

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

**File Ref: F2014199
Decision Ref: D0202015**

Participants:

Kenneth Dunstan Elder Travers MLC
Complainant

- and -

Public Transport Authority
Agency

DECISION AND REASONS FOR DECISION

FREEDOM OF INFORMATION – refusal of access – documents relating to a proposed rail link – section 30(f) – the requirements of a notice of decision – clause 1(1) – whether disclosure would reveal deliberations or decisions of an Executive body – clause 1(1)(b) – whether documents contain policy options or recommendations for possible submission to an Executive body – clause 6(1) – deliberative processes - disclosure would reveal opinion, advice, consultation and deliberation – public interest factors for and against disclosure – balancing the public interests.

Freedom of Information Act 1992: section 30(f); Schedule 1, clauses 1(1), 1(1)(b), 1(2), 1(5) and 6(1)

Public Sector Management Act 1994

Health Department of Western Australia v Australian Medical Association Ltd [1999] WASCA 269 at [18]

Ministry for Planning v Collins (1996) 93 LGERA 69

Minister for Regional Development; Lands [2009] WAICmr 9

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

Re BGC (Australia) Pty Ltd and Port Hedland Port Authority [2011] WAICmr 38

Re Edwards and Minister for Transport [2000] WAICmr 39

Re Environmental Defender's Office (Inc) and Ministry for Planning [1999] WAICmr 35

Re Farina and WA Country Health Service – South West [2013] WAICmr 16

Re Martin and Ministry for Planning; Martin and Department of Land Administration [2000] WAICmr 56

Re McKay and Water Corporation [2009] WAICmr 35

Re Post Newspapers Pty Ltd and Town of Cottesloe [2013] WAICmr 27

Re Ravlich and Minister for Regional Development [2009] WAICmr 9

Re Terrestrial Ecosystems and Department of Environment and Conservation

[2013] WAICmr 9

Re WA Newspapers Ltd and Civil Service Association of WA Inc and Salaries and Allowances

Tribunal and Mercer (Australia) Pty Ltd [2007] WAICmr 20

Re Watson and Minister for Forestry [2011] WAICmr 8

DECISION

The agency's decision is set aside. In substitution I find that the disputed documents are not exempt under clause 1(1)(b) or clause 6(1) of Schedule 1 to the *Freedom of Information Act 1992*.

Sven Bluemmel
INFORMATION COMMISSIONER

30 October 2015

REASONS FOR DECISION

1. This complaint arises from a decision made by the Public Transport Authority (**the agency**) to refuse Kenneth Dunstan Elder Travers MLC (**the complainant**) access to documents under section 65(1)(d) of the *Freedom of Information Act 1992* (**the FOI Act**).

BACKGROUND

2. In an undated access application, the complainant applied to the Department of Transport (**the Department**) under the FOI Act for access to documents relating to the proposed extension of the Thornlie train line. Specifically, the complainant sought access to:
 - all documents regarding the proposed extension of the Thornlie Line to Cockburn Central also referred to as the extension of the Thornlie line to the Mandurah line.
 - all animations, promotional material, art-work, signage, posters or publicity about an extension of the Thornlie Line to Cockburn Central and/or the Mandurah line, between the dates of 1 August 2012 to the date of the access application.
3. The cheque accompanying the complainant's access application is dated 15 March 2014. According to the date stamp marking the cheque as received in the Department, it appears the complainant's access application was received in the Department on 18 March 2014.
4. In accordance with section 15(1) of the FOI Act and under cover of a letter dated 10 April 2014, received in the agency on 11 April 2014, the Department transferred the complainant's access application to the agency.
5. By notice of decision dated 11 June 2014 the agency identified and listed 39 documents as coming within the scope of the complainant's access application. Mr Peter Martinovich, the agency's Executive Director Infrastructure Planning and Land Services, decided to refuse access to those 39 documents under clause 1 and clause 6(1)(a) of Schedule 1 to the FOI Act.
6. The agency identified two additional documents as coming within the scope of the complainant's access application. Accordingly, in another notice of decision dated 26 June 2014, Mr Mark Burgess, the agency's Managing Director refused access to those two additional documents, under clauses 1 and 6(1)(a) of Schedule 1 to the FOI Act.
7. On 4 July 2014, the complainant applied for internal review of both of the agency's decisions. By letter dated 17 July 2014, the agency varied its decision dated 11 June 2014 in relation to the 39 documents identified as coming within the scope of the complainant's access application. The effect of the variation was to decide to give the complainant access to some of the 39 documents in edited form, with information deleted under clause 3(1) and on the basis that it is outside the scope of the access application. In relation to the decision dated 26 June 2014, the agency advised the

