

**OFFICE OF THE INFORMATION
COMMISSIONER (W.A.)**

**File Ref: F2016223
Decision Ref: D0012019**

Participants:

Bennett & Philp Pty Ltd
Complainant

- and -

Gold Corporation
Agency

DECISION AND REASONS FOR DECISION

FREEDOM OF INFORMATION – refusal of access – documents held by the Perth Mint – documents outside scope of access application – clause 15(1)(b) – whether disclosure would reveal information about a transaction relating to gold or other precious metal received or held by the agency – clause 10(4) – commercial affairs of an agency – whether adverse effect on commercial affairs – clause 10(6) – whether disclosure would, on balance, be in the public interest – clause 5(1)(c) – whether disclosure would reveal a confidential source of information – section 31 – refusal to give information as to the existence or non-existence of the requested documents – clause 2(1)(a) – whether disclosure could reasonably be expected to damage inter-governmental relations – clause 2(2) – whether disclosure would, on balance, be in the public interest – section 24 – whether practicable to edit documents

Freedom of Information Act 1992 (WA): sections 8, 10, 24, 30, 31, 70, 74, 76, 85, 90 and 102; Schedule 1, clauses 2, 5(1), 6(1), 8, 10(1), 10(3), 10(4), 10(6) and 15

Gold Corporation Act 1987 (WA): sections 6 and 74

Interpretation Act 1984 (WA): section 19

Apache Northwest Pty Ltd v Department of Mines and Petroleum [2012] WASCA 167

Attorney-General's Department v Cockcroft (1986) 10 FCR 180

BGC (Australia) Pty Ltd v Fremantle Port Authority (2003) 28 WAR 187

Department of State Development v Latro Lawyers [2016] WASC 108

Manly v Ministry of Premier and Cabinet (1995) 14 WAR 550

Pearlman v The University of Western Australia [2018] WASC 245

Police Force of Western Australia v Winterton (Unreported, Supreme Court of WA, Library No 970646, 27 November 1997)

Public Transport Authority [2018] WASC 47

Re Chesson and Ministry of Fair Trading [2000] WAICmr 32

Re Conservation Council of Western Australia (Inc) and Western Power Corporation
[2006] WAICmr 7

Re Edwards and Electricity Corporation [1999] WAICmr 13

Re Fry and Police Force of Western Australia [1999] WAICmr 28

Re Hemsley and City of Subiaco and Anor [2008] WAICmr 46

Re Kobelke and Ministry of the Premier and Cabinet [1998] WAICmr 6

Re MacTiernan and Department of the Premier and Cabinet [2010] WAICmr 2

Re MacTiernan MLA and Main Roads Western Australia [2017] WAICmr 2

Re Ravlich and Department of Productivity and Labour Relations [2000] WAICmr 58

Re Pillsbury and Department of Mines and Petroleum and Others [2013] WAICmr 1

Re Slater and State Housing Commission of Western Australia [1996] WAICmr 13

Re Styles and City of Gosnells [1996] WAICmr 54

Re West Australian Newspapers Limited and Western Power [2006] WAICmr 10

Re Winterton and Police Force of Western Australia [1997] WAICmr 15

Hansard, Legislative Assembly, 24 November 1992, 7172-7175

DECISION

The agency's decision is varied. I find that:

- Documents 4, 38, 40 and part of Document 20 are outside the scope of the complainant's access application;
- Documents 3, 5, 6, 7, 9-18, 24 and 25 are exempt under clause 15(1)(b) of Schedule 1 to the *Freedom of Information Act 1992 (WA)* (**the FOI Act**);
- Documents 1, 2, 8, 19-23 and 27-37 are exempt under clause 10(4) of Schedule 1 to the FOI Act;
- Documents 26 and 39 are exempt under clause 5(1)(c) of Schedule 1 to the FOI Act;
- the agency's decision to neither confirm nor deny the existence of documents within the scope of point 3 of the complainant's access application under section 31 of the FOI Act is justified on the basis that such documents, if they existed, would be exempt under clause 2(1)(a) of Schedule 1 to the FOI Act; and
- it is not practicable for the agency to give the complainant access to edited copies of the disputed documents in accordance with section 24 of the FOI Act.

Catherine Fletcher
ACTING INFORMATION COMMISSIONER

16 January 2019

REASONS FOR DECISION

1. This complaint arises from a decision made by the Gold Corporation (The Perth Mint Australia) (**the agency**) to refuse Bennett & Philp Pty Ltd (**the complainant**) access to documents under the *Freedom of Information Act 1992* (WA) (**the FOI Act**).

BACKGROUND

2. On 22 March 2016 the complainant applied to the agency under the FOI Act for copies of:
 1. *all documents recording or referring to the Perth Mint's position, including reasons for adopting such position, on the applicability or otherwise of GST on acquisitions by the Perth Mint of scrap or recycled refining material or acquisition by the Perth Mint of such material after refining. Please note that this request is not for copies of transaction documents with Perth Mint customers.*
 2. *every review of Costs and Benefits of Applying Competitive Neutrality conducted pursuant to the Government of Western Australia's Policy Statement on Competitive Neutrality.*
 3. *all documents in your company's possession recording or referring to any complaint or concern by any party (including but not limited to the Government of India or any of its agencies) as to the importation or facilitation of importation of gold or [sic] mined in Australia into India by INTL FCStone Inc or any other entity.*
3. By notice of decision dated 3 May 2016 the agency decided to refuse access to all documents it located within the scope of the complainant's application on the basis that they are exempt under clauses 6, 10 and/or 15 of Schedule 1 to the FOI Act. The agency also advised that it had taken all reasonable steps to locate documents described in point 2 of the complainant's access application and that it was satisfied that the documents do not exist.
4. On 18 May 2016 the complainant applied for internal review of the agency's decision to refuse access to documents under clauses 6, 10 and 15. The complainant did not seek review of the agency's decision that no documents exist within the scope of point 2 of its access application. By letter dated 3 June 2016 the agency confirmed its decision.
5. By letter dated 27 July 2016 the complainant applied to the Information Commissioner (**the Commissioner**) for external review of the agency's decision (**application for external review**).

REVIEW BY THE INFORMATION COMMISSIONER

6. Following receipt of this complaint, the agency produced to the former Commissioner copies of the disputed documents together with its FOI file maintained in respect of the complainant's access application.

7. On 9 September 2016 the agency provided submissions to my office to support its claims for exemption under clauses 6, 10 and 15 of Schedule 1 to the FOI Act. It also raised additional claims for exemption under clauses 2(1) and 5(1) and in relation to section 31.
8. On 21 September 2016 my office gave the complainant a document prepared by the agency which described the categories of documents that the agency had located within the scope of the complainant's application. My officer asked the complainant to review that document and identify which categories of documents it wished to pursue on external review.
9. In a letter dated 24 October 2016 the complainant advised that it maintained its request for all documents identified within the scope of the complainant's application. In that letter the complainant also raised a number of questions regarding the agency's claims for exemption.
10. With the complainant's agreement, my office provided a copy of the complainant's letter dated 24 October 2016 to the agency. By email dated 1 November 2016 the agency advised that it:
 - no longer claims exemption under clause 10(1) but it maintains its claim for exemption under clauses 10(3) and 10(4);
 - relies on section 31 of the FOI Act and claims it is not required to give information as to the existence or non-existence of a document containing matter that would be exempt under clauses 2 or 5; and
 - does not rely on section 31 in relation to documents it claims are exempt under clauses 6 or 10.
11. On 11 November 2016 my officers met with the agency to discuss its claims for exemption. On 18 November 2016 my office requested further information from the agency in relation to certain specific documents. The agency provided my office with further information to support its claims for exemption, in response to my office's request, on 7 December 2016.
12. On 24 February 2017 my office sought clarification from the complainant as to whether it sought access to any documents or correspondence between the agency and its customers or potential customers, or if those documents could be excluded from the scope. The complainant confirmed that it does not seek details of specific or identifiable transactions with clients. However, the complainant maintained its request for communications with clients if those documents contain information regarding the agency's position, including reasons for adopting such position, on the applicability or otherwise of the Goods and Services Tax (GST) on acquisitions by the agency of scrap or recycled refining material or acquisition by the agency of such material after refining. The complainant confirmed that information identifying the customer could be deleted.
13. Following further discussions with my office, the agency withdrew its reliance on section 31 for Documents 8 and 26. My office has also made inquiries with the agency

to ensure that I comply with my obligations under section 74 of the FOI Act set out below in [27] and [133].

14. On 26 October 2017 one of my officers advised the complainant by email that, having discussed this matter with the then Acting Information Commissioner (**the former A/Commissioner**), it was likely that, based on the information currently before her, she would find that the agency's decision to refuse the complainant access to the requested documents is justified under the FOI Act. In light of that, the complainant was invited to reconsider whether or not it still wished to proceed with this matter. The complainant confirmed by email dated 26 October 2017 that it wished to proceed with its complaint.
15. On 28 November 2017, the former A/Commissioner provided the parties with a letter setting out her preliminary view of this matter (**preliminary view letter**). It was her preliminary view, for the reasons given in that letter, that the agency's decision to refuse the complainant access to the disputed documents is justified. The complainant did not accept the preliminary view and provided further submissions by letter dated 14 December 2017 (**further submissions**).
16. My office obtained further information from the agency in response to the complainant's further submissions made in relation to the agency's claims under clauses 10(3), 10(4) and 10(6) and section 31 of the FOI Act. The agency provided its response by letter dated 12 March 2018.
17. On 8 October 2018 I provided the parties with a letter setting out my supplementary preliminary view (**supplementary preliminary view letter**) in respect of Documents 1 and 28-37 and which addressed some of the procedural issues raised by the complainant. It was my supplementary preliminary view, for similar reasons as set out in this decision, that Documents 1 and 28-37 are exempt under clause 10(4) of Schedule 1 to the FOI Act rather than clause 10(3) of Schedule 1 to the FOI Act as stated in the preliminary view letter. In addition, I advised the parties that, having considered the preliminary view letter and all of the information currently before me including the disputed documents, I agreed with the former A/Commissioner's preliminary view as described in the preliminary view letter, apart from as described above.
18. The complainant did not accept my supplementary preliminary view and provided further submissions by letter dated 30 October 2018 (**additional submissions**).
19. By way of observation, during the period that this complaint has been before this office, there have been four different Information Commissioners (one a substantive appointment and three acting, including myself). In my view, this unusually high turnover in Information Commissioners during this period has adversely affected the timely finalisation of this matter.

