</sup> Leah McLennan (Reporter), 'Calls For An ICAC', *Stheadline*, South Australia, 7 August 2009.

<sup>18</sup> South Australia, *Hansard*, Legislative Council, 29 July 2008, 3789 (Rob Lucas).

<sup>19</sup> For example: Sarah Martin, *The Advertiser*, Australia, 'Invisible faces put \$890,000 into ALP' and comments, available from <http://www.news.com.au/adelaidenow> at 2 February 2011; Kim Wheatley, *The Advertiser*, Australia, 'The high price of dining with a pollie' ('Fundraising's high price of dining with a politician') and comments, available from <http://www.news.com.au/adelaidenow> at 12 February 2010; Melvin Mansell (editor), 'Cosy functions need to be transparent', *The Advertiser* (Adelaide, Australia) 9 February 2010, 16; Kim Wheatley,

57. On balance, I am not satisfied that disclosure of the relevant documents would be contrary to the public interest as required by clause 7(1)(c)(ii)(B) of Schedule 1 to the FOI Act.

### *Out of scope*

58. The agency has claimed that information within documents 20, 24 and 32 is not relevant to the application and is therefore outside the scope of my review. I do not accept the agency's claim. The application was for access to 'copies of all documents ... that includes [sic] reference to the body "SA Progressive Business".' In my view the application is not limited to references to SAPB *in* documents 20, 24 and 32. Rather, the entire documents are within the scope of the application.

### *Documents 20 and 24*

59. Documents 20 and 24 are email chains between Mr Owen of *The Australian* and Mr Lachlan Parker (and in one case Ms Bottrall as well) of the agency.
60. The residual information in document 20 consists of five emails, four are of a social nature and do not bear any relationship to Mr Owen's inquiry or Mr Lachlan's response. The fifth email, on the other hand, appears to be linked to the first two emails in the chain. It contains only one word, and nothing of substance, however. In my view the residual information is not exempt, and should be released to the applicant.
61. The residual information in document 24 consists of parts of a 'Statement from the Premier' and discussion between Mr Owen and Mr Parker about aspects of it. In my view, the residual information is not exempt, and should be released to the applicant. Regarding the first part of the email chain in particular, I note that it was a statement issued on behalf of the Premier to a representative of a media organisation.

### *Document 32*

62. The parts of document 32 that have not been released to the applicant consist of notes for a speech given by the Premier to mark Ms White's retirement from politics. The majority of the information is in the public domain and relates to Ms White's career before and after entering parliament. On 31 January 2011 Ms Nielsen of my office consulted Ms White regarding two notes on page 4 concerning her 'personal affairs' pursuant to section 39(10) of the FOI Act. On 4 February 2011 Ms White advised that she does not object to the release of document 32.

### **Determination**

63. In light of my reasoning above, I **reverse** the agency's determination, pursuant to section 39(11) of the FOI Act, to enable documents 17, 20, 21, 24, 26 and 32 to be released in their entirety.

### **Right of appeal**

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*The Advertiser*, Australia, 'Labor refuses to join donation ban', <http://www.news.com.au/adelaidenow/story/0,,26364733-2682,00.html> at 18 November 2009; Hendrik Gout, *The Independent Weekly*, Australia, 'Pressure builds on SA corruption', <http://www.independentweekly.com.au/news/local/news/general/pressure-builds-on-sa-corruption/1582903.aspx> at 1 August 2009; Tom Richardson, *The Independent Weekly*, Australia, 'SA corruption stance not credible', <http://www.independentweekly.com.au/blogs/state-politics/sa-corruption-stance-not-credible/1591624.aspx?storypage=0#> at 10 August 2009. The issue is also being debated interstate (see for example Paul Austin, *The Age*, Australia, 'Brumby is putting on the blinkers', <http://theage.com.au/opinion/politics/brumby-is-putting-on-the-blinkers-20090812-ei9b.html?page=-1> at 13 August 2009).

64. Any person aggrieved by my determination may appeal to the District Court of South Australia under section 40(2) of the FOI Act.
65. The agency may also appeal against my determination, but only on a question of law and only with the permission of the court, under section 40(1) of the FOI Act.
66. Under section 40(3) of the FOI Act, any such appeals should be commenced within 30 days after receiving notice of my determination; or in the case of a person who is not given notice of my determination, within 30 days after the date of my determination.
67. The agency should defer giving effect to my determination until after the expiration of the appeal period, and until any appeals have been finally disposed of.

Richard Bingham  
**SA OMBUDSMAN**

14 February 2011