

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

**File Refs: F1062000
Decision Ref: D0012001**

Participants: **National Tertiary Education Industry
Union (Murdoch Branch)**
Complainant

- and -

Murdoch University
First Respondent

Steven Schwartz
Second Respondent

Kevin Woods
Third Respondent

Anthony Jona Tate
Fourth Respondent

John Vincent Yovich
Fifth Respondent

Haji Yaakob Izan
Sixth Respondent

and

"T"
Seventh Respondent

DECISION AND REASONS FOR DECISION

FREEDOM OF INFORMATION - refusal of access - documents relating to the remuneration of senior staff – clause 3(1) – whether personal information – clause 3(3) – whether prescribed details in relation to an officer of an agency – clause 3(6) – whether disclosure, on balance, in the public interest – onus on complainant – clause 11(1)(c) – whether disclosure could reasonably be expected to have a substantial adverse effect on the management of personnel – meaning of “substantial” – clause 11(2) – public interest.

Freedom of Information Act 1992 (WA) ss. 10(2), 30 and 102(3); Schedule 1 clauses 3(1), 3(3), 3(6), 11(1)(c), 11(2); Schedule 2, Glossary.

Freedom of Information Regulations 1993(WA): regulation 9(1)

Workplace Relations Act 1996 (Commonwealth) ss. 83BC(2)(c) and 170WHB(2)(c)

Minimum Conditions of Employment Act 1993 (WA)

Freedom of Information Act 1982 (Vic)

Freedom of Information Act 1982 (Commonwealth)

Public Sector Management Act 1992 (Vic)

Financial Management Act 1994 (Vic)

Murdoch University Act 19732 (WA) s. 17(2)

Murdoch University Statute No.25 ss. 3(A) and 6

Financial Administration and Audit Act 1985 (WA) s. 66

Re Thwaites and Department of Premier and Cabinet (1996) 10 VAR 437

Re Ricketson and Royal Women's Hospital (1989) 4 VAR 10

Re Milthorpe and Mt Alexander Shire Council (1997) 12 VAR 105

Re Pescott and Victorian Transport Commission [No.2] (1998) 2 VAR 437

Re O'Sullivan and Department of Health and Community Services [No.2] (1995) 9 VAR 1

Re Anderson and Department of Immigration and Ethnic Affairs (1986) 4 AAR 414

DPP v Smith [1991] 1 VR 63

Re Forbes and Department of the Premier and Cabinet (1993) 6 VAR 53

Re Rintoul and Swinburne University (unreported, AAT of Victoria No. 29623, April 1997)

Attorney General's Department v Cockcroft (1986) 64 ALR 97

Harris v Australian Broadcasting Corporation (1983) 78 FLR 236

Re Healy and Australian National University (unreported, Commonwealth AAT, 23 May 1985)

Re James and Australia National University (1984) 2 AAR 327

Re Ayton and Police Force of Western Australia [1999] WAICmr 8

Re Australian Medical Association Limited and Health Department of Western Australia [1999] WAICmr 7

DECISION

The decision of the agency is varied. I decide that:

- the personal signatures and home addresses of individual employees of the first respondent are outside the scope of the complaint;
- the matter described in paragraph 73 of my reasons for this decision is exempt under clause 3(1) of Schedule 1 to the *Freedom of Information Act 1992* ('the FOI Act') but the disputed documents are not otherwise exempt.

B. KEIGHLEY-GERARDY
INFORMATION COMMISSIONER

2 January 2001

REASONS FOR DECISION

1. This is an application for external review by the Information Commissioner arising out of a decision made by Murdoch University ('the agency') to refuse the National Tertiary Education Industry Union (Murdoch Branch) ('the complainant') access to documents requested by it under the *Freedom of Information Act 1992* ('the FOI Act').
2. On 12 April 2000, the complainant made an application to the agency for access under the FOI Act to documents relating to the remuneration of the Vice Chancellor of the agency and the eight members of the agency's senior management team who are responsible for strategic planning and decision-making in the agency.
3. The agency decided that it was not required under the FOI Act to divulge information about salary packages, bonus payments and details of individual staff contracts and refused the complainant access to the documents containing the information sought by it. The agency's decision was confirmed following an internal review. However, neither the initial decision-maker nor the internal reviewer identified the documents that fell within the scope of the complainant's access application.
4. On 30 May 2000, the complainant made a complaint to the Information Commissioner seeking external review of the agency's decision on access.

REVIEW BY THE INFORMATION COMMISSIONER

5. In my opinion, the agency's notices of decision provided to the complainant did not comply with section 30 of the FOI Act. The agency did not identify the clause or clauses of Schedule 1 under which exemption was claimed, nor did it provide any findings on any material questions of fact underlying its reasons for refusing access, as required by s.30(f) of the FOI Act.
6. Following the receipt of this complaint, I required the agency to provide me with a schedule listing and describing the requested documents, together with the reasons for the agency's decision to refuse access, the findings on any material questions of fact underlying those reasons and the exemption clause or clauses applicable. The agency provided that information together with a schedule listing 20 disputed documents. The agency granted the complainant access to 4 documents but claimed that the remainder were exempt under clauses 3 and 11(1)(c) of Schedule 1 to the FOI Act. Copies of the schedule and the agency's submissions were given to the complainant.
7. In the course of further discussions with the parties to determine whether this complaint could be resolved by conciliation, a further 27 documents were

identified as falling within the scope of the complainant's access application. The complainant indicated that it would withdraw its complaint if the agency would create a document containing the following information:

- (a) the number of individuals and designations within salary bands of \$10,000 for the years 1996-2000;
- (b) the breakdown of each individual's total remuneration into the categories of salary, bonuses and benefits for the same period; and
- (c) the performance indicators for each individual.

The complainant suggested that the information in parts (a) and (b) should, in future, be made public by inclusion in the agency's Annual Operating Budget and Annual Report.