Preliminary view is not a decision

20. In its additional submissions, the complainant repeatedly referred to the view expressed by the former A/Commissioner in the preliminary view letter, and by me in my supplementary preliminary view letter, as 'decisions'.

21. In *Pearlman v The University of Western Australia* [2018] WASC 245 the Supreme Court of Western Australia (**Supreme Court**) considered the question of whether the expression of a preliminary view by the Information Commissioner is a ‘decision’ within the meaning of section 85(1) of the FOI Act. In doing so Justice Smith observed, at [52], that:

It is entirely proper for a court or tribunal to express a preliminary view so that a litigant can address the issues and problems thereby identified in a preliminary view and attempt to persuade the court or tribunal otherwise...The mere expression of a preliminary view does not constitute prejudgment of an issue.

[citations omitted]

22. Smith J then went on to say at [54]-[55]:

In this matter the preliminary view expressed by the Commissioner is not a ‘decision’ as the expression a mere ‘view’ of the matter is no more than that and did not of itself have any binding effect.

The effect of the content of the Commissioner’s preliminary letter was an expression that on the information before the Commissioner, in the absence of any further submission that could persuade him otherwise, he was of the view that the respondent was justified in refusing access to the documents.

If the Commissioner had subsequently issued a decision that complied with the requirements of s 76(2) and (5) of the FOI Act by dealing with and finally determining the matter, it is clear that the view of the Commissioner expressed in the preliminary letter would not constitute a ‘decision’ within the meaning of s 85(1) of the FOI Act.

23. I consider that the Supreme Court’s observations apply equally in this case and that the views expressed by the former A/Commissioner in the preliminary view letter, and by me in my supplementary preliminary view letter, are not decisions within the meaning of the FOI Act. Rather, my decision is contained in these Reasons for Decision.

Procedure for dealing with complaint

24. In its further submissions, the complainant submits, among other things, that it has not been given a reasonable opportunity to make submissions to me as required by section 70(3) of the FOI Act, having regard to the number of invitations each party received to make submissions during the external review process and the timeframe the complainant was given to make submissions in response to the preliminary view letter.
25. In respect of the first point above, section 70(1) of the FOI Act provides that, in order to deal with a complaint, the Information Commissioner may obtain information from such persons and sources, and make such investigations and inquiries, as he or she thinks fit. In this case, my office made the inquiries considered necessary to both clarify and reduce the issues in dispute and to obtain further information to assist me to determine this matter. In respect of the second point, the period of time that the complainant was given to make submissions in response to the preliminary view letter

is consistent with the usual timeframe this office gives to parties to do so. I note that the complainant provided its submissions in response to the preliminary view letter in the timeframe requested and did not seek an extension of time.

26. Accordingly, I consider that the obligation under section 70(3) of the FOI Act to ensure that the parties to this complaint have been given a reasonable opportunity to make submissions to me have been met.

Section 74 – obligation not to disclose certain information

27. Section 76(5) of the FOI Act requires me to include in my decision on a complaint the reasons for that decision, the findings on any material questions of fact underlying those reasons and reference to the material on which those findings were based. In addition, section 76(8) of the FOI Act provides that my decisions must be published ‘in order that the public is adequately informed of the grounds on which such decisions are made’. However, section 74(1) of the FOI Act requires me to ensure that exempt matter is not disclosed during the course of dealing with a complaint. Section 74(2) places a further obligation on me not to include exempt matter in a decision on a complaint or in reasons given for a decision. Under section 90 of the FOI Act similar provisions apply to the Supreme Court when hearing and determining appeal proceedings.
28. The complainant submits that the preliminary view letter did not provide adequate reasons for the former A/Commissioner’s view that the disputed documents are exempt under the relevant exemption clauses of Schedule 1 to the FOI Act.
29. The Supreme Court in *Manly v Ministry of Premier and Cabinet* (1995) 14 WAR 550 (*Manly*) at 556-557 recognised the difficulties faced by complainants and the constraints placed on the Information Commissioner by the FOI Act but took the view that section 90 – and by implication section 74 – should be construed strictly according to its tenor.
30. Taking into account the provisions of section 76(5) and section 76(8), I have endeavoured, within the constraints imposed upon me by section 74, to give the reasons for my decision and the material before me which supports those reasons. However, I am prevented from discussing, other than in general terms, the information on which my decision is based because to do so would be a breach of my obligations under section 74(2). The former A/Commissioner acknowledged in the preliminary view letter that this may place the complainant at a disadvantage in endeavouring to make meaningful submissions regarding the disputed documents.
31. However, I do not consider that the limits imposed by section 74 result in a denial of natural justice to the complainant.
32. In *Re MacTiernan and Department of the Premier and Cabinet* [2010] WAICmr 2 at [21], the former Commissioner observed that the obligations imposed by the FOI Act on the Information Commissioner to preserve the confidentiality of exempt matter seek to ensure that matter which is asserted to be exempt from disclosure may be scrutinised and examined by an officer quite independent of the agency claiming the exemption – namely, the Information Commissioner, or on appeal, the Supreme Court.

33. As Heenan J in *BGC (Australia) Pty Ltd v Fremantle Port Authority* (2003) 28 WAR 187 at [16] noted:

*That this security and examination of material, in order to protect the confidentiality of the material if the claim is justified, must be conducted without disclosure to the applicant, its counsel or solicitors is one example of these rare instances in which a party to litigation is deprived of full access to all material documents. However, this is not an isolated exception, and policy considerations which have prompted its acceptance, have been recognised in other areas of the law such as the power of a court to inspect documents in respect of which a claim for legal professional privilege has been made, or to scrutinise material relied upon for the issue of a search warrant, or to inspect documents for which a claim of public interest immunity has been asserted, without disclosing them to the party seeking inspection – see *Sankey v Whitlam* (1978) 142 CLR 1 at 46 and 110. None of these examples constitutes any denial of natural justice because, if the claim for privilege, confidentiality or public interest immunity is justifiably made, the party seeking to inspect the documents has no right of any kind to do so. Justice is achieved and the law applied in these situations by an examination of the documents by an independent officer or court acting on settled principles.*

The agency's notices of decision

34. Under section 102(1) of the FOI Act, the onus is on the agency to establish that its decision to refuse the complainant access to the requested documents is justified. The complainant is not required to establish that it is entitled to access the requested documents; it is up to the agency to establish a case for exempting a document from disclosure and to demonstrate that it has established the requirements of any exemption in its notice of decision.
35. Section 30 of the FOI Act sets out the details that must be included in an agency's notice of decision given to an access applicant. If an agency decides to refuse access to a document, section 30(f) of the FOI Act provides that the agency must include the following details in its notice of decision:
- the reasons for the refusal;
 - the findings on any material questions of fact underlying those reasons; and
 - reference or references to the material on which those findings were based.
36. I agree with the view expressed by the former A/Commissioner in the preliminary view letter that, in light of the above, in most cases, and unless an agency is relying on section 31, an agency is required to identify and describe each of the documents located within the scope of an access application; to explain why those documents or parts of documents are exempt; to specify which exemption clause or clauses apply to those documents or parts of documents; and to provide reasons, including material findings of fact, to show why the exemption clause or clauses apply to the document or information in question. I also recognise that in some cases an agency may be limited in the way it can describe the documents located within the scope of an access application, or in the detail an agency can provide to explain the basis for their exemption claim, in order to avoid the disclosure of exempt matter.

37. In this case, neither the agency's initial decision nor its internal review decision complied with the requirements of section 30(f). Apart from citing the exemption clause in respect of each document for which exemption was claimed and giving very brief reasons for its decision, neither decision explained how the requirements of each particular exemption provision were satisfied.
38. Although the agency provided the complainant with additional information in its internal review decision to explain why it considers the documents are exempt, the agency still did not address each criterion for each of the exemption clauses. Further, neither decision identified the documents that were located within the scope of the complainant's access application or provided reasons why the documents were not identified to the complainant.
39. I also agree with the view expressed by the former A/Commissioner in the preliminary view letter that the agency's notice of decision should have included a description of each of the documents located within the scope of point 1 of the complainant's access application, including the date of the document, the nature of the document (e.g. email, letter, report), and the author of the document or who the communication in the document was between. I also consider that this could have been done without disclosing exempt matter.
40. However, I consider that the above deficiency in the agency's notice of decision has been cured by the description of the documents my office has given to the complainant as described below.