complainant that internal review was not available as Mr Burgess is the principal officer of the agency. By letter dated 25 July 2014, the complainant applied to me for external review of both decisions made by the agency.

REVIEW BY THE INFORMATION COMMISSIONER

8. Following my receipt of this complaint, the agency produced to me the original of the disputed documents together with its FOI file maintained in respect of the complainant's access application.
9. Having reviewed those documents, I considered that the agency's notices of decision do not comply with section 30 of the FOI Act. Accordingly, by email dated 26 August 2014, the agency was invited to provide the complainant with written submissions detailing all of the arguments upon which it relies to support its claims that the disputed documents are exempt under clauses 1 and 6(1)(a) of Schedule 1 to the FOI Act.
10. On 5 September 2014, the agency provided the complainant with its response and a schedule of documents.
11. Having examined all of those documents, including the agency's notices of decision, there are a number of procedural matters on which I comment below concerning the manner in which the agency dealt with the application.

PROCEDURAL ISSUES

12. Section 30 of the FOI Act sets out the details that must be included in a 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.
13. In the circumstances of this matter, the notices of decision should explain how and why the disputed documents meet the requirements of clause 1 including the particular sub-clause of clause 1 on which the agency chooses to rely. In addition, the notice of decision should explain how and why the disputed documents meet each element of the exemption clause – in this case both paragraphs (a) and (b) of clause 6(1) – with reference to, and explanation of, the material facts. The material facts are those which are necessary to constitute the exemption claimed.
14. To comply with the requirements of section 30(f) of the FOI Act, it was necessary in the circumstances of this matter for the notices of decision to identify how disclosure of information in the disputed documents would on balance be contrary to the public interest, other than by simply referring to the exemption clause.

15. The obligation to provide an access applicant with a notice of decision that contains all of the information prescribed by section 30 of the FOI Act is intended to ensure that the true basis of a decision is clearly and intelligibly explained. An applicant should be able to understand all of the elements involved in applying a particular exemption and why access is being refused. In this case, I consider that both the agency's initial and internal review decisions are deficient because they do not comply with the statutory requirements of section 30 of the FOI Act.
16. I acknowledge that in certain circumstances, including the circumstances of this matter, an agency may be restrained from identifying exempt information, and that this may limit how much detail the agency is able to include in its decision. However, as I have noted in a number of my decisions, and most recently, in *Re Post Newspapers Pty Ltd and Town of Cottesloe* [2013] WAICmr 27 at [28] to [34], if an agency gives an applicant a notice of decision that does not contain sufficient findings of fact and a clear statement of the basis on which an exemption is claimed, it is unlikely that the applicant will have a clear understanding of the reasons why access is refused and why the requirements of any exemption clause or clauses are satisfied.
17. Only if applicants understand all of the elements involved in applying a particular exemption and why access is refused are they in a position to decide whether to accept the decision or to test it by way of external review on complaint to the Information Commissioner.

Onus on agency

18. Section 102(1) of the FOI Act provides that, except where subsection (2) or (3) applies, in any proceedings concerning a decision made under the FOI Act by an agency, the onus is on the agency to establish that its decision was justified or that a decision adverse to another party should be made. The onus is on the agency to establish that access to the disputed documents should not be given.