8. The agency did not agree to provide the information requested by the complainant in respect of parts (a) and (b), but provided the performance indicators for each relevant officer of the agency. The agency also gave the complainant access to a number of the disputed documents and the complainant withdrew its complaint with respect to other documents. However, this matter could not otherwise be resolved by conciliation between the parties.
9. Six of the nine senior officers of the agency concerned in this matter applied to be joined as parties to this complaint, and they were joined. However, all nine officers concerned made comments or submissions in relation to the claims for exemption under clause 3 of Schedule 1 to the FOI Act.
10. On 25 October 2000, after considering all of the submissions and other material before me, I informed the parties in writing of my preliminary view of this complaint, including my reasons. It was my preliminary view that some of the information in the disputed documents which referred to the base salary, the total employment costs or the nature of any benefits and bonuses payable may not be exempt matter under clause 3(1). However, it was my preliminary view that other information, being signatures and home addresses, may be exempt matter under clause 3(1). It was also my preliminary view that the disputed documents may not be exempt under clause 11(1)(c).
11. None of the parties to this complaint made any further submissions nor did they provide additional information to me. However, as a conciliatory gesture, the agency offered to provide remuneration details in tabular format for 1999 and 2000 for the officers concerned, but indicated that the same information could not be provided for the years 1996-1998, as requested by the complainant, because the data prior to 1999 is apparently not comparable to the data compiled after 1999. The complainant rejected the agency's offer.

THE DISPUTED DOCUMENTS

12. At the conclusion of the review process, 18 documents remained in dispute between the parties. The disputed documents are described as follows, using the numbering system in the schedule compiled by the agency:

Document Number	Document Author and Date	Contents
Vice Chancellor		
1	Table: movements in remuneration package of the Vice Chancellor 1996-1999 [from agenda papers of 2 December 1999 meeting of Chancellor's Committee]	Summary table of remuneration package over 4 years
2	Memo from University Secretary to Director of Human Resources, 3 December 1999	Remuneration package for 2000
3	Employment contract signed on 1 July 1995	Vice Chancellor's contract
Deputy Vice Chancellor		
5	Employment contract signed on 21 January 1997	Deputy Vice Chancellor's contract
6	Letter with attached employment contract dated 22 August 1990	Contract 1990-1996
7	Table showing remuneration 1996-2000, dated 12 June 2000	Remuneration details
Pro Vice Chancellor (Academic)		
14	Letter with attached Australian Workplace Agreement, dated 20 January 1999	Contract
Pro Vice Chancellor (Research)		
17	Australian Workplace Agreement, dated 24 January 1999	Contract for current appointee.
18	Table showing remuneration 1996-2000, dated 12 June 2000	Remuneration changes table
Pro Vice Chancellor (Resource Management)		
22	Letter with attached Australian Workplace Agreement, dated 24 January 1999	Contract
23	Letter to Pro Vice Chancellor, dated 16 March 2000	Changes to remuneration package
Executive Dean, Division of Business, IT and Law		
27	Australian Workplace Agreement, dated 12 February 1999	Contract
28	Contract dated 18 December 1996	Contract 1997-1998
Executive Dean, Division of Science and Engineering		
33	Australian Workplace Agreement, dated 25 March 1999	Contract
34	Contract dated 18 December 1996	Contract 1997-1998
Executive Dean, Division of Social Sciences, Humanities and Education		
39	Australian Workplace Agreement, dated 25 March 1999	Contract
Executive Dean, Division of Veterinary and Biomedical Sciences		
44	Academic contract and covering letter to Executive Dean from the Vice Chancellor, dated 12 September 1996	Contract

45	Letter from the Vice Chancellor to Director of Human Resources, dated 2 February 1999	Revised remuneration
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13. Documents 1-2, 7 and 18 comprise a memorandum and tables relating to the remuneration packages of the Vice Chancellor, the Deputy Vice Chancellor and the Pro Vice Chancellor (Research). Documents 3, 5, 6, 14, 17, 22-23, 27-28, 33-34, 39 and 44-45 comprise correspondence, contracts of employment and Workplace Agreements relating to senior officers of the agency that set out the terms and conditions of employment of those officers. For convenience, I shall refer to those documents collectively as ‘the contracts’.
14. Having inspected the disputed documents, I consider that the letters attached to Documents 14 and 22 fall outside the ambit of the complainant’s access application and, accordingly, I need not deal with them further.

THE EXEMPTIONS

(a) Clause 3 - Personal information

15. The agency claims that all of the disputed documents are exempt under clause 3(1). Clause 3(1) provides that matter is exempt matter if its disclosure would reveal personal information about an individual (whether living or dead). The term “personal information” is defined, in the Glossary in Schedule 2 to the FOI Act, to mean:

“...information or an opinion, whether true or not, and whether recorded in a material form or not, about an individual, whether living or dead –

- (a) whose identity is apparent or can reasonably be ascertained from the information or opinion; or*
- (b) who can be identified by reference to an identification number or other identifying particular such as a fingerprint, retina print or body sample”.*

16. In my view, the purpose of the exemption in clause 3(1) is to protect the privacy of individuals about whom information may be contained in documents held by State and local government agencies. The definition of “personal information” in the Glossary makes it clear that any information or opinion about a person, from which that person can be identified, is exempt matter under clause 3(1). In my opinion, disclosure of the disputed documents must reveal something more about an individual than simply his or her name in order to attract the exemption.
17. Clause 3(1) is subject to the limits on exemption in clauses 3(2)-3(6). In the circumstances of this complaint, I consider that only clauses 3(3) and 3(6) are relevant. Clause 3(3) provides that matter is not exempt matter under clause 3(1) if it consists of prescribed details about a person who is or has been an

officer of an agency. Those details are prescribed by regulation 9(1) of the *Freedom of Information Regulations 1993* ('the Regulations'). Clause 3(6) provides that matter is not exempt under clause 3(1) if its disclosure would, on balance, be in the public interest.

The agency's submission

18. The agency submits that the information requested by the complainant is personal information about officers of the agency and that that information does not fall within the details prescribed in the Regulations. In support of that proposition, the agency cited a number of decisions made by the Administrative Appeals Tribunal of Victoria ('the Tribunal'): *Re Thwaites and Department of Premier and Cabinet* (1996) 10 VAR 437 at 449; *Re Ricketson and Royal Women's Hospital* (1989) 4 VAR 10 at 12; *Re Milthorpe and Mt Alexander Shire Council* (1997) 12 VAR 105 at 110; *Re Pescott and Victorian Transport Commission [No.2]* (1998) 2 VAR 437 at 453 and *Re O'Sullivan and Department of Health and Community Services [No.2]* (1995) 9 VAR 1 at 21.
19. In addition, the agency referred me to page 24 of the *Implementation Guidelines* issued at the time of the introduction of the FOI Act where it is stated that "information relating to a person's finances, income ..." may be described as personal information. The agency contends that, where similar information has been disclosed in other jurisdictions, this may be due to differences in the respective FOI Acts. The agency submits that documents disclosed in those jurisdictions might nonetheless be found to be exempt under the FOI Act.
20. The agency noted that the *Workplace Relations Act 1996* (Cth) ('the Workplace Relations Act') treats Australian Workplace Agreements ('Workplace Agreements') as personal information. The agency submits that, under the Workplace Relations Act, the Office of the Employment Advocate is explicitly prohibited from releasing Workplace Agreements in a manner that would identify the particular employee concerned.
21. The agency submits that, therefore, the disputed documents, particularly Documents 14, 17, 22, 27, 33 and 39 which are Workplace Agreements, are exempt under clause 3(1) of Schedule 1 to the FOI Act. The agency made submissions concerning the question of whether disclosure would, on balance, be in the public interest. I deal with those submissions in paragraphs 61-71 below.