THE DISPUTED DOCUMENTS AND ISSUES FOR DETERMINATION

41. The disputed documents consist of the 40 documents identified by the agency as coming within the scope of point 1 of the complainant's access application.
42. My office has prepared a schedule of the disputed documents which is contained at the Appendix to this decision. Throughout this decision I have adopted the document numbering as set out in that schedule.
43. The complainant submits that the description of the disputed documents as set out in the Appendix – which is the same as the Appendix to the preliminary view letter – is not adequate and does not 'comply' with the 'indicia' described at [39] above. In particular, the complainant submits that the description of the documents in the Appendix does not include the author of the documents. While I accept that the latter submission is correct, the Appendix does describe, albeit generally, who the communication in each document was between. The disputed documents are described in general terms having regard to the constraints imposed upon me by section 74 of the FOI Act. In my view, that description provides the level of detail that can be given, in accordance with my comments at [39], without disclosing exempt matter.
44. During the external review process, the agency amended its claims for Documents 20, 38 and 40 and now claims that those documents are outside the scope of the access application either in full or in part. The agency claims that the remaining disputed

documents are exempt under clauses 2, 5(1), 6(1), 8, 10(3), 10(4) and 15(1)(b), as set out in the Appendix to this decision.

45. In addition, without confirming or denying the existence of documents within the scope of point 3 of the complainant's access application, the agency relies on section 31 of the FOI Act to refuse access to such documents on the basis that, if they existed, they would be exempt from disclosure under clauses 2 or 5 of Schedule 1 to the FOI Act.
46. Section 76(1)(b) of the FOI Act provides that in dealing with a complaint, the Commissioner has the power to decide any matter in relation to an access application that could, under the FOI Act, have been decided by the agency.
47. There are three issues that I must determine in this matter. First, whether any of the disputed documents are outside the scope of the complainant's access application as the agency claims or based on my review of the documents. Second, whether or not the remaining disputed documents are exempt from disclosure as claimed by the agency or for any other reason. Third, whether or not the agency is entitled to rely on section 31 to refuse access to documents of the kind described in point 3 of the complainant's access application, on the basis that such documents, if they existed, would be exempt from disclosure under clauses 2 or 5 of Schedule 1 to the FOI Act.

DOCUMENTS THAT ARE OUTSIDE THE SCOPE OF THE ACCESS APPLICATION

48. As noted at [44], although the agency initially claimed that Documents 20, 38 and 40 were exempt under clauses 6(1), 10(3), 10(4) or 15(1), the agency now claims that Documents 38, 40 and part of Document 20 are outside the scope of the complainant's access application. I have reviewed those documents and am satisfied that they do not contain information as described in points 1, 2 or 3 of the complainant's application. As a result, I find that Documents 38, 40 and part of Document 20 are outside the scope of the complainant's application and I have not considered them further.
49. In addition, based on my examination of Document 4, I consider that this document does not contain information as described in points 1, 2 or 3 of the complainant's access application. Accordingly, I find that Document 4 is not within scope of the complainant's application and I have not considered it further.

CLAUSE 15(1) – GOLD OR OTHER PRECIOUS METALS

50. Clause 15(1) of Schedule 1 to the FOI Act provides as follows:

(1) Matter is exempt matter if its disclosure would reveal information about –

- (a) gold or other precious metal received by Gold Corporation from a person, or held by Gold Corporation on behalf of a person, on current account, certificate of deposit or fixed deposit; or*
- (b) a transaction relating to gold or other precious metal received or held by Gold Corporation.*

(2) *In this clause –*

Gold Corporation means the Gold Corporation constituted under section 4 of the Gold Corporation Act 1987 or a subsidiary of Gold Corporation within the meaning of that Act.

51. I note that this office has not previously considered the application of the exemptions in clause 15. I also note that there is no equivalent provision to clause 15 in any other jurisdiction in Australia.
52. Section 19 of the *Interpretation Act 1984* (WA) provides that certain extrinsic material may be considered in the interpretation of a provision of a written law. That includes any relevant material in any official record of proceedings in either House of Parliament: section 19(2)(h).
53. I note that in the parliamentary debates following the Second Reading of the *Freedom of Information Bill 1992 (the FOI Bill)*, the Honourable David Smith MLA – the then Minister for Justice and the Minister in charge of the FOI Bill – said the following about the purpose of the exemption in clause 15:

The purpose of this extra exemption is that Gold Corporation operates like a bank with trading accounts in precious metals. It was not intended that the accounts of individuals would be made public through FOI legislation. ...

[Hansard, 25 November 1992, 7172]

...

This clause is intended to recognise that Gold Corporation is international in its activities, and that it wanted to be able to say to people that the information would be kept secret and not have to refer people to the interpretation of other clauses or to the limitations in other clauses in respect of public interest. ...

...The sole reason for Gold Corporation's existence is to buy and sell gold and to allow people to trade in precious metal. For that reason, it was thought appropriate to have a specific exemption to deal with those aspects...

[Hansard, 25 November 1992, 7173]

54. The following debate also took place between Hon C Edwardes MLA and Hon D Smith MLA in relation to the scope of paragraph (b) of clause 15(1) and the meaning of ‘transaction’:

Mr D.L. SMITH: Paragraph (b) relates to individual transactions. ...This provision is attempting to exempt the actual transaction relating to gold or other precious metals received or held by Gold Corporation.

Mrs Edwardes: Is that when they make large purchases of gold perhaps ready for sale?

Mr D.L. SMITH: Or even small purchases of gold for the purposes of later resale.

Mrs Edwardes: Why would that information need to be kept confidential?

Mr D.L. SMITH: Because the transaction would be with an individual. We would not want individuals or gold mining companies having their receipts or advice about how much they are paid for their gold or how much gold they delivered made public.

Mrs Edwardes: Is “transaction” defined sufficiently?

Mr D.L. SMITH: The dictionary and legal definition is wide enough to include most transactions...

[Hansard, 25 November 1992, 7174-7175]

55. Clause 15(1) contains two separate exemptions and there are no limitations that apply to either exemption. As a result, if I find that the disclosure of matter would reveal information of the kind described in clause 15(1)(a) or (b) then the matter will be exempt from disclosure under the FOI Act.
56. In this case, the agency claims that Documents 1-6, 9-21 and 23-25 are exempt under clause 15(1)(b), among other exemption clauses. To satisfy the requirements of clause 15(1)(b) it must first be established that disclosure of the matter would reveal information about a transaction. Second, it must be established that the transaction relates to gold or other precious metal received or held by Gold Corporation.

The complainant’s submissions

57. The complainant’s submissions are set out in its application for external review and in its letter to my officer dated 27 February 2017. In summary, the complainant submits as follows:
 - Point 1 of the complainant’s application specifically excludes ‘copies of transaction documents with Perth Mint customers’.
 - The only material sought by point 1 of the complainant’s application is material relating to the agency’s position on the applicability of GST in the abstract, not in relation to specific transactions. Therefore, clause 15 cannot apply.
 - Although the complainant does not seek access to specific transaction documents with clients, where documents contain information regarding the agency’s position on the applicability or otherwise of GST on acquisitions by the agency of scrap or recycled refining material or acquisition by the agency of such material after refining, the complainant seeks access to those documents, including if it is a communication with a customer referring to the agency’s general GST policy. However, the complainant would expect any information identifying the customer would be deleted.
 - The agency has taken a very wide interpretation of clause 15 that goes against the purpose and object of the FOI Act.

The agency's submissions

58. The agency's submissions are set out in its notices of decision dated 3 May 2016 and 3 June 2016, and its letter to my office dated 9 September 2016. In summary, the agency submits that Documents 1-6, 9-21 and 23-25 are exempt under clause 15(1)(b) because their contents concern customer transactions and, as a result, their disclosure would reveal information about a transaction relating to gold or other precious metals received by the agency.
59. The agency has provided further specific information to my office to support its claim that the information in certain documents concerns customer transactions. However, my obligations under section 74 prevent me from disclosing that information.

Consideration

60. I have examined Documents 1-6, 9-21 and 23-25.
61. Documents 3, 5, 6, 9-18, 24 and 25 consist of internal email correspondence, correspondence between the agency and its customers and a history of client transactions. I consider that these documents contain information about transactions between the agency and its customers and, if disclosed, they would reveal information about a transaction between the agency and its customers.
62. My office requested further information from the agency to determine whether the transactions referred to in the documents relate to gold or other precious metal being received or held by the agency, as required by the second part of clause 15(1)(b). After considering the further information provided by the agency, I am satisfied that each of the transactions the subject of Documents 3, 5, 6, 9-18, 24 and 25 relate to gold or other precious metal being received or held by the agency. Therefore, I consider that these documents are exempt under clause 15(1)(b).
63. The agency does not claim that Document 7 is exempt under clause 15(1)(b). However, as already noted, section 76(1)(b) empowers me to decide any matter in relation to the access application that could have been decided by the agency. Based on my examination of Document 7, I consider that the disclosure of Document 7 would reveal information about a transaction that relates to gold or precious metal being received or held by the agency. Accordingly, I am satisfied that Document 7 is exempt under clause 15(1)(b).
64. In summary, I find that Documents 3, 5, 6, 7, 9-18, 24 and 25 are exempt under clause 15(1)(b). In light of this finding, it is not necessary for me to consider whether those documents are exempt under any of the other exemption clauses claimed by the agency and I have not done so.
65. However, I am not satisfied that Documents 1, 2, 19-21, and 23 contain information about a transaction that relates to gold or other precious metal being received or held by the agency. Therefore, I do not consider those documents are exempt under clause 15(1)(b). However, I consider that those documents are exempt under clause 10(4), for the reasons set out below.

CLAUSE 10(4) – COMMERCIAL AFFAIRS OF AN AGENCY

66. The agency claims that Documents 1, 2, 8, 19-23 and 27-37 (**the Clause 10 documents**) are exempt under clause 10(4), among other exemptions.

67. Clause 10, in so far as relevant, provides as follows:

10. State's financial or property affairs, matter adversely affecting etc.

(1) ...