Principal Officer of the agency

19. Section 100 of the FOI Act requires that decisions made under the FOI Act are to be made by the agency's principal officer or an officer of the agency directed by the principal officer for that purpose either generally or in a particular case. Further, clause 1 in the Glossary to the FOI Act, 'principal officer' means, amongst other things, 'in relation to a department of the Public Service or an organisation specified in column 2 of Schedule 2 to the *Public Sector Management Act 1994* – the chief executive officer of that department or organisation. According to the organisational structure in the agency's 2014 Annual Report the role of Managing Director of the agency is subordinate to the Chief Executive Officer.
20. Accordingly, I do not consider that it was correct for the agency to advise the complainant in this matter, as it did in its notice of decision dated 26 June 2014, that the complainant did not have a right of internal review of that decision. In my view, based on the information contained in the agency's Annual Report, its Managing Director is not its principal officer for the purposes of the FOI Act.

THE DISPUTED DOCUMENTS

21. There are 39 documents in dispute in this matter which are described, in the terms as the agency described to the complainant, in the schedule attached to this decision.

CLAUSE 1 – CABINET AND EXECUTIVE COUNCIL

22. As I understand the agency's submissions, it claims that the disputed documents are exempt under clause 1(1) and clause 1(1)(b) of Schedule 1 to the FOI Act. Clause 1, so far as is relevant, provides:

1. *Cabinet and Executive Council*

- (1) *Matter is exempt matter if its disclosure would reveal the deliberations or decisions of an Executive body, and, without limiting that general description, matter is exempt matter if it –*
- (a) ...
- (b) *contains policy options or recommendations prepared for possible submission to an Executive body;*
- ...
- (2) ...
- ...
- (5) *Matter is not exempt by reason of the fact that it was submitted to an Executive body for its consideration or is proposed to be submitted if it was not brought into existence for the purpose of submission for consideration by the Executive body.*
- (6) *In this clause “Executive body” means –*
- (a) *Cabinet;*
- (b) *a committee of Cabinet;*
- (c) *a subcommittee of a committee of Cabinet; or*
- (d) *Executive Council.*

23. Clause 1(1) contains a general description of matter that is exempt under clause 1 - that is, the deliberations or decisions of an Executive body - and paragraphs (a)-(f) of clause 1(1) relate to specific kinds of document or information included within that general description. The purpose of the exemptions in clause 1 is to protect the confidentiality of the deliberations and decisions of Cabinet and other Executive bodies (as defined in clause 1(6)). Clause 1 is not subject to a public interest test. The presumption is that there can be no public interest arguments that would overcome the public interest in maintaining Cabinet confidentiality and collective ministerial responsibility. The only limits on the exemption are contained in subclauses (2) to (5), which are of themselves quite specific.

The agency's submissions

24. To support its claim for exemption under clause 1, the agency submits that disclosure of the disputed documents would reveal the deliberations of an Executive Body within the meaning of Clause 1, 'or would reveal policy options or recommendations prepared for submission or possible submission to an Executive body'. The agency submits that ultimately any proposals relating to the extension of the rail line, including the potential need for resumption of land and payment of compensation, will require the approval of Cabinet, or one of its committees or sub-committees.
25. The agency also submits that the disputed documents were prepared for submission to Cabinet as they contain the planning and design work undertaken by the agency which 'will form the basis for a Business Case which in the future will be submitted to Cabinet or the Economic and Expenditure Reform Committee'.
26. In addition, the agency submits that:

[a]lthough the individual documents themselves will not be submitted to Cabinet, much of the information contained within these documents will be incorporated into the Business Case to be put before Cabinet.
27. Further, the agency submits that none of the limits on exemption in clauses 1(2)-1(5) apply to the disputed documents in this matter. The disputed documents 'were not brought into existence for some other purpose and only now sought to be put before an Executive body but rather the intention was always for the substance of the those documents to form the basis of the Business Case for consideration by Cabinet'.
28. The agency submits that the complexity and significance of a decision to extend a railway is 'clearly a ... decision for government and one which would ultimately need the approval of Cabinet. It goes without saying that this is a deliberative process of government'.

Consideration

29. The scope and meaning of the exemption in clause 1(1) has been considered by the former A/Information Commissioner in *Re Ravlich and Minister for regional Development; Lands* [2009] WAICmr 9 and recently by me in *Re BGC (Australia) Pty Ltd and Port Hedland Port Authority* [2011] WAICmr 38 (**BGC**) and *Re Farina and WA Country Health Service – South West* [2013] WAICmr 16.
30. The former Commissioner in *Re Martin and Ministry for Planning and Department of Land Administration* [2000] WAICmr 56 said at [18] that, in the circumstances of that matter:

I accept the view that the purpose for which the disputed documents were created is a critical issue. I also accept that it is important to take into account the context in which a document is created to determine, among other things, the purpose for which it was created.