Submissions from the officers of the agency

22. All nine of the senior officers of the agency object to the disclosure of their contract details and of any related correspondence, which each submits is personal information and exempt matter under clause 3(1). A number of the senior officers made submissions that I have considered in paragraphs 43-45 below in relation to the question of public interest.

The complainant's submission

23. The complainant cited the decisions made by the Tribunal in support of its claim that the disputed documents should be disclosed. In brief, the complainant submits that information concerning the employment conditions and remuneration of the senior officers of the agency is information that it is not unreasonable to disclose. In the alternative, the complainant submits that, if disclosure of the disputed documents would reveal personal information, then, pursuant to clause 3(6), disclosure would, on balance, be in the public interest.
24. The complainant submits that I should be guided by the words of the FOI Act rather than by extrinsic material, such as the *Implementation Guidelines* that form part of the submission made to me by the agency. The complainant also submits that ss.83BC(2)(c) and 170WHB(2)(c) of the Workplace Relations Act provide that disclosure is permitted if required or permitted by another Act and that, accordingly, a determination under the FOI Act to disclose such information would permit its release.

Consideration

25. There are no formal published precedents in this jurisdiction concerning documents of the kind that are in dispute in this complaint. In my view, there is little assistance to be gained from the decisions to which I was referred by the agency because the relevant exemption provision in the *Freedom of Information Act* (Vic) ('the Victorian FOI Act') differs significantly from clause 3(1) of the FOI Act. Under the Victorian FOI Act the exemption concerns "information relating to the personal affairs" (a term which is not defined in that Act) of any person, whereas the exemption under the FOI Act concerns "personal information" which term is defined in the FOI Act.
26. In the view of the Commonwealth Administrative Appeals Tribunal, the term "information relating to the personal affairs of any person" is a term "...inherently incapable of precise or exhaustive definition": *Re Anderson and Department of Immigration and Ethnic Affairs* (1986) 4 AAR 414 at 430, and one that has been given varying interpretations. In 1991, the *Freedom of Information Act 1982* (Cth) was amended by deleting that phrase from the relevant exemption and replacing it with the defined term "personal information". Under the Victorian FOI Act the exemption is concerned with the "unreasonable disclosure" of the relevant kind of information, whereas under the FOI Act the relevant kind of information is exempt unless one of the specified limits applies. Moreover, there is no equivalent provision in the Victorian FOI Act in respect of prescribed details relating to officers of agencies, as set out in clause 3(3) of the FOI Act.
27. With regard to the parties' submissions in respect of the Workplace Agreements, I note that the provisions of the Workplace Relations Act cited by the agency specifically apply to the Industrial Registrar and to an "entrusted person" who is either a member of the staff of the Industrial Registry set up under that Act, or a person who has acquired that information from a Registry official. The prohibition against disclosure of the identities of the parties to a Workplace

Agreement does not apply where such disclosure is authorized or permitted by another Act. I also note that each Workplace Agreement contains a provision relating to disclosure of the agreement. That provision states that nothing prohibits or restricts the agency from disclosing details of the Workplace Agreement to another person. In my opinion, the provisions of the Workplace Relations Act do not prevent disclosure by the agency under the FOI Act of information that is not exempt matter.

28. The first question that I must consider is whether the disputed documents contain personal information, as that term is defined in the FOI Act, about an officer or officers of the agency. If the disputed documents do contain personal information, then I must consider whether the limits on the exemption for personal information apply to that information. In my view, the question is not, as the complainant submits in light of the Victorian cases, whether disclosure is reasonable, because reasonableness is not a relevant factor for the purposes of clause 3(1) of the FOI Act.
29. Having inspected the disputed documents, I consider that they contain information about individual senior officers, such as names, personal signatures, home addresses, salary amounts, benefits, bonuses, position, duties and conditions of appointment. Certain of the documents also contain the names, addresses and personal signatures of third parties. I understand that the complainant is not seeking access to the latter or to the signatures or home addresses of the senior officers of the agency, which is information that is *prima facie* exempt under clause 3(1) and, accordingly, that information need not be released and I need not consider it further.
30. With regard to the conditions of appointment of the senior officers set out in the contracts, I note that a list of the standard conditions of appointment for the senior officers is available to the public via the agency's website, under the headings of "Executive Information Booklet – Executive Appointments – Conditions of Appointment". Those conditions include a 5-year term of appointment, a remuneration package that includes a fully maintained vehicle, entertainment and travel allowances, salary packaging, leave and relocation expenses and superannuation (noting, in the latter condition, that "*The position is superannuable under the Superannuation Scheme for Australian Universities (SSAU). Under this scheme, the member contributes 7% of salary and the University contributes a further 14%. In addition, the University contributes a further 3% to the Tertiary Education Superannuation Scheme (TESS)*").
31. With regard to the contracts, I consider that standard conditions of appointment such as those published on the agency's website or set out in the *Minimum Conditions of Employment Act 1993*, together with standard legal "boiler-plate" provisions (to the extent that such conditions and provisions are reflected in the contracts) is not personal information as defined. In my view, it is information about the general conditions of appointment relevant to the senior positions and is not information about any individual. It cannot, thus, be exempt under clause 3(1). Therefore, I find that information of that kind in the documents is not exempt under clause 3(1).

32. However, I consider that information relating to non-standard conditions of appointment, or which relates to the particular salary-packaging arrangements of an individual, is personal information about an individual under clause 3(1). I consider that information relating to the salary amounts, benefits, bonuses, position and duties of each senior officer in the disputed documents is information about an individual whose identity is apparent or can reasonably be ascertained from the information in the documents and, accordingly, that material is personal information and *prima facie* exempt under clause 3(1).
33. The next question that I must consider is whether the limits on exemption in clauses 3(3) and 3(6) of Schedule 1 to the FOI Act apply.