(2) ...

(3)

(4) *Matter is exempt matter if its disclosure –*

(a) *would reveal information (other than trade secrets or information referred to in subclause (3)) concerning the commercial affairs of an agency; and*

(b) *could reasonably be expected to have an adverse effect on those affairs.*

(5) ...

(6) *Matter is not exempt matter under subclause (1), (2), (3), (4) or (5) if its disclosure would, on balance, be in the public interest.*

68. The exemptions in clause 10 reflect the commercial reality that many State and local governments are increasingly engaged in commercial activities and are intended to ensure that the commercial and business affairs of government agencies – conducted by those agencies for and on behalf of the Western Australian public – are not jeopardised by the disclosure of documents under the FOI Act unless there is a public interest that requires such disclosure.

69. As the complainant has correctly submitted in its additional submissions:

The specific language of clauses 10(1), 10(3) and 10(4) makes it clear that those subclauses are directed at protecting different kinds of information from disclosure under the FOI Act. Whilst an agency may claim exemption for the disputed matter under more than one subclause of clause 10, clauses 10(1), 10(3) and 10(4) are mutually exclusive exemption clauses.

See [43] of *Re Hemsley and City of Subiaco and Anor* [2008] WAICmr 46, referred to at [93] of *Re MacTiernan MLA and Main Roads Western Australia* [2017] WAICmr 2.

The agency's submissions

70. The agency's submissions are set out in its notices of decision dated 3 May 2016 and 3 June 2016, its letter to my office dated 9 September 2016 and its email to my office dated 18 November 2016. In summary, the agency submits as follows:

- Under section 6 of the *Gold Corporation Act 1987* (**the GC Act**) the agency is required to perform its functions in accordance with prudent commercial principles and use its best endeavours to derive a profit by earning a commercial rate of return on its capital.
- Section 74 of the GC Act provides that, subject to any other laws, no agency employee may divulge information concerning the business affairs of another person to any third party.
- In order to fulfil its statutory functions, the agency must operate, trade and deal in the refining industry in an economically viable and competitive manner and the Board must use its best endeavours to derive a profit by earning a commercial rate of return on its capital. This includes ensuring that the agency maintains good relations with its customers and contract partners and maintains the confidentiality of its practices and policies from its competitors (including its tax positions and treatment of each business activity engaged in).
- The agency operates in a very competitive environment.
- The GST treatment of precious metal transactions is complex.
- Due to its significant commercial and financial impact, applying the correct GST treatment is critical to ensure the commercial survival of the agency.
- Over time, the agency has developed compliant policies and processes and made a substantial investment in legal and taxation advice to this end. This advice has commercial value to the agency.
- Some of the disputed documents contain information that reveals that advice or the benefits of that advice.
- The agency's competitors may use the information in the documents to entice existing customers of the agency to their refinery with more favourable terms or the agency's competitors may utilise the information for their own benefit in producing its GST policies without having to pay for the expert advice.
- The agency's customers are highly sensitive to privacy and confidentiality matters and they frequently enquire about the privacy and confidentiality of any information provided to the agency.
- Disclosure of the documents, even with business information of third parties deleted, is likely to undermine the confidence and trust currently placed in the

agency by the global gold industry, and/or damage the agency's reputation as a confidential, commercial counterparty.

The complainant's submissions

71. The complainant's submissions are set out in its application for external review. In summary, the complainant submits as follows:
- The agency merely asserts that the documents have a commercial nature and the damage that would result from disclosure. The agency has not described the nature of the commercial value the material contains, or set out how disclosure could diminish that value.
 - It is often the case that agreements with government agencies contain a clause to the effect that a party contracting with the State acknowledges that materials produced pursuant to the contract may be subject to an FOI application.
 - The agency has not provided any findings on the material questions of fact underlying its reasons for relying on clause 10 as required by section 30(f). The agency has not displaced its onus as set out in section 102(1).
 - The agency has not properly applied the public interest test. The agency has formed a belief for why access is being sought and has used that belief as a reason to refuse access to the documents contrary to section 10 of the Act. The documents should be released on the basis that the agency failed to meet the onus under section 102(1) of the FOI Act that it is not in the public interest for these documents to be released.
72. In addition, in its further submissions the complainant claims, in summary, that:
- No authority has been provided for the proposition that the agency deserves special treatment under the FOI Act.
 - Any information on the application of the GST is already public knowledge, and disclosure of that information therefore cannot have an adverse effect on the commercial affairs of the agency.
73. In response to the claims made at the above two bullet points, the agency submits that it is not suggested that it deserves any special treatment under the FOI Act; and disputes the claim that any information on the application of the GST is already public knowledge, noting the distinction between 'the public's knowledge of the *content* of a law and the public's knowledge of the *application* of that law to the operations of a business in a particular scenario, having regard to all the relevant facts and circumstances (agency emphasis)'.
74. In its additional submissions, the complainant, in summary, submits that:
- Information about the agency's GST policies is not information relating to its commercial affairs. Therefore, the requirements of paragraph (a) of clause 10(4) have not been met.

- Disclosure of the Clause 10 documents could not reasonably be expected to have an adverse effect on the agency's affairs. Therefore, the requirements of paragraph (b) of clause 10(4) have not been met.

Consideration

75. In *Re Conservation Council of Western Australia (Inc) and Western Power Corporation* [2006] WAICmr 7 (**Re Conservation Council**), the Commissioner made the following observations, at [32], about the application of clause 10(4):

The exemption provided by clause 10(4) is more general in its terms than that in clauses 10(1) and 10(3). It is directed at protecting the commercial affairs of the State or an agency from adverse effects so that the competitive positions of those bodies are not undermined and so that they are not placed at a commercial disadvantage. Unlike the legislation in other jurisdictions in which the term 'business, professional, commercial or financial affairs' is used, the exemption in clause 10(4) is concerned only with the "commercial affairs" of the State or an agency. However, in my view, the commercial affairs of an agency may also include its business and financial affairs.

I agree with those observations.

76. The Commissioner also said the following about the purpose of the exemption in clause 10(4) at [124] of *Re Conservation Council*:

I ... recognise a public interest in the agency not being commercially disadvantaged in a competitive market place by virtue of its accountability obligations. Therefore, I recognise a public interest in protecting the confidentiality of commercial information that could reasonably be expected to have an adverse effect on the agency's commercial affairs if disclosed. That is the purpose of the clause 10(4) exemption...

77. In this case, the agency must meet with the requirements of both paragraphs (a) and (b) of clause 10(4) in order to establish a prima facie claim for exemption. That is, the agency must show that disclosure of the Clause 10 documents would reveal information concerning the commercial affairs of an agency and that disclosure of that information could reasonably be expected to have an adverse effect on those affairs. If the requirements of both of those paragraphs are satisfied, the Clause 10 documents will be exempt under clause 10(4), subject to the application of the limit on exemption in clause 10(6).

78. The first question for my determination is whether, if disclosed, the Clause 10 documents would reveal information concerning the commercial affairs of an agency. In *Re Slater and State Housing Commission of Western Australia* [1996] WAICmr 13 at [30], the former Commissioner said:

[T]he mere fact that there are commercial aspects to the agency's operations is not sufficient, in my view, to conclude that a document acquired to assist the agency in making commercial decisions necessarily contains information

‘concerning the commercial affairs of the agency’. Whether a particular document is one that concerns the commercial affairs of the agency depends on a proper characterisation of the contents of the document.

79. In its additional submissions, the complainant submits that:

A review of the type of information that has been held to relate to “commercial affairs” in previous decisions under Clause 10(4) confirms that matters such as business plans, prices and commercial dealings are all issues that the Courts have recognised in the past as being legitimate “commercial affairs” [citing six previous decisions of this office, not decisions of a court].

However, the payment of GST, which is a fixed percentage of the price of the good or service being purchased, is not a commercial or business or financial matter. It is a statutory or regulatory matter concerning compliance with the A New Tax System (Goods and Services Tax) Act 1999 (GST Act). The material cannot therefore satisfy Clause 10(4)(a) as it is not material relating to commercial affairs.

We are not aware of any case where an agency's payment of tax was found to be a “commercial affair”....

Therefore, any argument that the agency's GST policies are “commercial” because they are required for the agency to remain “competitive” is not supported by the FOI Act and should not be accepted.

80. The agency has referred to section 6 of the GC Act in its submissions. Section 6 provides:

6. Functions of the Board

- (1) *The Board is the governing body of Gold Corporation and its subsidiaries, the Mint and GoldCorp.*
- (2) *Subject to this Act, the Board has power —*
 - (a) *to determine the policy of Gold Corporation, the Mint and GoldCorp in relation to any matter and to control the affairs of Gold Corporation and each of its subsidiaries; and*
 - (b) *to determine the respective functions and operations to be performed by Gold Corporation and each of its subsidiaries.*
- (3) *Subject to this Act, the Board shall —*
 - (a) *perform the functions and develop and expand the business of Gold Corporation and its subsidiaries for the benefit and to the greatest advantage of the people of Australia;*
 - (b) *perform its functions in accordance with prudent commercial principles; and*
 - (c) *use its best endeavours to ensure that the revenue of Gold Corporation is sufficient to meet its expenditure and to derive a profit by earning a commercial rate of return on its capital.*

81. Having regard to the nature of the agency's functions as set out above and its unique position as a government agency trading for profit, I consider that it is more likely that a document acquired or created to assist the agency in making commercial decisions will 'concern the commercial affairs of the agency'.
82. I have examined the Clause 10 documents. I am satisfied that, if disclosed, these documents would reveal information concerning the commercial affairs of the agency because they reveal information about its customers and transactions or information about the agency's GST policies or GST advice received. I consider that this type of information relates to the commercial affairs of the agency.
83. I am not persuaded by the complainant's submissions at [79]. The disputed information does not have to 'be a commercial affair of the agency'; rather it must be 'information concerning the commercial affairs of the agency' and I am satisfied for the above reasons that it is.
84. The next question for my consideration is whether disclosure of these documents could reasonably be expected to have an adverse effect on the agency's commercial affairs. In *Attorney-General's Department v Cockcroft* (1986) 10 FCR 180 the Full Federal Court of Australia said, at 190, that the words 'could reasonably be expected to' in the Commonwealth FOI Act were intended to receive their ordinary meaning. That is, they require a judgment to be made by the decision maker as to whether it is reasonable, as distinct from something that is irrational, absurd or ridiculous, to expect the relevant outcome. That approach was accepted as the correct approach by the Court of Appeal (WA) in *Apache Northwest Pty Ltd v Department of Mines and Petroleum* [2012] WASCA 167.