31. In addition, on page 7162 of Hansard 24 November 1992, the former Minister for Justice in charge of the Bill said:

Quite often cabinet minutes relate to various reports which are created independently of Cabinet, but are presented to Cabinet for note or endorsement in some way. When a document comes into existence for reasons other than specific Cabinet purposes, the Cabinet exemption should not apply...the exemption should not apply because the document happens to turn up at Cabinet as part of Cabinet documents.

32. To understand the background to the Government's commitment to build the proposed rail link, I note the following.
33. On Tuesday 11 June 2013, the then Minister for Transport answered a question in Parliament from Mr C Tallentire MLA in relation to the Thornlie Railway Line extension. In his answer, the then Minister advised the Legislative Assembly that the agency was at that time undertaking analysis for the demand for the extension; that the agency was at the time producing a 'Project Definition Plan to define the scope and cost of [the] proposal'.
34. In addition, the then Minister advised the Legislative Assembly that the Project Definition Plan would contain information which would assist the Government in deciding when the rail extension would be constructed; that the cost estimate would be based on the final scope of the work which was at that stage yet to be determined; and that the plan for 'Public Transport for Perth in 2031' would be received 'shortly' from the Department of Transport. (See extract from Hansard – Assembly Tuesday 11 June 2013 p1266b-1266b).
35. According to the *Tenders WA* website a number of contracts have been awarded for works associated with the proposed extension, including the following:
- 7 August 2013 - Sinclair Knight Merz \$47,169.00 Thornlie Link Concept Design and Finalise Master Plan;
 - 18 July 2013, AECOM Australia Pty Ltd \$22,433.40 Thornlie Master Plan – Verification of Engineering Design for Glen Iris to Cockburn Tunnel;
 - 7 June 2013, Lowes Churchill & Associates Pty Ltd \$148,550.00 Thornlie Link – Planning Services Project Coordinator and Assistant Project Coordinator;
 - 13 September 2012, GHD Pty Ltd \$28,803.50 Thornlie Extensions – Environmental Assessments;
 - 13 September 2012 SLR Consulting Australia \$43,450.00 Thornlie Extension – Noise and Vibration Study for Passenger and Freight.
36. In addition to the above contracts, according to *Tenders WA* at least another six contracts have been awarded for various works on the proposed extension totalling \$516,055.00.

37. In addition, from the Department of Transport website, my officer has printed a copy of its publication *Public Transport for Perth 2013 – draft for consultation*, published in July 2011, which refers to the:

[e]xtension of the Thornlie line to link with the Mandurah line with a major interchange station in the vicinity of Ranford Road and a station to serve the Jandakot Airport growth precinct (11.5kms).

38. According to the Department of Transport's website, as updated on 5 February 2015 at 8:28:42am, that report is still a draft for consultation.
39. From the Department of Transport's website, my officer has printed a document titled *TravelSmart Workplace Forum Promoting Public Transport Use Planning to Improve Perth's Public Transport Network* which is a presentation given in May 2012, which, amongst other things, shows a route for a proposed rapid transit infrastructure, that extends the Thornlie rail line to the Mandurah rail line.
40. There is nothing in the agency's submissions that supports its claim about the purpose for which the disputed documents were created. To the contrary, based on my examination of the disputed documents, and the background information above, I consider that they were brought into existence for the purpose of providing officers of the agency and other government agencies with assessments of the feasibility of the Thornlie Rail Link proposed extension (**the proposed extension**).
41. Twenty of the disputed documents consist of emails between officers of the agency and/or officers of the agency and external consultants. The agency submits that the disputed documents contain policy options and recommendations that it claims will be presented to Cabinet. The Australian Concise Oxford Dictionary Fourth edition, defines 'policy' to mean 'a course or principle of action adopted or proposed by a government, party, business, or individual etc'.
42. I have examined the disputed documents. In my view, they do not contain policy options. Rather they contain options and information that relate to the practicalities of the proposed extension, such as planning considerations, environmental considerations and the financial implications of the proposal.
43. I agree with the agency's submissions that the disputed documents may contain information upon which a future Business Case could be based. However, as stated above, the information contained in the documents does not currently constitute policy options or recommendations, but instead appears to be general information for internal consideration. Accordingly I consider the possibility that the information in the documents may be included in a future Business Case which may be submitted to Cabinet or one of its committees is too remote to bring the documents within the terms of the exemption in clause 1(1)(b).
44. There is nothing in the disputed documents, or any of the material before me, to support the agency's claims that the disputed documents were brought into existence for the purpose of submission or possible submission to an Executive body as defined in clause 1(6) of Schedule 1 to the FOI Act. I accept that the relevant Minister would ultimately be briefed on the outcome of the agency's preparation and this may result in a Cabinet