Clause 3(3) – prescribed details in relation to an officer of an agency

34. Having examined the disputed documents, I consider that they contain some information that may be characterized as prescribed details pursuant to clause 3(3). The agency accepts that the senior officers to whom the disputed documents relate are officers of the agency for the purposes of the FOI Act. Clause 3(3) provides that certain prescribed details relating to officers of an agency are not exempt matter under clause 3(1). Regulation 9(1) of the Regulations prescribes the following details for the purposes of clause 3(3):
- the person’s name;
 - any qualifications held by the person relevant to the person’s position in the agency;
 - the position held by the person in the agency;
 - the functions and duties of the person, as described in any job description document for the position held by the person; or
 - anything done by the person in the course of performing or purporting to perform the person’s functions or duties as an officer as described in any job description document for the position held by the person.

Accordingly, I find that information consisting of any of those prescribed details, including the name, position and duties of each senior officer is not exempt matter under clause 3(1).

Clause 3(6) – the public interest

35. Since I am satisfied that a *prima facie* claim for exemption exists under clause 3(1) for information relating to the salary amounts, bonuses and benefits paid or payable as part of the remuneration packages of each individual senior officer, it remains for me to consider whether disclosure of that information would, on balance, be in the public interest. Pursuant to s.102(3) of the FOI Act, the onus is on the complainant to establish that disclosure would, on balance, be in the public interest.

36. The public interest is not defined in the FOI Act. In my view, the term is best described in the decision by the Supreme Court of Victoria in *DPP v Smith* [1991] 1 VR 63, at page 75, where the Court said:

“The public interest is a term embracing matters, among others, of standards of human conduct and of the functioning of government and government instrumentalities tacitly accepted and acknowledged to be for the good order of society and for the well-being of its members. The interest is therefore the interest of the public as distinct from the interest of an individual or individuals ... There are ... several and different features and facets of interest which form the public interest. On the other hand, in the daily affairs of the community, events occur which attract public attention. Such events of interest to the public may or may not be ones which are for the benefit of the public; it follows that such form of interest per se is not a facet of the public interest”.

The agency’s submission

37. The agency submits that it is necessary to distinguish between the public interest and what is public curiosity. The agency doubts whether the information requested by the complainant will contribute significantly to the consideration of any public issue, although it may satisfy the curiosity of many individuals. The agency further submits that the complainant intends to use the information contained in the disputed documents as a bargaining point in its salary negotiations and that, consequently, the complainant’s interest is a sectional one rather than a public interest.

38. However, the agency acknowledges that there are a number of public interest factors that favour disclosure of the documents and identifies the following:

- The public interest in the accountability of public bodies for the expenditure of public monies. The agency notes that the need for transparency is essential, particularly at the present time, when enterprise bargaining negotiations over salary discussions have slowed and budgetary allocations are in dispute.
- The public interest in the public receiving value for its money, especially in a financial climate where funds are extremely tight and the agency has stated that the anticipated increase in staff salaries would lead to significant job redundancies.
- The public interest in dealing with staff concerns at the increase in the costs of the University Chancellery, at a time when other parts of the agency are being asked to reduce costs.

39. The agency also submits that the following factors weigh against disclosure:

- The public interest in maintaining the personal privacy of individuals. The agency submits that disclosure would be an unreasonable invasion of the

privacy of the persons concerned, some of whom have strongly objected to the release of the information. The agency submits that the public interest in maintaining personal privacy outweighs the public interest in accountability, which has largely been satisfied by the information already provided to the complainant.

- The public interest in the agency being able to offer market-competitive salaries to attract top calibre senior executives in order to maximise its ability to achieve its strategic objectives and make the most effective use of available funds. The agency submits that disclosure of details of executive remuneration in the agency is likely to lead to staff and student pressure to prevent any increase in executive remuneration, thereby discouraging the agency from offering market-competitive salaries. The agency submits that that result would be particularly disadvantageous for the agency given its remoteness and relative size because the agency may need to offer remuneration above the market average in order to attract top calibre senior staff and it would be disadvantaged in the market place for executive talent if it were pressured to offer below market rates.
- The public interest in maintaining the productivity and morale of the senior officers. The agency submits that there is a public interest in maximising the effectiveness of senior managers at a time when universities are receiving less public funding per student and are funding significant staff salary increases with negligible Commonwealth supplementation. The agency submits that disclosure would undercut the agency's ability to achieve that result. The agency contends that disclosure is likely to create invidious comparisons between its senior officers and that this could make it difficult in the future to offer differing remuneration packages that are designed to reflect the background, skills and abilities of each individual and the needs of the relevant position. The agency submits that this would further disadvantage it in the competition for highly capable senior executives. (This contention forms the basis of the agency's separate claim for exemption under clause 11 and I deal with it in paragraphs 85-88 below).
- The public interest in encouraging resolution of disputes rather than conflict since disclosure is likely to deepen a "them and us" approach among staff, thereby inhibiting the reaching of common ground in the settlement of disputes.
- The public interest in maintaining the competitive position of the agency in industrial relations negotiations. The agency submits that it is currently conducting delicate enterprise bargaining negotiations with the union of which the complainant represents the local branch and that disclosure could put the agency at a disadvantage to its competitors in enterprise bargaining negotiations since the other State universities are in similar negotiations.

40. It is the contention of the agency that similar information relating to all four public universities in Western Australia should also be disclosed so that all of

the agency's competitors will be treated similarly. The agency adds that, without those bench marks, it will be impossible to make judgements about the relative fairness of the salary packages offered by the agency to its senior officers.

41. The agency submits that, in weighing the factors for and against disclosure, the public interest, on balance, favours non-disclosure because, in the present case, public accountability may be met by the provision of less detailed information than that requested by the applicant. The agency referred me to the decision of the Tribunal in *Re Thwaites* in support of its contention. The agency submits that it has a high degree of transparency by its publication of information concerning its financial records, for example, the material published annually in its "*Description of the Operating Budget*" and in its Annual Report.
42. Finally, the agency submits that the test required by the FOI Act is that the case submitted by the complainant (as distinct from whatever additional public interest factors I may regard as pertinent) needs to be stronger than the case for non-disclosure, not simply equal to it. The agency submits that the complainant has not submitted a case that, on balance, is as strong as the public interest factors favouring non-disclosure.