Documents 19, 20, 21, 22 and 23

85. Documents 19, 22 and part of Document 21 consist of communications between the agency and its existing customers. Documents 20, 23 and the remainder of Document 21 are internal communications relating to the agency's existing customers.
86. I accept that the agency operates in a competitive global environment where sensitivity and confidentiality are expected by existing customers and potential customers.
87. In my view, the disclosure of Documents 19-23 could reasonably be expected to result in existing and/or potential customers losing confidence in the sensitive and confidential service provided by the agency. I also accept that it could reasonably be expected that potential customers who discovered that the agency had disclosed communications with, or relating to, its existing customers, may be discouraged from doing business with the agency. Therefore, I am satisfied that the disclosure of Documents 19-23 could reasonably be expected to have an adverse effect on the agency's commercial affairs.
88. In saying this, I do not intend to suggest that the FOI Act should be applied to the agency in such a way as to result in any document held by the agency being exempt from disclosure because of the agency's unique commercial function. However, I consider the particular legislated commercial function of the agency means that there

may be a different outcome when applying the FOI Act to documents that contain communications between the agency and its customers, as compared to other agencies who may also deal with customers.

89. The complainant submits that no authority has been provided for the proposition that the agency deserves special treatment under the FOI Act. I have advised the complainant that I do not consider that the agency deserves special treatment under the FOI Act, nor does the agency contend this. In its additional submissions, the complainant maintains that my comments at [87] are ‘reasons why the agency does deserve special treatment in relation to the application of [c]lause 10(4) to Documents 2, 8, 19-23 and 27’. However, I remain of the view that the agency does not deserve special treatment under the FOI Act and I do not consider my comments at [87] are inconsistent with this view.
90. The agency submits that the number of participants in the gold industry in Australia is relatively small and the participants are familiar with each other. The agency submits that even if the names of the third parties were removed from the disputed documents, those within the industry would still be able to identify the third party from the context of the document. I accept that that could potentially be true for some documents. However, I consider that even if the third parties could not be identified from the documents, disclosure could still reasonably be expected to have an adverse effect on the commercial affairs of the agency.
91. This situation can be distinguished from other matters involving the business information of third parties. Typically, third party businesses who engage with a government agency want the agency’s business. In those situations, it is in the third parties’ interest to approach the agency and provide the relevant information in order to secure business. However, in this situation the agency is the one who needs to attract customers to its services in order to be able to make a profit. It is essential for the agency to attract and retain customers to perform its statutory function. Therefore, actions that may discourage customers from doing business with the agency could reasonably be expected to have an adverse effect on its commercial affairs.
92. In its additional submissions, the complainant claims that I am, in effect, saying that ‘the agency must be able to give its customers “express assurances of confidentiality”. Failure to do so would mean the agency would potentially lose customers to its commercial competitors’. The complainant contends that this view is contrary to the comment made by the Commissioner in *Re Conservation Council* at [117] that ‘Since the commencement of the FOI Act, no agency can give any person or organisation express assurances of absolute confidentiality’.
93. The complainant also submits that the adverse effect arising from the inability to provide absolute confidentiality is not the ‘adverse effect’ clause 10(4)(b) was designed to resolve; and that, as customers who deal with the agency now are already doing so with the knowledge that the agency is subject to the FOI Act, it therefore does not see how applying the FOI Act to the agency could discourage customers in their dealings with the agency.
94. I do not agree with the complainant’s claim that I am, in effect, saying that the agency must be able to give its customers express assurances of confidentiality. In my view,

the question is not whether the application of the FOI Act could discourage customers in their dealings with the agency; the relevant question is whether disclosure of these documents under the FOI Act could reasonably be expected to have an adverse effect on the agency's commercial affairs if customers lose confidence in the confidential aspect of some of the services provided by the agency or if customers are discouraged from doing business with the agency. In my view, the answer to that question is yes.

Documents 1, 2, 8 and 27-37

95. Documents 2, 8 and 27 are internal communications regarding the agency's GST policies. Document 1 is a memorandum from a third party to the agency providing advice on secondary refinement and GST. Documents 28-30 consist of agency GST position papers. Documents 31-37 are different draft versions of the agency's GST policy manual and covering emails attached to each draft.
96. The agency submits that it has made a substantial investment in legal and taxation advice to develop its policies; that the agency must ensure that it complies with ATO requirements and that its GST policies are commercially competitive in order to fulfil its obligations under section 6 of the GC Act; that its GST policy manual is not publicly available; and that it does not offer tax advice to its clients.
97. In the agency's annual report for 2015/2016, at page 20, the Chief Executive Officer's 'Year in Review' statement refers to the competitive nature of the gold industry as follows:

Competition in the precious metals refining sector remains high, with additional capacity locally and offshore adding to what is already a global excess. This has led to rounds of industry price-cutting to retain volume.

98. From the agency's submissions, I understand that the purpose of seeking taxation and legal advice when creating its GST policies is to ensure that the agency is compliant with its GST obligations while also remaining competitive against other industry players. The agency submits that, if the documents are disclosed, their competitors may use the information in the documents to entice existing and potential customers of the agency to their refinery with more favourable terms or the agency's competitors may utilise the information for their own benefit in producing its GST policies without having to pay for the expert advice.
99. Given the specialised nature of the agency's commercial operations and the limited pool of like competitors, I accept that disclosure of the information in Documents 1, 2, 8 and 27-37 could reasonably be expected to enable a competitor to review and adjust its own GST policies to give it a commercial advantage over the agency. As a result, I accept that the commercial advantage the information gives to the agency would be lost or reduced by disclosure of the information and that this loss of commercial advantage could reasonably be expected to adversely affect the agency's commercial affairs. Therefore, I am satisfied that the disclosure of Documents 1, 2, 8 and 27-37 could reasonably be expected to have an adverse effect on the agency's commercial affairs.
100. Further, as disclosure of information under the FOI Act is considered to be disclosure to the world at large – see *Public Transport Authority* [2018] WASC 47 at [71] – it is not

relevant whether or not the access applicant is an industry competitor of the agency; the effects of disclosure are generally considered as though disclosure were to the world, rather than only to the particular access applicant.

101. In its additional submissions the complainant claims that a number of the documents, which it has specified, are between 2 and 7 years old and that ‘the age of a document is a factor to consider in relation to whether an exemption applies under clause 10(4)(b),’ citing comments made in *Re West Australian Newspapers Ltd and Western Power Corporation* [2005] WAICmr 10 and *Re Edwards and Electricity Corporation* [1999] WAICmr 13. While I generally agree with this submission, it does not alter my view that the disclosure of the Clause 10 documents could reasonably be expected to have an adverse effect on the agency’s commercial affairs, for the reasons I have given.
102. In its further submissions the complainant submits that the preliminary view letter did not deal with its submission made in its application for external review in relation to section 74 of the GC Act. The complainant claims that, although those submissions were originally made in relation to clause 10(1), they apply equally to the agency’s clauses 10(4) claims.
103. In this regard the complainant submits, citing section 74 of the GC Act and section 8 of the FOI Act, that there are no provisions in either of those Acts that state that section 74 of the GC Act has effect despite the FOI Act. The complainant contends, therefore, that ‘it cannot be maintained by the [agency] that its customers rely on section 74 of the [GC Act] in relation to non-disclosure of information in relation to the application of the FOI Act’.
104. I agree that the secrecy provisions in section 74 of the GC Act do not override the FOI Act and I understand that the agency does not contend otherwise. I consider that section 74 of the GC Act is relevant in this matter only to the extent that its existence bears on the question of whether the disputed documents in this matter are exempt under the provisions in Schedule 1 to the FOI Act.
105. The complainant claims that disclosure of these documents could not have an adverse effect on the agency’s affairs because any information on the application of the GST is already public knowledge. The complainant submits that ‘the agency's arguments that this is somehow not the case cannot be held to be “persuasive in the sense that it is based on real and substantial grounds and must commend itself as the opinion of a reasonable decision-maker.”’, citing *Manly* at page 573 (my emphasis). However, in my view that is not the test in this case for the reasons set out below.
106. In *Re Pillsbury and Department of Mines and Petroleum and Others* [2013] WAICmr 1 (*Re Pillsbury*), the former Commissioner considered a similar claim that the test for whether disclosure ‘could reasonably be expected’ to have a certain effect under the FOI Act is whether there are ‘real and substantial grounds’, in light of Owen J’s comments in *Manly*. However, for the reasons given in *Re Pillsbury* at [25]-[31], I consider that the approach to the meaning of the phrase ‘could reasonably be expected to’ in the FOI Act that I am bound to follow is as described at [84] in these Reasons for Decision.