submission being prepared, based on the information obtained by the agency. However, that does not mean that the disputed documents were brought into existence for the purpose of submission to an Executive Body or that their disclosure would reveal the deliberations or decisions of an Executive Body.

45. I am not satisfied that disclosure of the disputed documents would reveal the deliberations or decisions of an Executive Body. Nor am I satisfied that any of the disputed documents contain policy options or recommendations prepared for possible submission to an Executive body. Accordingly, for the reasons given above, I find that the disputed documents are not exempt under clause 1(1) or 1(1)(b) of Schedule 1 to the FOI Act.

Clause 6 – Deliberative processes

46. The agency also claims the disputed documents are exempt under clause 6(1) of Schedule 1 to the FOI Act. Clause 6(1) provides:

Deliberative processes

(1) *Matter is exempt matter if its disclosure —*

(a) *would reveal —*

(i) *any opinion, advice or recommendation that has been obtained, prepared or recorded; or*

(ii) *any consultation or deliberation that has taken place, in the course of, or for the purpose of, the deliberative processes of the Government, a Minister or an agency; and*

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

47. The deliberative processes of an agency are its ‘thinking processes’, the process of reflection, for example, on the wisdom and expediency of a proposal, a particular decision or a course of action: see *Re Waterford and Department of the Treasury (No.2)* (1984) 5 ALD 588.
48. In order to establish a prima facie claim for exemption under clause 6(1), the requirements of both paragraphs (a) and (b) of clause 6(1) must be satisfied.
49. The public interest test in clause 6(1)(b) is not a limit on the exemption; it is an element of the exemption. In consequence, unless an agency claiming exemption under clause 6 can establish that disclosure would, on balance, be **contrary** (my emphasis) to the public interest, the documents will not be exempt. If both paragraphs (a) and (b) are satisfied, the disputed information will be exempt subject to the application of any relevant limit on exemption set out in clauses 6(2) to 6(4).

The burden and standard of proof

50. In my decision in *Re McKay and Water Corporation* [2009] WAICmr 35 (*Re McKay*), at paragraphs [25] to [27], I considered the onus borne by an agency under the FOI Act as follows:

Section 102(1) of the FOI Act provides that the agency bears the onus of establishing that its decision to refuse the complainants access to the disputed information was justified. In that regard, Owen J of the Supreme Court of Western Australia in Manly v Ministry of the Premier and Cabinet (1995) 14 WAR 550 said, at p.573 of that decision:

In my opinion it is not sufficient for the original decision maker to proffer the view. It must be supported in some way. The support does not have to amount to proof on the balance of probabilities. Nonetheless, it must 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.

Although the claim for exemption in that case was made under clause 4(3) of Schedule 1 to the FOI Act, I consider those comments apply equally to the exemption claimed by the agency in the present case.

The relevant standard of proof to establish a claim for exemption under the FOI Act is the balance of probabilities: see Re WA Newspapers Ltd and Civil Service Association of WA Inc and Salaries and Allowances Tribunal and Mercer (Australia) Pty Ltd [2007] WAICmr 20.