Submissions from the officers of the agency

43. One senior officer submits that it is not in the public interest to reveal details of a person's salary package because, in cases where contracts are designed as a package to induce employment in the agency, such disclosure could retrospectively provide private details relating to an individual's previous employment in the private sector. Another senior officer expressed concerns that information, once disclosed, would be taken out of context and misused, causing embarrassment to senior officers and their families.
44. Three other senior officers did not object to information about the amount of their total salary package being disclosed. However, that was qualified, in the case of two of those officers, by statements that disclosure in that form was acceptable only if equivalent information from other Western Australian universities was made available, and that the superannuation and other benefits should be identified for ease of direct comparison with other academic salaries.
45. A number of the senior officers expressed concerns that, since equivalent information was not available from other Western Australian or interstate universities, there was the potential for disclosure to affect them adversely. More than one senior officer noted that academic salaries have traditionally been expressed as a cash component only and there was concern that, in context, the release of the total salary amount would be misleading. One senior officer submits that only the information relating to remuneration contained in the University's audited financial statements should be disclosed.

The complainant's submission

46. The complainant submits that its interest is not a sectional interest because the community as a whole is concerned with the quality of public education which is paid for from the public purse. The complainant submits that it is concerned at recent proposed course cuts that could affect the quality of that education. For example, in the 1998-1999 financial year when the Vice Chancellor's Division had operated outside its budget, staff were being asked "to tighten their belts". The complainant provided me with copies of newspaper articles referring to a motion of no confidence passed by the complainant in respect of the senior management team and its assessment of the agency's financial difficulties and how those difficulties could be resolved.
47. The complainant identified a number of public interest factors that it considers favour disclosure of the information. Those factors, together with the complainant's submissions in respect of them, are as follows:
- The public interest in the complainant being able to exercise its right of access under the FOI Act.
 - The public interest in the accountability, transparency and scrutiny of publicly funded bodies. The complainant states that the agency is a public institution funded, to a significant degree, by tax revenues, and the individuals about whom the information is sought are public officers who are ultimately accountable to the taxpayer. Accordingly, the complainant submits that there is a public interest in the disclosure of full details concerning the remuneration of the senior officers and the formulae used to calculate their remuneration because disclosure would contribute to providing the necessary scrutiny, transparency and accountability, including the need to shed light on what appears to be secret administrative decision-making practices.
 - The public interest in being able to "clear the air" over controversy concerning financial issues. The complainant informs me that the only Division within the agency that has had rapid increases in expenditure over the past four years is the Vice-Chancellery and that, since 1998, there has been a 30% increase in Chancellery expenditure whilst the rest of the university community was undergoing major financial cutbacks and tighter fiscal restraints. The complainant states that the increase in expenditure is due primarily to increases in salary and benefits to the senior officers. The complainant points to the expenditure on facilities for the senior staff which it considers to be unwarranted in the financial climate and submits that it is not in the public interest in the current tight, financial climate in the tertiary sector for this information to remain out of the public arena.
 - The public interest in encouraging the resolution of disputes. The complainant submits that it is concerned that public officers who are paid by public money need not disclose benefits and salaries when other staff salaries are in the public domain and that this creates a "them and us" situation. The complainant submits, in essence, that the highest paid public officers should be more, not less, accountable than the lowest paid public

officers, in that their salaries and bonuses should be open to scrutiny. The complainant points to the anomaly in the agency's implicit suggestion that the remuneration of the senior officers is personal and private information whilst the remuneration of the rest of the university staff (and others in public education) is not.

- The public interest in maintaining the effectiveness, productivity and morale of the senior management team. The complainant rejects the agency's contention that disclosure of the disputed information would demoralise the senior officers and submits that disclosure will make for greater clarity and transparency which will have a positive effect on morale, productivity and efficiency. The complainant submits that the setting of remuneration for senior officers should be determined in the marketplace and not kept secret. The complainant submits that maximising the effectiveness of the senior officers is best achieved when their remuneration packages are comparable over time. In effect, the complainant submits that there is a public interest in everyone in the senior management team knowing from the beginning exactly how he or she stands in relation to remuneration, in the interests of openness and transparency.
48. The complainant suggests that the agency's financial reporting requirements relating to the remuneration of senior officers may not be as comprehensive as the equivalent reporting requirements in Victoria because the agency's Annual Reports do not reflect the total remuneration packages of its senior officers. The complainant does not accept that the publicly available information concerning the senior officers' remuneration is capable of sensible analysis. The complainant submits that, on balance, the public interest in the disclosure of the disputed documents outweighs the public interests identified by the agency that favour non-disclosure.

Consideration

Information in the public domain

49. I have considered the agency's submission that public accountability has been satisfied by the information already in the public domain. I understand that the *Murdoch University Act 1973* governs the remuneration of the senior officers of the agency. Pursuant to s.17(2) of that Act, the Senate (the governing body of the agency) has the power to make statutes with respect to, amongst other things, the management of the agency. Under s.3(A) of the agency's Statute No. 25, the Vice Chancellor has delegated authority to appoint, promote and dismiss staff, determine their remuneration and conditions of service and determine the agency's policies on those matters. The Vice Chancellor's own remuneration and conditions of service are determined by the Chancellor's Committee, pursuant to s.6 of Statute No. 25.
50. I have examined the material identified by the agency as information that is in the public domain. The document entitled "*Description of the Operating Budget*" shows the allocation of funds but contains no details of the

remuneration of senior officers that would be relevant to this matter. I also understand that the agency has given the complainant access to the agendas and minutes of its Resources Committee, but that material does not disclose remuneration details either.

51. A certain amount of information relevant to this complaint is published in the agency's current Annual Report. Items 34 and 35 of the financial statements attached to the agency's Annual Report are included by virtue of the Treasurer's Instructions. Item 34 sets out "*the total of fees, salaries and other benefits received or due and receivable for the financial year by Senior Officers of the University*". In summary, the published information in respect of senior officers of the agency is given, at item 34, as follows:

Remuneration of Senior Officers	1999 \$'000	1998 \$'000
The number of Senior Officers whose total of fees, salaries and other benefits received or were due and receivable, for the financial year falls within the following bands:		
\$80,001 - \$90,000	-	1
\$90,001 - \$100,000	-	1
\$100,001 - \$110,000	2	2
\$110,001 - \$120,000	1	4
\$120,001 - \$130,000	3	0
\$130,001 - \$140,000	-	1
\$140,001 - \$150,000	1	-
\$150,001 - \$160,000	-	1
\$160,001 - \$170,000	1	-

Item 35 sets out the same information in respect of the Vice Chancellor, as follows:

\$270,000 - \$280,000	1	1
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52. Having examined the disputed documents I cannot ascertain from item 34 which senior officer position is represented by the numbers relating to each band. Nor can I determine, from an inspection of the contracts, that the amounts in those documents correlate to the bands set out in the Annual Report. That may be because, as the agency advises, the Treasurer's Instructions do not provide for inclusion of superannuation amounts paid by the agency. In my opinion, the information in items 34 and 35 only provides a rough guide to the remuneration received by senior officers of the agency and is not capable of any detailed analysis. For example, it is not possible to distinguish between the remuneration of the Pro Chancellors and that of the Executive Deans, nor is it possible to deduce whether the total remuneration falls within the relevant bands.