107. Understandably, the complainant's claim is made without the benefit of seeing the content of the disputed documents themselves. However, I have examined the disputed documents and considered the agency's claims and accept that the information in the documents regarding the agency's position on the applicability of GST – being the information requested by the complainant at point 1 of its access application in this regard – is not public knowledge.
108. During the course of this external review, both parties have made submissions to my office – most recently, the complainant in its additional submissions – as to whether or not the law in relation to the way in which GST is applied to the process of refining scrap precious metal is settled. However, as I am satisfied for the reasons given in these Reasons for Decision that the disclosure of Documents 1, 2, 8 and 27-37 could reasonably be expected to have an adverse effect on the agency's commercial affairs, I do not consider it is necessary for me to decide whether the above mentioned law is settled and I have not done so.
109. In its additional submissions, the complainant contends that 'no evidence' has been provided by the agency in support of a number of its claims. As the Supreme Court observed in *Department of State Development v Latro Lawyers* [2016] WASC 108 (*Latro Lawyers*) at [59], the rules of evidence do not apply to a decision of the Commissioner: section 70(2) of the FOI Act.
110. In that case, Beech J said, at [63]:

Even if the rules of evidence applied (which they do not), the contents of documents and the inferences that can be drawn from those contents are evidence. To my mind, the [submissions of the agency in that case] plainly included evidence in support of the conclusions they invited.

111. Further, I consider that the effect of that decision – which, as a decision of the Supreme Court, is binding upon me – is that the issue of whether disclosure of the Clause 10 documents could reasonably be expected to have an adverse effect on the commercial affairs of the agency does not have to be established by objective evidence outside of the submissions made by the agency: see [65] of *Latro Lawyers*.
112. In this case, based on the agency's submissions, the contents of the documents and the inferences that can be drawn from them, I am satisfied that the disclosure of the Clause 10 documents could reasonably be expected to have an adverse effect on the agency's commercial affairs. Accordingly, I find that the Clause 10 documents are prima facie exempt under clause 10(4). As a result, it is necessary for me to consider whether the public interest limitation on the exemption in clause 10(6) applies to those documents.
113. For the sake of completeness, I note that in its additional submissions, the complainant submits that:

[W]e have not been made aware of any findings of fact underlying the reasons for relying on Clause 10(4). For example, in the matter of West Australian Newspapers Limited and Western Power, Re [2006] WAICmr 10, the Commission[er] in that matter considered that in supporting a finding of adverse effect, the agency should have at least provided:

“disclosure on its profitability or how the adverse effect claimed would be 'substantial' in the context of its overall financial affairs.”

No evidence of this nature has been provided by the agency and the claim the agency's response has somehow satisfied the onus pursuant to section 102 should not be accepted.

114. I understand that the above submission refers to comments made in *Re West Australian Newspapers Limited and Western Power* [2006] WAICmr 10 where the Commissioner said at [104]:

WPC [the agency] provided me with no findings on the material questions of fact underlying its reasons for relying on clause 10(1). For example, WPC made no attempt to estimate the impact of the Report's disclosure on its profitability or how the adverse effect claimed would be 'substantial' in the context of its overall financial affairs.

115. The above comments were in the context of a claim that a document was exempt under clause 10(1) of Schedule 1 to the FOI Act, which provides that matter is exempt if its disclosure could reasonably be expected to have a substantial adverse effect on the financial or property affairs of the State or an agency, compared to clause 10(4) where the term 'adverse effect' is not prefaced by the word 'substantial' (my emphasis). Accordingly, I do not consider that the complainant's submission described at [113] alters my finding at [112].

The public interest

116. Clause 10(6) provides that matter is not exempt under clause 10(4) if its disclosure would, on balance, be in the public interest. The complainant submits that the agency has failed to satisfy its onus to establish that disclosure is not in the public interest. However, under section 102(3) of the FOI Act, the complainant bears the onus, as the access applicant, of persuading me that disclosure of the Clause 10 documents would, on balance, be in the public interest and that the limit in clause 10(6) applies.
117. In its further submissions the complainant submits, in summary, that 'whether or not the [agency], a statutory entity, is properly complying with the provisions of the GST Act is in the public interest'. The agency maintains that the public interest factors in favour of non-disclosure outweigh the public interest factors in favour of disclosure.
118. In its additional submissions the complainant submits, in summary, that:
- If the documents disclose that the agency did not pay GST on purchases of secondary gold, the disclosure of this material would be in the public interest.
 - The public has a right to know if its government agencies have been acting in compliance with legislative requirements.

- As observed in *Re Conversation Council*, there is a public interest in the accountability of agencies for the manner in which they discharge their obligations on behalf of the Western Australian public.
119. I agree with the complainant that there is a public interest in the public knowing whether agencies are complying with their legislative obligations. However, the complainant has not provided any information to support a submission that the agency has not complied with its obligations to pay GST.
120. I also recognise that there is a public interest in the accountability of agencies for the manner in which they discharge their obligations on behalf of the public of Western Australia. In my view, that accountability includes informing the public, wherever possible, of the basis for decision-making and the material considered relevant to the decision-making process. However, that public interest factor has limited weight in this unique circumstance where the agency is required to use its best endeavours to derive a profit, and disclosure of the material considered relevant to the decision-making process would have an impact on the agency's ability to fulfil that obligation.
121. I consider it is in the public interest for the agency to be able to fulfil its obligations under its enabling legislation. Further, section 6(3)(a) of the GC Act notes that the agency's obligations to develop and expand the business is 'for the benefit and to the greatest advantage of the people of Australia'.
122. On the information before me, I am not persuaded that the disclosure of the Clause 10 documents would, on balance, be in the public interest. Therefore, I find that the Clause 10 documents are exempt under clause 10(4) and the agency's decision to refuse access to those documents is justified. In light of that finding, it is not necessary for me to consider whether those documents are exempt under any of the other exemption clauses claimed by the agency and I have not done so.

CLAUSE 5 – LAW ENFORCEMENT

123. The agency claims that Document 26 is exempt under various subclauses of clause 5(1). As already noted, section 76(1)(b) gives me the power to make any decision in relation to the access application that the agency could have made under the FOI Act. Although the agency did not claim that Document 39 is exempt under clause 5(1), I consider that both Documents 26 and 39 are exempt under clause 5(1)(c) for the following reasons.
124. Clause 5(1)(c) provides:
- (1) *Matter is exempt matter if its disclosure could reasonably be expected to –*
 - (a) ...
 - (b) ...
 - (c) *enable the existence, or non-existence, or identity of any confidential source of information, in relation to the enforcement or administration of the law, to be discovered.*

125. For a document to be exempt under clause 5(1)(c) there are three requirements that must be established: the source of information must be confidential; the information given must relate to the enforcement or the administration of the law; and it must be shown that disclosure could reasonably be expected to enable the existence or identity of that confidential source to be discovered: *Re Styles and City of Gosnells* [1996] WAICmr 54 at [15].
126. The exemption in clause 5(1)(c) refers to a ‘confidential source of information’ and is therefore, in my view, not directed at protecting from disclosure a source of ‘confidential information’. In other words, the requirement of confidentiality in clause 5(1)(c) relates to the nature of the source rather than the nature of the information. The information supplied from a confidential source need not be confidential (although it may be), but it must relate to the enforcement or administration of the law: *Re Chesson and Ministry of Fair Trading* [2000] WAICmr 32 at [65].
127. I have examined Documents 26 and 39 and considered further information provided to me by the agency. I am satisfied that the disclosure of Documents 26 and 39 could reasonably be expected to enable the identity of a confidential source of information in relation to the enforcement or administration of the law to be discovered. Consequently, I find that those documents are exempt under clause 5(1)(c).
128. The complainant argues in its further submissions that it is unable to make any meaningful submissions on the application of clause 5(1) without information about the contents and nature of Documents 26 and 39 and without further reasons for my view. However, as already noted, my obligation under section 74 of the FOI Act limits the detail I can provide for the reasons for my view and I acknowledge that this places the complainant at a disadvantage in making meaningful submissions in this regard.
129. In light of my finding that Documents 26 and 39 are exempt under clause 5(1)(c), it is not necessary for me to consider whether those documents are also exempt under the other exemptions claimed by the agency, as set out in the schedule of documents in the Appendix to this decision, and I have not done so .

SECTION 31 – INFORMATION AS TO THE EXISTENCE OF DOCUMENTS

130. Without confirming or denying the existence of documents within the scope of point 3 of the complainant’s access application, the agency has refused access to such documents under section 31 of the FOI Act on the basis that any such documents, if they existed, would be exempt from disclosure under clauses 2 or 5 of Schedule 1 to the FOI Act.
131. Section 31 of the FOI Act provides:
- (1) *Nothing in this Act requires the agency to give information as to the existence or non-existence of a document containing matter that would be exempt matter under clause 1, 2 or 5 of Schedule 1.*
 - (2) *If the access application relates to a document that includes, or would if it existed include, exempt matter of a kind referred to in subsection (1), the agency may*

give written notice to the applicant that the agency neither confirms nor denies the existence, as a document of the agency, of such a document but that, assuming the existence of such a document, it would be an exempt document and, where such a notice is given –

- (a) section 30 applies as if the decision to give such a notice were a decision referred to in that section; and*
- (b) for the purposes of this Act, the decision is to be regarded as a refusal of access to the document because the document would, if it existed, be an exempt document.*

132. I recognise that an agency's reliance upon section 31 of the FOI Act is not without difficulties for both the Information Commissioner and for complainants. In *Re Fry and Police Force of Western Australia* [1999] WAICmr 28 at [8]-[11], the Commissioner explained the difficulties, as follows:

Section 31 of the FOI Act clearly demonstrates that the Parliament of Western Australia recognised that, in certain circumstances, a decision-maker may be confronted with a request for documents which may be exempt from disclosure but where the character of the document described in the access application is such that the mere acknowledgment of the document's existence, accompanied by a denial of access, would itself reveal exempt matter and thereby cause the damage which the exemption is designed to prevent. It also recognises those circumstances in which merely confirming that documents do not exist would itself be a disclosure of information which could cause the kind of harm to the public interest that the exemptions are designed to protect.