The agency's submissions

51. The agency's submissions are contained in a schedule of the disputed documents provided to the complainant, and copied to me, under cover of a letter dated 5 September 2014 and in a letter dated 15 December 2014.
52. The agency submits that the disputed documents would disclose ongoing deliberative processes including the selection of the rail extension route and station locations. In addition, the agency submits that disclosure of the disputed documents could cause property speculation along the proposed route and that 'there is always the danger through the premature release of information, of stimulation of community opposition (or support) purely out of sectional and private interests [or] political opportunism'.
53. In correspondence dated 5 September 2014, the agency submitted that the disputed documents are exempt in full under clause 1 and clause 6(1) of Schedule 1 to the FOI Act. In that letter, the agency stated:

With respect to whether these documents are in the public interest, which remains at the forefront of decision making about giving access, it should be noted that the information contained within them is preliminary and is part of the normal deliberative process that occurs when the [agency] is investigating and researching the various different elements of a major infrastructure project for possible inclusion into a Master Plan document. Any decisions made against each element then need to [be] discussed and receive cross agency support as well as the approval from the [agency's] Executive. Those processes are still ongoing.

54. The agency also submits that it would not be in the public interest to disclose the disputed documents as it would limit the agency's 'ability to negotiate fair contract

prices, could lead to land speculation, could be commercially disadvantageous and potentially mislead the public and cause them unnecessary concern’.

55. The agency also submits that:

[t]he information, opinions and advice contained within this ministerial correspondence are preliminary and have been prepared as a communication for the Minister by the Public Transport Authority (PTA) as part of the normal deliberative processes. It is the WA Government’s policy not to release any ministerial correspondence of this nature without prior consent by the Minister. The release of this preliminary advice is not in the public interest as it could cause confusion as the positions recommended within the correspondence are not final.

56. Specifically, in relation to the public interest, the agency submits that:

- premature disclosure would not assist public debate as it would lead to confusion and may prejudice future negotiations;
- disclosure of the disputed documents would invite public scrutiny when the government has not given it full and proper consideration;
- the public interest is not served by the premature generation of debate on points that may or may not even form a relevant part of the decision making process; and
- disclosure could also undermine essential processes involved in the administration of government, for example, the convention of Cabinet confidentiality.

57. In addition, the agency submits that the public interest would be best served by allowing those deliberations to occur unobstructed and with the benefit of access to all the material available to the agency only, so that decisions or even informed review of all facets of the project can be properly undertaken.

58. The agency further submits that it is not in the public interest for the agency’s ‘thinking processes’ to be open to public scrutiny as it is likely that the agency would then be:

expected to justify its thinking on elements of the project which are not final and are part of the brainstorming and research activities....if the public were privy to the workings of these ‘thinking processes’ the agency could never examine appropriately all the aspects of the project for fear that they could potentially change the way that private entities conduct, operate and invest in their businesses for the future.

Consideration

Deliberative processes of an agency - clause 6(1)(a)

59. In *Re McKay*, at paragraph 31 I considered the submission of the agency regarding the use of the past tense in clause 6(1)(a). I found that:

[T]he use of the past tense in clause 6(1)(a) means that if the disputed information falls within that paragraph, it is not relevant whether the deliberative process has ended or is ongoing. However, I consider that the question of whether the relevant deliberative process is ongoing or not is relevant to a consideration of whether disclosure of the disputed information would, on balance, be contrary to the public interest.

60. Based on my examination of the disputed documents, I consider that they contain information which can be categorised as opinion or advice that has been obtained in the course of the deliberative processes of the agency. I accept that the relevant deliberative processes in this case are the agency's deliberations to determine the route, station locations and other associated works involved in development and construction of the Thornlie Rail link.
61. Accordingly, I am satisfied that disclosure of the disputed documents would reveal matter of the kind referred to in clause 6(1)(a).

