

**Decision D0012021 – Published in note form only**

***Re Onslow Salt Pty Ltd and Department of Jobs, Tourism, Science and Innovation [2021] WAICmr 1***

**Date of Decision: 12 February 2021**

***Freedom of Information Act 1992 (WA): section 65; Schedule 1, clause 4(3)***

On 27 February 2020, Onslow Resources Ltd (**the access applicant**) applied to the Department of Jobs, Tourism, Science and Innovation (**the agency**) under the *Freedom of Information Act 1992 (WA)* (**the FOI Act**) for access to the environmental reports submitted by a third party, Onslow Salt Pty Ltd (**the complainant**) to the agency, for a number of specified years.

The scope of the access application was reduced by agreement between the agency and the access applicant to extracts from the Annual Environmental Report (**AER**) submitted by the complainant for the year 2015-2016. The AER is submitted by the complainant to the agency in accordance with the requirements of the *Onslow Solar Salt Agreement Act 1992*.

After seeking the views of the complainant, pursuant to section 33 of the FOI Act, the agency decided, on 29 May 2020, to refuse the access applicant access to the requested information.

On 11 June 2020, the access applicant sought internal review of the agency's decision. The agency reversed its decision on 23 June 2020 and decided to give the access applicant access to the requested information.

On 23 July 2020, the complainant applied to the Information Commissioner (**the Commissioner**) for external review of the agency's decision. The agency provided the Commissioner with its FOI file maintained in respect of the access application, together with the AER.

The access applicant was joined as a party to the matter pursuant to section 69(3) of the FOI Act.

The complainant claimed that particular, identified information (**the disputed information**) in the AER was exempt under clause 4(3) of Schedule 1 to the FOI Act, and additionally that other information was out of scope of the access application.

On 19 November 2020, after considering the material then before her, the Commissioner provided the parties with her preliminary view of the matter. It was her preliminary view that the disputed information was not exempt under clause 4(3) of Schedule 1 to the FOI Act.

The Commissioner was also of the view that the complainant's right, as a third party, to seek review of the agency's decision to give access to a document under section 65 of the FOI Act is limited to whether the document is exempt under clauses 3 or 4 of Schedule 1 to the FOI Act: *Re Tallentire and Department of Agriculture and Food [2015] WAICmr 2* at [160].

The complainant was invited to accept the Commissioner's preliminary view or to provide further submissions.

By letter dated 4 December 2020, the complainant indicated that it did not accept the Commissioner's preliminary view and provided further submissions.

After considering all of the information before her, including the complainant's further submissions, the Commissioner was not dissuaded from her preliminary view.

The exemption in clause 4(3) is concerned with protecting from disclosure information about the business, professional, commercial or financial affairs of a person. The exemption consists of two parts and the requirements of both parts (a) and (b) must be satisfied in order to establish a prima facie claim for exemption. If the requirements of both parts (a) and (b) are satisfied, the application of the limit on the exemption in clause 4(7), the public interest, must also be considered.

Clause 4(3)(a) provides that matter is exempt matter if its disclosure would reveal information about the business, professional, commercial or financial affairs of a person. The Commissioner accepted that, given the nature of the AER, the disputed information, if disclosed, would reveal information about the business affairs of the complainant. Therefore, the Commissioner considered that the requirements of clause 4(3)(a) had been met.

Clause 4(3)(b) provides that if disclosure of the matter described in clause 4(3)(a) could reasonably be expected to have an adverse effect on those affairs or prejudice the future supply of information of that kind to the Government or to an agency, then that matter will be exempt.

The Commissioner considered that, as the complainant is required by statute to provide the information in the AER to the agency, it was not open to the complainant to refuse to provide information of that kind to the agency. Accordingly, the Commissioner was not persuaded that disclosure could reasonably be expected to prejudice the future supply of information of that kind to the Government or an agency.

Taking into account all of the information before her, including the information on the complainant's website about its activities; the fact that the complainant was the only operator with a licence to undertake the particular activities at the particular site; and the information already publicly available about the operations of the complainant, the Commissioner was not persuaded that disclosure of the disputed information could reasonably be expected to have an adverse effect on the affairs of the complainant. Therefore, the Commissioner found that the requirements of clause 4(3)(b) had not been met. As a result, the Commissioner was not required to consider the limit on the exemption in clause 4(7) and she did not do so.

Accordingly, the Commissioner found that the disputed information was not exempt under clause 4(3) of Schedule 1 to the FOI Act and confirmed the agency's decision.