133. Section 74(1)(b) of the FOI Act requires that, when I am dealing with a complaint that involves the use of section 31, I must do such things as I think necessary to avoid the disclosure of information as to the existence or non-existence of a document containing matter that is exempt under clauses 1, 2 or 5 of Schedule 1. Further, section 74(2) places a further obligation on me not to include information of a kind referred to in section 74(1)(b) in a decision on a complaint or in reasons given for a decision. This means that my procedures must be tailored to the particular circumstances of the complaint and I am limited to giving my reasons for my decision in relation to the agency's section 31 claim in general terms only.

134. I note that, in its internal review decision, the agency characterised the documents sought under point 3 of the complainant's access application as 'documents that... relate to the importation of gold into India by a counterparty of the agency'. The complainant submits that this is a mischaracterisation of its request under this part of its access application.

135. I have proceeded on the basis that the scope of point 3 of the complainant's access application is as described at [2] of this decision. That is:

[A]ll documents in your company's possession recording or referring to any complaint or concern by any party (including but not limited to the Government of India or any of its agencies) as to the importation or facilitation of importation

of gold or [sic] mined in Australia into India by INTL FCStone Inc or any other entity.

The complainant's submissions

136. The complainant's submissions are set out in its letter to my office dated 24 October 2016. In summary, the complainant submits as follows:

- The agency has already admitted that documents exist within point 3 of the access application in its notices of decision.
- The most appropriate course of action is for the agency to waive any claim under section 31 and the Commissioner to decide on the actual exemption being claimed as was done in *Re Kobelke and Ministry of the Premier and Cabinet* [1998] WAICmr 6 (*Re Kobelke*).

The agency's submissions

137. The agency submits that:

- Section 31 provides that the agency is not required to give information about the existence or non-existence of documents that contain matter which would be exempt under clauses 2 or 5. On that basis, the agency is not required to give the complainant any details relating to the possible existence of such documents, including the reasons why those document would be exempt.
- The agency's notices of decision merely state that there may be documents which potentially fall within scope of the complainant's request.
- The decision in *Re Kobelke* did not consider the application of section 31 and can be distinguished from the current matter.
- Documents within the scope of this request, if they existed, would be exempt under clause 2 of Schedule 1 to the FOI Act.
- The Commissioner has said that the exemption in clause 2 is directed at protecting the relationship and flow of information between the Western Australian Government and other governments.
- It would not be in the public interest to disclose documents that would fall within the scope of point 3 of the complainant's application, whether they actually exist or not, because communications of such a nature are made in confidence and there would be a real risk that disclosure would prejudice the agency's trading relationship with other governments.
- Documents within the scope of this request, if they existed, would be exempt under clause 5 of Schedule 1 to the FOI Act.

Consideration

138. I do not accept the agency's claim that it is not required to give reasons why documents of the type requested in point 3 of the complainant's access application would, if they existed, be exempt when relying on section 31. Section 31(2)(a) of the FOI Act states that a notice under section 31(1) is a decision to which section 30 applies. Section 31(2)(b) states that that decision is regarded as a refusal of access to the document because the document would, if it existed, be an exempt document. Section 30, as described above, requires an agency to give reasons for its decision to refuse access to a document.
139. While I acknowledge that an agency is not required to disclose exempt matter when giving the reasons for its decision, which may limit the reasons an agency is able to give to an applicant, section 31 does not permit an agency to make a decision without giving reasons for that decision.
140. The complainant submits that the most appropriate course of action is for the agency to waive any claim under section 31 because it has already admitted that documents exist, as was the case in *Re Kobelke*. In *Re Kobelke* the Commissioner did not require that the agency withdraw its section 31 claim. The decision to withdraw a section 31 claim is at an agency's discretion. The agency in this case claims that it did not confirm the existence of documents within the scope of point 3 of the complainant's application as its decision stated 'there are limited documents potentially meeting the criteria in Request 3 and, on a strict reading of the complainant's request, there may be none that meet those criteria'.
141. As the agency has exercised its discretion to continue to rely on its claim under section 31 for documents of the kind requested in point 3 of the complainant's access application, my role in this matter is to determine whether the agency's reliance on section 31 to neither confirm nor deny the existence of documents within the scope of point 3 of the complainant's application is justified on the basis that such documents, if they existed, would be exempt under clauses 2 or 5. I have first considered whether such documents would, if they existed, be exempt under clause 2.

Clause 2 – inter-governmental relations

142. Clause 2 of Schedule 1 to the FOI Act provides as follows:

- (1) *Matter is exempt matter if its disclosure —*
- (a) *could reasonably be expected to damage relations between the Government and any other government; or*
 - (b) *would reveal information of a confidential nature communicated in confidence to the Government (whether directly or indirectly) by any other government.*
- (2) *Matter is not exempt matter under subclause (1) if its disclosure would, on balance, be in the public interest.*

(3) *In this clause —*

other government means the government of the Commonwealth, another State, a Territory or a foreign country or state.

143. To establish an exemption under clause 2(1)(a), the agency must show that disclosure of the documents as described in point 3 of the complainant's access application, if they existed, could reasonably be expected to damage relations between the State Government and any other government. If the agency establishes a prima facie exemption claim, the onus shifts to the complainant, as the access applicant, to demonstrate that disclosure would, on balance be in the public interest and that clause 2(2) applies.
144. Point 3 of the complainant's access application requests access to documents recording or referring to any complaint or concern by any party, including the Government of India, as to the importation into India of gold that was mined in Australia.
145. I consider that any documents from the Government of India or its agencies relating to a complaint or concern regarding the importation of gold into India to the Government or agency would consist of sensitive communications. I understand that importation of gold is a globally competitive industry and I would therefore expect that communications between governments regarding the importation of gold would be confidential in nature.
146. Due to the nature of importing and exporting gold, if there were concerns about the importation of gold into India raised by a party that resulted in communications between the Government or the agency and the Government of India, I consider that that information would be particularly confidential in nature and disclosure of that information could reasonably be expected to damage relations between the Government and another government (namely, the Government of India). Therefore, I consider that documents of the kind requested in point 3 of the complainant's access application would be prima facie exempt under clause 2(1)(a).
147. The agency has provided additional information to me which I am prevented from disclosing due to my obligations under section 74. Again, I acknowledge that this may put the complainant at a disadvantage in responding with meaningful submissions. However, my duty under section 74 to protect from disclosure matter claimed to be exempt and information as to the existence or non-existence of a document containing matter that is exempt under clauses 1, 2 or 5 of Schedule 1 is paramount.
148. In the complainant's application for external review, the complainant referred to two documents that are mentioned in judgements of the High Court of Karnataka in India. One document is a statement of the agency referred to at paragraph 25 of the Petition Judgment and the other is a letter from the agency to the Directorate of Revenue Intelligence in New Delhi, India at paragraph 14 of the Appeal Judgment. Both the Petition Judgment and the Appeal Judgment were attached to the complainant's application for external review.
149. Without confirming or denying whether those documents exist and are held by the agency, I consider that documents of that nature would also be exempt under clause 2(1)(a) for the reasons given above.

150. As I consider that documents of the kind requested in point 3 of the complainant's access application would be exempt under clause 2(1)(a), I have considered whether the public interest limit on the exemption in clause 2(2) would apply.

Clause 2(2) - the public interest

151. Clause 2(2) provides that matter is not exempt under clause 2(1) if its disclosure would, on balance, be in the public interest.
152. In its further submissions the complainant submits that disclosure of any documents of the type requested would be in the public interest and that the limit in clause 2(2) would apply. The complainant submits that:

[T]he [agency's] special position as the pre-eminent refiner of gold in Australia, and as a statutory body, means the [agency] is seen as a role model and standard for other participants in the industry to measure themselves against. Any records of the [agency] which involves how it conducts its business and how that affects other members of the Australian gold industry are of critical public importance for the setting of standards and norms that all parties abide by.

153. The agency submits that it is neither accepted nor relevant that the agency sets standards or norms for the public to follow and claims that the complainant's further submissions raise matters that are of a private, not public, nature.
154. As observed at [120], I acknowledge that there is a public interest in the accountability of agencies for the manner in which they discharge their functions on behalf of the public of Western Australia, including informing the public, where possible, of the basis for decision-making and the material considered relevant to the decision-making process. However, the complainant's request for documents in this case appears to relate to matters of a private nature and I do not consider that disclosure of such documents would, on balance, support this public interest.
155. In *Re Ravlich and Department of Productivity and Labour Relations* [2000] WAICmr 58, the Commissioner said, at [32]:

Weighing against disclosure, I recognise a public interest in preserving the flow of information between governments and inter-governmental cooperation so that joint initiatives can be effectively and efficiently implemented. I also consider that there is a strong public interest maintaining the capacity of governments to communicate in confidence with each other and with the knowledge that confidences will be honoured.

156. I agree with that view. In balancing the public interests for and against disclosure, I am not satisfied that the public interests favouring disclosure outweigh the public interests favouring non-disclosure. Therefore, I do not consider that the limit on exemption in clause 2(2) would apply to documents of the kind described at point 3 of the complainant's access application.