The public interest – clause 6(1)(b)

62. The public interest test in clause 6(1)(b) is intended to cover those cases where public disclosure would be prejudicial to the proper operation of government or the proper workings of an agency such that the right of access under the FOI Act is subordinate : see *BGC*.
63. A conclusion that disclosure is contrary to the public interest cannot be made until the public interest reasons against disclosure are weighed against those favouring disclosure, to determine where the balance of the public interest lies.
64. Unlike the other exemption clauses set out in Schedule 1 to the FOI Act that are limited by a public interest test, in the case of a claim for exemption under clause 6(1), an access applicant is not required to demonstrate that disclosure of the requested matter would be in the public interest. Instead, the onus of establishing that its disclosure would, on balance, be contrary to the public interest rests with the agency: see: *Health Department of Western Australia v Australian Medical Association Ltd* [1999] WASCA 269 at [18].
65. In *Ministry for Planning v Collins* (1996) 93 LGERA 69, Templeman J said, at p.13:

In reaching a decision on the public interest question, the Commissioner must make a judgement. And unless it is shown that the Commissioner has erred in law in doing so, that judgement will stand even though the court hearing an appeal from the Commissioner pursuant to s 85(1) of the Act might have reached a different conclusion.

66. Accordingly, I am required to consider and evaluate the relative weight of competing public interests before reaching a conclusion as to where the balance lies.
67. I recognise the public interest in people having access to information about the processes of government decision-making and in the accountability of agencies for the manner in which they discharge their obligations on behalf of the public in Western Australia. In my view, such accountability includes informing the public, wherever possible, of the basis upon which decisions directly affecting them have been made and of the material considered relevant to that process. This clearly accords with one of the objects of the FOI Act, which is to promote informed public participation in the processes of government. In my opinion, such information includes an understanding of how decisions are made and the matters taken into account.
68. I also recognise that there may, in certain circumstances, be a public interest in agencies carrying out their deliberations on particular issues without those deliberations being undermined by the premature disclosure of relevant documents.
69. This office has consistently expressed the view that it may be contrary to the public interest to disclose deliberative process documents if there is evidence that such disclosure would adversely affect the agency's decision-making process or that disclosure would, for some other reason, be demonstrably contrary to the public interest: see for example, *Re WA Newspapers Ltd and Civil Service Association of WA Inc and Salaries and Allowances Tribunal and Mercer (Australia) Pty Ltd* [2007] WAICmr 20.
70. I do not accept the agency's claims that disclosure of any of the disputed documents will result in 'the premature generation of debate on points that may or may not even form a relevant part of the decision making process.' I consider that there is already in the public domain a large amount of information about the proposed rail link and station locations. In contrast I consider that disclosure of the disputed documents would facilitate, rather than hinder, any future debate within the community.
71. I reject the agency's submissions that disclosure of the disputed documents 'would not assist public debate as it would lead to confusion and may prejudice future negotiations.' There is no material before me in this case to support such a claim. In any event, it is within the scope and power of the agency to release other information, whether by way of a press release or other documents, to counter any confusion or uncertainty that may exist following disclosure under the FOI Act.
72. A number of the arguments made by the agency in support of its claim that disclosure would be contrary to the public interest relate to the undesirability of speculation in relation to a potential public transport project before government has made a final decision on all aspects of that project. The agency essentially argues that sectional interests may use the information to support or undermine options according to the alignment of particular options to their own interests. While such behaviour may well be likely, sectional interests are not going to disappear or start behaving altruistically if the disputed documents are withheld. It is surely part of the role of government to make project decisions which are in the best interests of the public, even in the face of various lobbying efforts.

- 73. Further, I consider that speculation about aspects of the proposed extension to the Thornlie rail line will occur in any event, whether the disputed information is released or not.
- 74. On the information before me, I am not persuaded that the disclosure of the disputed matter would adversely affect the integrity of the agency's deliberations in connection with this matter.
- 75. In my view, the agency has not established the requirements of clause 6(1)(b) and, consequently, I am not satisfied that the disputed documents are exempt under clause 6(1).

CONCLUSION

- 76. I find that the disputed documents are not exempt under clauses 1(1), 1(1)(b) or 6(1) as claimed by the agency.