The Victorian cases

53. When considering whether or not disclosure of similar kinds of information would be unreasonable in the Victorian cases to which I have been referred, the Tribunal identified some relevant public interest factors. To that extent, I have, therefore, considered a number of Victorian cases, including those to which the parties have referred me in support of their respective positions.
54. *Re Ricketson* concerned the disclosure of information on salary set out in the employment contract of the Chief Executive Officer of the Royal Women's Hospital. The Tribunal found that the amount of the salary received by that officer was information relating to his personal affairs and decided that disclosure of that amount would not be unreasonable in the circumstances. In that case, Hanlon J said at page 14:

"It seems to me that there is little to be said of the proposition that it is an unreasonable invasion of Mr Henry's privacy. I do not believe that executive officers in his position have any worthwhile distinction to draw between the position that they are in and the position with many people senior and junior to their rank and responsibility, be they in private employment or not, whose remuneration levels are known and are the subject of legitimate public interest and legitimate discussion."

55. In *Re Milthorpe*, the Tribunal considered the disclosure of information contained in the employment contracts of the Chief Executive Officer and another senior officer of a local government. In that case, Deputy President Macnamara considered that clauses containing particular figures and termination payments should be treated in like case with remuneration, in accordance with the principle exemplified in *Re Ricketson*.
56. In *Re Forbes and Department of the Premier and Cabinet* (1993) 6 VAR 53, the applicant sought access to documents revealing the "salary and consultancy packages" of the Secretary of the Department of the Premier and Cabinet. Section 51 of the *Public Sector Management Act 1992* (Vic) requires that the remuneration package for officers in the Public Service of Victoria must be within the relevant range specified in Schedule 3 to that Act. Section 60 provides that the remuneration package of executive officers is the total amount of the annual rate of monetary remuneration and the annual cost to the employer of employment benefits provided. The respondent submitted that the public was entitled only to know the range within which the remuneration package was found which, in this case, was \$235,000 to \$297,500. However, the Tribunal decided that the range was too broad for sensible analysis and that, in the circumstances, it would not be unreasonable to reveal the total amount of the Secretary's remuneration package. Deputy President Ball said, at page 60:

"Mr Baxter is a senior public servant performing very significant public functions and being paid wholly from money provided by the public. The public is entitled to know precisely how much of its money is received in salary and entitlements by senior public servants for performing functions on behalf of the public."

57. In *Re Forbes*, the Tribunal considered that the public had the right to know the specific amount within the salary range at which the Secretary was paid. The Deputy President took the view that the amount of the salary package was composed of the actual monetary remuneration together with the annual cost of employment benefits to the employer and that, provided the actual costs to the employer are known, this basis of payment more accurately and clearly indicates the total amount of an officer's remuneration payment. Deputy President Ball said, at page 61:

"If a person's cash salary and cash allowance only is known the equivalent cash value of other benefits which may be received by that person remain hidden."

58. A number of the Tribunal's decisions concern the disclosure of information relating to the calculation and payment of performance bonuses. In *Re Rintoul and Swinburne University* (unreported, Administrative Appeals Tribunal of Victoria No. 29623, April 1997), an applicant sought access to documents relating to the payment of performance bonuses for executive officers at Swinburne University in order to see whether proper procedures had been followed. The respondent released to the applicant edited copies of the terms and conditions of the relevant forms of contract of employment. The undisclosed extracts included details of individual financial packages and the potential performance-related bonus percentages. In the circumstances of that case (where the officers concerned were below the level of "high fliers"), the Tribunal found that it would be unreasonable to release the information sought and that any public interest was equally served by information already released or proposed to be released.

59. The decision in *Re Thwaites* dealt with similar issues. In that case, the applicant sought information concerning the performance bonus amounts paid or payable to the Secretaries of Government Departments, as well as their performance ratings. It was not disputed that performance assessments related to the personal affairs of particular officers. It was public knowledge that the performance of the individuals concerned was subject to periodic review, performance bonuses were awarded within a range up to 20 per cent per annum, and that the aggregate of performance bonuses awarded was payable only upon completion of the term of each contract. The Tribunal held that, in the circumstances of that case, the public interest in accountability was satisfied by the publication of the amount of the performance bonuses, if paid, as required by instructions pursuant to the *Financial Management Act 1994* (Vic). However, the Tribunal found that release of information concerning performance bonuses before they became payable would be speculative and would undermine the authority of the Department Heads and affect their ability to manage and lead. Deputy President Megay, by way of comment, said, at pages 451-452:

"[The Tribunal] prefers the view enunciated in the later cases that the public interest is served by disclosing the totality of those amounts drawn from the public purse and is not usefully served by providing a split-up of various component parts."

Balancing the public interest factors

60. Determining whether or not disclosure would be in the public interest, involves identifying the public interest factors for and against disclosure of information relating to the salary amounts, benefits and bonuses of senior officers of the agency, weighing those factors and deciding where the balance lies. Pursuant to s.102(3) of the FOI Act, the onus is on the complainant to establish that disclosure of that personal information about the senior officers would be in the public interest.
61. I accept the agency's submission that the test required by the FOI Act is that the case for disclosure submitted by the complainant needs to be stronger than the case for non-disclosure, not simply equal to it, when the opposing factors are weighed one against the other. However, I do not accept the agency's contention that the complainant's case must be distinct from whatever additional public interest factors I may regard as pertinent. I consider that my function when dealing with a complaint includes identifying public interests that are relevant to the matter before me, weighing those factors and making a judgment about where the balance lies.
62. I accept that the public interest embraces more than simply the interests of an individual. However, I am not persuaded by the agency's submission that the complainant has a sectional rather than a public interest. In the present case, I recognise that the agency is a public institution which operates to serve the community as a whole and that it is funded by significant amounts of public monies. I consider that there is a public interest in the community being informed of how taxpayer funds are spent.
63. I recognise that there is a very strong public interest in maintaining personal privacy. I consider that that public interest may only be displaced by some other countervailing public interest that requires the disclosure of private information. I have taken into consideration the strong objections of the senior officers to the release of personal information. I have noted the submission from one of those officers that disclosure could retrospectively provide private details relating to a person's previous employment in the private sector. However, I am not persuaded that disclosure would necessarily have that result. It may provide a basis for speculation as to whether the previous salary was less or more than the amount disclosed, but would not confirm that either way.
64. I recognize that there is a public interest in agencies being able to attract highly qualified and skilled executive personnel. However, I am not persuaded that disclosure of information relating to executive remuneration is likely to result in such pressure that the agency could not offer market-competitive salaries and thereby detract from its ability to obtain the services of such personnel. The agency has provided me with no probative material to show that disclosure would so disadvantage the agency in the market place. I accept that the remoteness and relative size of the agency are relevant factors, but I consider that the decisions made by applicants for the senior officers' positions are likely