157. Based on all the information before me, I am satisfied that documents of the kind described in point 3 of the complainant's access application, if they existed, would be exempt under clause 2(1)(a). As a result, I find that the agency's reliance on section 31 to neither confirm nor deny the existence of such documents is justified. In light of my finding, it is not necessary for me to consider the agency's claim that such documents, if they existed, would also be exempt under clause 5 and I have not done so.

SECTION 24 - EDITING

158. In its application for external review the complainant submits that the disputed documents could be edited to remove any exempt information in accordance with section 24 of the FOI Act.

159. Section 24 of the FOI Act provides:

If -

- (a) the access application requests access to a document containing exempt matter; and*
- (b) it is practicable for the agency to give access to a copy of the document from which the exempt matter has been deleted; and*
- (c) the agency considers (either from the terms of the application or after consultation with the applicant) that the applicant would wish to be given access to an edited copy,*

the agency has to give access to an edited copy even if the document is the subject of an exemption certificate.

160. The complainant has referred to a decision of the Commissioner in *Re Winterton and Police Force of Western Australia* [1997] WAICmr 15, as the basis for their argument that section 24 only refers to the physical practicability of editing a document and that it is not relevant whether the agency considers the documents to be intelligible following the editing. However, the application of section 24, and particularly the qualification contained in paragraph (b) of section 24, was discussed in the appeal of that decision to the Supreme Court. In *Police Force of Western Australia v Winterton* (Unreported, Supreme Court of WA, Library No 970646, 27 November 1997) (**Winterton**) Scott J, at page 16, said as follows:

It seems to me that the reference to the word "practicable" is a reference not only to any physical impediment in relation to reproduction but also to the requirement that the editing of the document should be possible in such a way that the document does not lose either its meaning or its context. In that respect, where documents only require editing to the extent that the deletions are of a minor and inconsequential nature and the substance of the document still makes sense and can be read and comprehended in context, the documents should be disclosed. Where that is not possible, however, in my opinion, s.24 should not be used to provide access to documents which have been so substantially altered as to make them either misleading or unintelligible.

161. In its further submissions the complainant stated that it does not accept, if the exempt material is deleted and access given to edited copies, that the disputed documents would be ‘misleading or unintelligible’. The complainant submits that ‘The right of access under section 10 should only be abridged in strict accordance with the Act and access should be provided to documents, even if almost entirely redacted’.
162. I am bound to apply *Winterton*. Accordingly, I have considered whether it would be practicable to provide the complainant with edited copies of the disputed documents from which the exempt information has been deleted in accordance with *Winterton*. In my view, it would not be practicable for the agency to edit the disputed documents because significant editing would be required to avoid disclosure of the exempt matter which would then render those documents unintelligible. As a result, I find that it is not practicable for the agency to give the complainant access to edited copies of the disputed documents in accordance with section 24 of the FOI Act.

CONCLUSION

163. For the reasons set out in this decision, I find that:
- Documents 4, 38, 40 and part of Document 20 are outside the scope of the complainant’s access application;
 - Documents 3, 5, 6, 7, 9-18, 24 and 25 are exempt under clause 15(1)(b) of Schedule 1 to the FOI Act;
 - Documents 1, 2, 8, 19-23 and 27-37 are exempt under clause 10(4) of Schedule 1 to the FOI Act;
 - Documents 26 and 39 are exempt under clause 5(1)(c) of Schedule 1 to the FOI Act;
 - the agency’s decision to neither confirm nor deny the existence of documents within the scope of point 3 of the complainant’s access application under section 31 of the FOI Act is justified on the basis that such documents, if they existed, would be exempt under clause 2(1)(a) of Schedule 1 to the FOI Act; and
 - it is not practicable for the agency to give the complainant access to edited copies of the disputed documents in accordance with section 24 of the FOI Act.

APPENDIX

SCHEDULE OF DOCUMENTS

Document Number	Date	Description	Agency's exemption claims	Decision
1	8 March 2016	Memorandum to agency prepared by third party	Clauses 6(1), 10(3), 10(4), 15(1)(b)	Exempt cl 10(4)
2	2 March 2016	Internal agency email	Clause 10(4)	Exempt cl 10(4)
3	24 February 2016	Internal agency emails	Clauses 6(1), 10(4), 15(1)(b)	Exempt cl 15(1)(b)
4	19 February 2016	Internal agency email	Clauses 10(4), 15(1)(b)	Out of scope
5	19 February 2016	Internal agency emails	Clauses 10(4), 15(1)(b)	Exempt cl 15(1)(b)
6	19 February 2016	Internal agency emails containing email from third party	Clauses 6(1), 10(3), 10(4), 15(1)(b)	Exempt cl 15(1)(b)
7	17 February 2016	Internal agency emails	Clauses 10(3), 10(4)	Exempt cl 15(1)(b)
8	18 February 2016	Internal agency emails containing email from third party	Clauses 2, 5(1), 6(1), 8, 10(3), 10(4)	Exempt cl 10(4)
9	9 April 2016	Internal agency emails containing emails from third party	Clauses 6(1), 10(3), 10(4), 15(1)(b)	Exempt cl 15(1)(b)
10	26 March 2016	Email from agency to third party	Clauses 10(4), 15(1)(b)	Exempt cl 15(1)(b)
11	Undated	Internal agency memorandum	Clauses 10(3), 10(4), 15(1)(b)	Exempt cl 15(1)(b)
12	28 August 2013	Email from agency to third party	Clauses 15(1)(b)	Exempt cl 15(1)(b)
13	28 August 2013	Letter from agency to third party	Clauses 10(3), 10(4), 15(1)(b)	Exempt cl 15(1)(b)
14	6 November 2013	Letter from agency to third party	Clauses 10(3), 10(4), 15(1)(b)	Exempt cl 15(1)(b)
15	13 November 2013	Letter from third party to agency	Clauses 10(3), 10(4), 15(1)(b)	Exempt cl 15(1)(b)
16	19 June 2013	Internal agency emails	Clauses 10(3), 10(4), 15(1)(b)	Exempt cl 15(1)(b)
17	5 July 2013	Internal emails containing email from third party	Clauses 6(1), 10(3), 10(4), 15(1)(b)	Exempt cl 15(1)(b)
18	29 May 2013	Internal emails containing email from third party	Clauses 6(1), 10(3), 10(4), 15(1)(b)	Exempt cl 15(1)(b)
19	9 October 2011	Emails between agency and third party	Clauses 10(3), 10(4), 15(1)(b)	Exempt cl 10(4)
20	7 February 2012	Internal agency emails containing email from third party	Clauses 6(1), 10(3), 10(4), 15(1)(b). Part of document out of scope.	Exempt cl 10(4); part of document out of scope.

Document Number	Date	Description	Agency's exemption claims	Decision
21	9 February 2012	Internal agency email	Clauses 6(1), 10(3), 10(4), 15(1)(b)	Exempt cl 10(4)
22	23 January 2012	GST ruling of third party attached to Document 21	Clause 10(4)	Exempt cl 10(4)
23	10 February 2012	Internal agency notes	Clauses 6(1), 10(4), 15(1)(b)	Exempt cl 10(4)
24	2 April 2012	Internal agency email	Clause 15(1)(b)	Exempt cl 15(1)(b)
25	30 August 2011	Email from agency to third party	Clause 15(1)(b)	Exempt cl 15(1)(b)
26	14 July 2015	Briefing paper from agency	Clauses 2(1), 5(1), 10(4)	Exempt cl 5(1)(c)
27	28 October 2014	Internal agency emails containing emails from third party	Clauses 6(1), 10(3), 10(4)	Exempt cl 10(4)
28	May 2013	Agency GST position paper	Clauses 6(1), 10(3), 10(4). Part of document out of scope.	Exempt cl 10(4)
29	5 March 2014	Email between agency and third party with GST position paper attached.	Clauses 6(1), 10(3), 10(4). Part of document out of scope.	Exempt cl 10(4)
30	19 January 2016	Agency GST position paper prepared by third party	Clauses 6(1), 10(3), 10(4). Part of document out of scope.	Exempt cl 10(4)
31	13 April 2015	Internal agency email with draft GST policy manual attached	Clauses 6(1), 10(3), 10(4). Part of document out of scope.	Exempt cl 10(4)
32	5 October 2015	Internal agency email with draft GST policy manual attached	Clauses 6(1), 10(3), 10(4). Part of document out of scope.	Exempt cl 10(4)
33	6 October 2015	Internal agency email with draft GST policy manual attached	Clauses 6(1), 10(3), 10(4). Part of document out of scope.	Exempt cl 10(4)
34	8 October 2015	Email from agency to other agency officers and third party, with draft GST policy manual attached	Clauses 6(1), 10(3), 10(4). Part of document out of scope.	Exempt cl 10(4)
35	15 October 2015	Email from third party to agency with draft GST policy manual attached	Clauses 6(1), 10(3), 10(4). Part of document out of scope.	Exempt cl 10(4)
36	22 October 2015	Email from agency to third party with draft GST policy manual attached	Clauses 6(1), 10(3), 10(4). Part of document out of scope.	Exempt cl 10(4)
37	26 October 2015	Email from third party to agency with draft GST policy manual attached	Clauses 6(1), 10(3), 10(4). Part of document out of scope.	Exempt cl 10(4)
38	12 November 2015	Internal agency email	Out of scope	Out of scope
39	23 November 2015	Email from third party to agency	Clauses 6(1), 10(4)	Exempt cl 5(1)(c)

Freedom of Information

Document Number	Date	Description	Agency's exemption claims	Decision
40	10 January 2014	Internal agency presentation	Out of scope	Out of scope