Document Number	Date	Document Type	Document Description	Comment
1	Jan 2013	Animation	Thornlie to Mandurah Line Link.	
2	Jan 2013	Media Statement	Draft PTA internal.	
1	25/10/2012	Email	Internal correspondence regarding land costs for Master Plan.	Edited access
2	29/10/2012	Email with attachment	External correspondence regarding project funding.	Access to email, edited access to attachment
3	30/10/2012	Emails with attachment	Internal and external correspondence regarding project cash flows.	Access to email, edited access to attachment
4	10/12/2012	Email with attachment	External correspondence regarding project benefits and costs.	Access to email, edited access to attachment
5	19/12/2012	Email with attachment	Internal correspondence regarding stations and platform locations.	Edited access to email, access to attachment refused
6	31/01/2013	Emails with attachment	Internal and ministerial correspondence regarding project reasoning for extension and cost benefits.	
7	31/01/2013	Email with attachment	Internal and ministerial correspondence regarding an update on project reasoning for extension and cost benefits.	Access to email, access to attachment refused
8	31/01/2013	Emails with attachment	Internal correspondence regarding project cost estimates.	Access to email, edited access to attachment
9	09/04/2013	Email	Internal correspondence regarding project timeframe.	
10	24/04/2013	Email and Contentious Issue Briefing Note	Internal and ministerial correspondence regarding the project.	Access to email, access to Contentious Issue Briefing Note refused
11	04/06/2013	Email with Minutes of Meeting and drawing attachment	Internal and external stakeholders regarding the project and freight corridor noise mitigation.	Access to email, access to attachment refused
12	28/06/2013	Email with Minutes attachment	Internal and external stakeholders regarding the project and freight corridor and Nicholson Road grade	Access to email, access to attachment refused

			separation.	
13	23/07/2013	Email with Minutes attachment	Internal and external stakeholders regarding the project.	Access to email, access to attachment refused
14	22/08/2013	Email with draft Minutes attachment	Internal and external stakeholders regarding the meeting's agenda and action items.	Access to email, access to attachment refused
15	04/09/2013	Email with various attachments and drawings	Internal and external correspondence regarding project reports.	
16	11/09/2013	Email with minutes attachment	Internal and external stakeholders regarding the project design and stakeholder commitment.	Access to email, access to attachment refused
17	24/10/2012	Draft Project Plan	Draft Project Plan for the preparation of a Master Plan.	
18	29/10/2012	Memo	Internal correspondence regarding project cash flow.	Edited access
19	13/11/2012	Drawing	Schematic of proposed final layout of Cockburn modification Option A.	
20	31/12/2012	Summary	Summary of planning progress (Rev 3) Beckenham to Glen Iris Proposed Railway.	
21	February 2013	Draft Report	Draft Thornlie Extension Environmental Assessment.	
22	February 2013	Report	Estimates of works and equipment summary for the project.	Edited access
23	27/03/2013	Draft Report	Draft Concept Design - Thornlie Rail Link.	
24	16/05/2013	Report	External reports on electrical and communication systems include pre design cost estimates for project works.	
25	16/05/2013	Draft Report	Draft Rail infrastructure Project Definition Plan.	
26	17/05/2013	Spreadsheet	Thornlie Rail Link Design Review Comments.	
27	19/06/2013	Spreadsheet	Thornlie Rail Link Timeline of Project.	
28	25/06/2013	Drawings	Presentation Station Concept Design drawings.	
29	25/06/2013	Plan/Drawings	Preliminary Project	

			Definition Plans.	
30	26/06/2013	Report	Thornlie to Cockburn modellings outcomes.	
31	August 2013	Draft Plan	Draft Project Definition Plan - Section 5.	
32	19/02/2013	Briefing Note	Extension of the Thornlie service to Cockburn Central station.	
33	27/03/2013	Letter	External correspondence proposal acceptance - project definition report.	Full access
34	23/10/2012	Email and attachment	Internal correspondence regarding project cashflow estimates.	Edited access to email, access to attachment refused
35	26/10/2012	Email and attachment	Internal correspondence regarding project cashflow estimates.	Edited access to email, access to attachment refused
36	11/12/2012	Email and attachment	Internal correspondence regarding project submission to Infrastructure Australia.	Edited access to email, access to attachment refused
37	17/05/2013	Email and attachment	Internal correspondence regarding the project Master Plan and budget operational expenditure.	Edited access to email, access to attachment refused
38	17/10/2012	Email	Internal correspondence regarding planning for the project.	
39	31/07/2013	Letter	External correspondence proposal acceptance - concept design and Master Plan.	Full access