to be influenced by a number of factors, of which remuneration may be a significant, but not the sole, consideration. For example, I understand that the agency is recognized as a leader in its field for the quality of its teaching and this might well be an important factor. Therefore, I am not persuaded by the agency's argument that disclosure would disadvantage the agency to the extent that it claims it would do so.

65. I recognize that there is a public interest in maintaining the productivity and morale of senior officers who are essentially responsible for ensuring that the agency is competitive and able to produce quality educational outcomes. However, I note that none of the senior officers made any comments or submissions to me concerning the likely effects of disclosure on his or her productivity or morale, although one officer submitted that disclosure, if taken out of context, could cause embarrassment to that person and that person's family. It may be that there is always the potential for information taken out of context to cause embarrassment, but I am not persuaded that any embarrassment would ensue or that if that were to occur that any significant impact on productivity or morale would necessarily be the result.
66. I also accept that there is a public interest in the agency responding to concerns about the increase in the costs of the University Chancellery at a time when other parts of the agency are expected to reduce their costs, and a public interest in the internal resolution of disputes and disagreements in the agency. However, I am not persuaded that disclosure of information about executive remuneration in the agency would be likely to inhibit the settlement of disputes. I take the view that the more open and transparent the dispute resolution process is, the more likely it will be that a resolution can be achieved and, in that context, uninformed speculation is more likely to encourage conflict and deepen existing differences amongst the agency's officers.
67. Favours disclosure, I recognize that there is a public interest in the complainant being able to exercise its right of access to documents under the FOI Act. I recognise that there is a public interest in the accountability of the agency for the expenditure of public monies and I note that the agency acknowledges a need for transparency when enterprise bargaining negotiations over salary discussions have slowed and budgetary allocations are in dispute.
68. I recognise that there is a public interest in the public receiving value for its money spent on public education, especially in the present climate of financial restrictions. I agree with the Tribunal in *Re Ricketson* and *Re Forbes* that the public is entitled to know how much of its money is received in salary and entitlements by senior public officers for performing functions on behalf of the public and that such information is the subject of legitimate public interest and discussion.
69. The officers of the agency involved in this matter are members of the agency's senior management team who are responsible for decision-making at the highest level. I consider that their positions and duties are analogous to those of senior executives in other public sector agencies whose salaries and other benefits are

determined by the Salary and Allowances Tribunal and published in the Government Gazette. I consider that there is a strong public interest in favour of the disclosure of similar information relating to the senior executive officers of the agency and of other tertiary institutions.

70. I agree with the views expressed by the Tribunal in those cases to which I have referred that, in general, the public interest is served by disclosing the totality of the remuneration and also that it is in the public interest for the public to know the components comprising that total, but not the amount, of the individual benefits and bonuses which make up the salary package. In my opinion, the agency's Annual Report does not provide information that can be sensibly analysed to provide more than a rough guide to the remuneration of the senior management team generally. Accordingly, in weighing the competing public interest factors, I consider that disclosure of information as to the remuneration of the senior officers would, on balance, be in the public interest.
71. In this matter, information relating to the salary and benefits paid to the senior officers is recorded in a variety of ways. Documents 1, 7 and 18 contain tables recording the base salary amount, the total employment cost, and the amounts of any bonus and benefits included in the total amounts. Elsewhere, the contracts record base salaries, or both the base salary and the total employment cost, together with the amounts of additional benefits or bonuses. I agree with the comments of Deputy President Ball in *Re Forbes* that if only a person's base salary is known that does not give the complete picture. In my view, where the total employment cost is stated, that should be disclosed. However, I consider that it is in the public interest to disclose the base salary amount and (if recorded in the documents) the total employment cost and, at the same time, identify the nature of the other benefits or bonuses paid or payable, without disclosing the individual amounts of each of those benefits or bonuses.

Conclusion

72. Accordingly, I find that information in the disputed documents that refers to standard conditions of appointment, legal "boilerplate" provisions, the names and positions of the senior officers, details of each officer's duties and other provisions which relate to an individual's position or functions as an officer of the agency, the base salary amounts, the total employment costs and the nature of any benefits and bonuses payable is not exempt matter under clause 3(1) because such information is not personal information as defined under clause 3(1), or is prescribed details for the purposes of clause 3(3), or its disclosure would, on balance, be in the public interest.
73. However, I find that non-standard conditions of employment and the individual amount of each of the benefits or bonuses paid or payable to the senior officers (and where those amounts are recorded in total, the total amount) is exempt matter under clause 3(1). I have specifically identified this matter to the agency, by the provision of highlighted copies of the documents.

(b) Clause 11(1)(c) – Effective operation of agencies

74. The agency also claims exemption for all of the disputed documents under clause 11(1)(c). Clause 11, as far as is relevant, provides:

- “(1) Matter is exempt matter if its disclosure could reasonably be expected to –
- (a) ...
 - (b) ...
 - (c) have a substantial adverse effect on an agency’s management or assessment of its personnel;
 - (d) ...

Limit on exemptions

- (2) Matter is not exempt matter under subclause (1) if its disclosure would, on balance, be in the public interest.”

75. To establish an exemption under clause 11(1)(c) the agency must show that disclosure could reasonably be expected to result in a “*substantial adverse effect*” on the management or assessment of its personnel. In *Attorney-General’s Department v Cockcroft* (1986) 64 ALR 97 at page 106, the Full Federal Court said that the words ‘could reasonably be expected’ were intended to receive their ordinary meaning and required 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 stated consequences to follow if the documents in question were disclosed.

76. The requirement that the adverse effect must be ‘substantial’ is an indication of the degree of gravity that must exist before a *prima facie* claim for exemption is established: *Harris v Australian Broadcasting Corporation* (1983) 78 FLR 236. In the context of the exemption in clause 11(1)(c), I accept that ‘substantial’ is best understood as meaning ‘serious’ or ‘significant’: *Re Healy and Australian National University* (unreported, Administrative Appeal Tribunal No. 2148, 23 May 1985); *Re James and Australian National University* (1984) 2 AAR 327 at 341.

