

**Decision D0352008 – Published in note form only**

***Re Hunt and Humphry and Department of Industry and Resources, CITIC Pacific Mining Management Pty Ltd, Sino Iron Pty Ltd and Mineralogy Pty Ltd [2008] WAICmr 35***

**Date of decision: 20 August 2008**

***Freedom of Information Act 1992: sections 24 and 33; Schedule 1, clauses 4(2), 4(3), 6 and 8***

In January 2008, the complainant, Hunt and Humphry, a law firm, applied to the agency for access under the *Freedom of Information Act 1992* ('the FOI Act') to certain proposals made pursuant to the *Iron Ore Processing (Mineralogy Pty Ltd) Agreement 2002* of which Mineralogy Pty Ltd ('Mineralogy') is the principal proponent and Sino Iron Pty Ltd ('Sino') is a co-proponent. In 2006, Mineralogy sold its wholly owned subsidiary – Sino – to CITIC Pacific Ltd ('CP Ltd'). CITIC Pacific Mining Management Pty Ltd ('CITIC') is an Australian company wholly owned by CP Ltd which was established, among other things, to manage the development and ongoing operation of the Sino Iron Pellet Project in the Pilbara region of Western Australia.

The agency identified four documents as coming within the scope of the complainant's application and consulted with the relevant third parties – CITIC, Sino and Mineralogy – as it was required to do under s.33 of the FOI Act. On 15 April 2008, the agency decided to refuse access to one document but to give access in full or in edited form to the three other documents. The three third parties sought an internal review of that decision. On 22 May 2008, the agency varied its decision by refusing access to an additional document. On 3 July 2008, the complainant applied to the A/Information Commissioner for external review of the agency's decision to refuse access to one of the documents. That document – Document 2 – is described on the agency's schedule of documents as "*01/02/2008 Sino Iron Pellet Project – Project Proposal (Project 1)*." The agency claimed that Document 2 was exempt in full under clause 4(2) or 4(3) of Schedule 1 to the FOI Act.

In the course of dealing with the external review, CITIC, Sino and Mineralogy were joined as parties to the complaint. CITIC and Sino made submissions to the A/Commissioner claiming that Document 2 was exempt in full or in part under clauses 4(2) or 4(3). Mineralogy also made submissions and claimed that Document 2 was exempt in full under clauses 4, 6 and 8.

On 29 July 2008, the A/Commissioner provided the parties with a letter setting out his preliminary view of the matter. The A/Commissioner considered that much of the information in Document 2 was information that was in the public domain. However, the A/Commissioner identified certain information in Document 2 - such as geological data and capital costings - as having a commercial value to the third parties. The A/Commissioner's preliminary view was that that information was exempt under clause 4(2) but that it would be practicable to delete that information pursuant to s.24 of the FOI Act and give the complainant access to Document 2 in edited form. The parties were invited to either accept the A/Commissioner's preliminary view or provide him with further submissions in support of their respective positions.

In response, the complainant, the agency, CITIC and Sino accepted the A/Commissioner's preliminary view. However, Mineralogy did not respond to the A/Commissioner's letter and made no further submissions concerning its claims that Document 2 was exempt under clauses 4, 6 and 8. Accordingly, although the other parties accepted the A/Commissioner's preliminary view of the complaint, the A/Commissioner was required to make a decision on that matter.

There being no new evidence before the A/Commissioner to cause him to reconsider his preliminary view, the A/Commissioner found that certain information in Document 2, which he identified to the parties, is exempt under clause 4(2) and that it was practicable to give the complainant access to Document 2 in edited form.