The agency’s submission

77. The agency submits that the complainant’s access application might be considered as a tactic to drive a wedge between the Vice Chancellor and the senior management team. It asserts that other universities have commented on similar tactics adopted by the union and that this was also the subject of comment at a recent meeting of the Australian Vice Chancellors’ Committee. However, s.10(2) of the FOI Act makes it clear that a person’s right to be given access under the FOI Act is not affected by the agency’s belief as to what are the person’s reasons for wishing to obtain access. I consider that the agency’s belief as to the complainant’s reasons for seeking access are not relevant to my determination of the claim for exemption.

78. The agency contends that disclosure of the disputed documents could reasonably be expected to have a substantial adverse effect on the cohesion of the senior management team and on the ability of the members of that team to manage their own staff. The agency notes that by drawing attention to disparities between the salaries of the senior officers, there will be a substantial adverse effect on the morale of those individuals, in particular with regard to those less well remunerated.
79. The agency contends that disclosure will lead to an attack on the levels of some of those salaries. It submits that, although such an attack would be aimed at the holders of those positions, it is only human nature that the incumbents' morale, and hence productivity, would be negatively affected. The agency submits that disclosure is likely to be interpreted by the senior officers (and those working for them) as a reflection of their comparative worth with a consequent, negative effect on morale. The agency cites the view of the Tribunal in *Re Thwaites* at page 451 in support of its view.
80. The agency also submits that any attack on remuneration levels is likely to make it more difficult for the agency to objectively review remuneration levels for senior officers as it will generate staff pressure to depress executive salaries, irrespective of salary changes in the marketplace. The agency informs me that salaries have been negotiated specifically in relation to the unique qualifications and experience of the individuals, as well as the strategic objectives to be achieved and that another person occupying the same position in future may be paid at a higher or lower rate.
81. Finally, the agency submits that disclosure is likely to deepen a "them and us" approach among senior officers and the rest of the staff, thereby inhibiting the reaching of common ground in the settlement of disputes.

The complainant's submission

82. The complainant denies the agency's assertion that it is seeking access to the disputed documents in order to drive a wedge between the Vice Chancellor and the senior management team and rejects the claim that disclosure of the disputed documents would generate staff pressure to depress executive salaries.
83. The complainant referred to my decision in *Re Ayton and Police Force of Western Australia* [1999] WAICmr 8, and in particular to the comment that:

"Personnel issues between managers and subordinates can and do occasionally surface in any large organisations. They are simply administrative issues that managers must deal with as part of their working responsibilities, and may be viewed by contemporary managers as opportunities for change and improvement, rather than as organisational threats".

The complainant submits that this comment is relevant to the circumstances of this claim for exemption.

84. The complainant submits that the potential for some mistrust or suspicion does not amount to a “substantial adverse effect”: *Re Australian Medical Association Limited and Health Department of Western Australia* [1999] WAICmr 7. The complainant rejects the agency’s submission that disclosure of the disputed documents could reasonably be expected to have a substantial adverse effect on the morale of the senior officers, particularly those who may be less well remunerated than others. The complainant submits that disclosure of this information will allow for greater clarity and transparency. I understand the complainant to contend that it is the lack of such openness and transparency that is more likely to have an adverse effect on the senior officers’ morale.

Consideration

85. I am not persuaded that disclosure would adversely affect the morale of senior officers as claimed by the agency. The agency submits that the decision in *Re Thwaites* supports its claim that disclosure would have a negative effect on the morale of its senior officers. In *Re Thwaites*, the Tribunal accepted the evidence of an expert in an executive search organisation that comparisons could adversely affect the ability of senior staff to manage and lead. However, those comments were made in reference to comparisons, not of salaries, but of performance assessments for the purpose of awarding performance bonuses. As I have noted earlier, the complainant withdrew its request for access to information relating to performance assessments. Disclosure may require the agency to justify the levels of remuneration paid to its senior officers, but I consider that result to be a part of the agency’s general accountability for decisions that are made. In my view, it is open to the agency to provide the senior officers with an explanation or to take other steps to effectively communicate the reasons for any disparities. For example, if it is evident that remuneration is based on unique qualifications and experience, then I do not accept that disclosing that information with an explanation would result in any adverse effect on general morale, and certainly not a substantial adverse effect as required by the terms of the exemption clause. It might be that certain qualifications or experience are in demand or short supply at any one time and thus a disparity in remuneration levels between positions would reflect market forces. In my view, similar circumstances apply widely in other areas of employment and are generally understood and accepted by the public. In any event, the agency has provided me with no probative material to support its claims and, accordingly, I consider that those claims are mere speculation. I do not consider that the adverse effects on the management of its personnel claimed by the agency are significant or serious, even if they could reasonably be expected to follow from the disclosure of the documents.
86. I am not persuaded that disclosure of the relevant information in the disputed documents is likely to deepen divisions between senior officers and the rest of the staff as submitted by the agency. I consider that it is equally likely that transparency and openness about such matters could create a better understanding of the real issues between those involved rather than fostering the ongoing speculation and deepening the divisions which both parties

acknowledge presently exist. In my opinion, the resolution of disputes is more likely if the parties understand the administrative processes involved in setting the remuneration levels of senior officers.

87. For the reasons given, I am not satisfied that a claim for exemption under clause 11(1)(c) is made out. The agency has not persuaded me that disclosure of the disputed documents could reasonably be expected to have a substantial adverse effect on the management or assessment of its personnel. In any event, the exemption in clause 11(1)(c) is subject to the limit on exemption in clause 11(2), which provides that matter is not exempt under clause 11(1) if its disclosure would, on balance, be in the public interest. I have discussed the public interest in some detail above and, in my opinion, that discussion applies equally to my consideration of this claim for exemption and I adopt it accordingly.
88. As a result, I find that the disputed documents are not exempt under clause 11(1)(c).
89. Both the agency and a number of the parties joined to this complaint expressed concerns that if any of the information in the disputed documents was found not to be exempt under the FOI Act, it should be released in context and that such information should be disclosed at the same time as similar information relating to other universities. With regard to the first of those concerns, I note that the agency has the power to provide information in its relevant context. In relation to the second, the Information Commissioner only has jurisdiction to make a determination, when dealing with a valid complaint under the FOI Act, on that complaint only.
