RINDOS AND UWA

OFFICE OF THE INFORMATION COMMISSIONER (W.A.)	**File Ref: 94024** **Decision Ref: D02095**

Participants:

David John Rindos
Complainant

- and -

The University of Western Australia
Respondent

DECISION AND REASONS FOR DECISION

FREEDOM OF INFORMATION - refusal of access - documents relating to tenure review - documents relating to review of department of agency - clause 8(2) - confidential communications - information of a confidential nature obtained in confidence - prejudice future supply - candour and frankness of future responses - disclosure where author of report consents to release - report as part of managerial responsibilities - clause 11(1)(c) - effective operations of agencies - substantial adverse effect on agency's management or assessment of its personnel - onus on agency to justify claims - clause 6(1) - deliberative processes - advice and opinion obtained and recorded for the deliberative processes of the agency - documents relating to review of department of agency's - contrary to public interest to reveal information.

Freedom of Information Act 1992 (WA) ss. 21; 68(1); 72(1)(b); 75(1); 102(1); Schedule 1 clauses 3(1), 6(1), 7(1), 8(2), 11(1)(c).
Freedom of Information Act 1982 (C'wth) ss. 36(1); 40(1)(c); 45.

Re Weeks and Shire of Swan (Information Commissioner, WA, 24 February 1995, unreported).
News Corporation Limited v National Companies and Securities Commission (1984) 57 ALR 550.
Ryder v Booth [1985] VR 869.
Re Veale and Town of Bassendean (Information Commissioner, WA, 25 March 1994, unreported).
Re Gahan and City of Stirling (Information Commissioner, WA, 21 October 1994, unreported).
Re Murtagh and Commissioner of Taxation (1984) 54 ALR 313.
Re De Souza-Daw and Gippsland Institute of Technology (1987) 2 VAR 6.
Re Kamminga and Australian National University (1992) 15 AAR 297.

Re Pemberton and The University of Queensland (Information Commissioner, Queensland, 5 December 1994, unreported).
Harris v Australian Broadcasting Corporation (1983) 78 FLR 236.
Re Jones and Shire of Swan (Information Commissioner, WA, 9 May 1994, unreported).
Re Healy and Australian National University (Commonwealth Administrative Appeals Tribunal, 23 May 1985, unreported).
Re James and Australian National University (1984) 2 AAR 327.
Manly v Ministry of Premier and Cabinet (Supreme Court of Western Australia, Appeal No. SJA 1143 of 1994).

DECISION

The decision of the agency is set aside. In substitution, it is decided that:

- The third and fourth paragraphs on page 7 of Document 1 are exempt under clause 3(1) of Schedule 1 to the *Freedom of Information Act 1992*, but the balance of Document 1 is not exempt;

- The third and fourth paragraphs on page 7 of the first attachment to Document 23 are exempt under clause 3(1) of Schedule 1 to the *Freedom of Information Act 1992*, but the balance of the first attachment to Document 23 is not exempt;

- Documents 6, 24, 27 and 29 and the third attachment to Document 23 are not exempt;

- Documents 14, 16A, 16B, 32 and 33 and the deleted parts of Documents 15A, 15B and 25 are exempt under clause 6(1) of Schedule 1 to the *Freedom of Information Act 1992*.

B. KEIGHLEY-GERARDY
INFORMATION COMMISSIONER

10th July 1995

REASONS FOR DECISION

1. This is an application for external review by the Information Commissioner arising out of a decision of The University of Western Australia ('the agency') to refuse Dr Rindos ('the complainant') access to certain documents requested by him under the *Freedom of Information Act 1992* ('the FOI Act').

BACKGROUND

2. The documents the subject of this complaint relate to a dispute between the complainant and the agency over the agency's decision to deny the complainant tenure. I consider it useful to explain the background to the issue of tenure in order to place the agency's decision, and the complainant's concerns, into context.

3. The agency has informed me that academic staff appointments in the agency are made in accordance with the relevant Industrial Award and with procedures and policies contained in the agency's manual dealing with these matters. On 9 January 1989, the complainant accepted an appointment in the agency, as Senior Lecturer initially placed in the Centre for Pre-History, attached to the then Archaeology Department. The position of Senior Lecturer is the third most senior position behind the positions of Professor and Associate Professor.

4. The complainant's appointment was subject to the normal terms and conditions applicable to that position. One of those conditions is that the appointment was "subject to review" for an initial period of three years. In this instance, as he took up his appointment on 13 June 1989, the complainant's period of appointment was to 12 June 1992.

5. During the period of his appointment, in accordance with normal practices, the complainant was required to submit three "annual statements of activities" to his Departmental Head. I am informed by the agency that the first statement was considered satisfactory and the complainant was advised accordingly on 8 August 1990. The second statement was accepted as satisfactory, with some qualifications, on 18 October 1991. It is my understanding that the areas of concern on that occasion were brought to the attention of the complainant.

6. Following the appointment of a new Head of Division, Dr Partis, the initial appointment of the complainant was extended on 13 May 1992 for six months to 31 December 1992, in order for his new supervisor to have sufficient time to provide a fair and reasonable assessment of the complainant's capabilities. In November 1992, Dr Partis recommended to the Vice-Chancellor that the complainant's tenure not be approved.

7. In December 1992, the Vice-Chancellor referred the matter to a Committee of Review for inquiry and recommendation. In the interim, the period of appointment was extended again by the Vice-Chancellor, in a letter to the complainant dated 10 December 1992, *"for the period necessary to allow for her*

consideration and decision on the Committee's report". The Committee of Review also recommended against tenure in a report to the Vice-Chancellor dated 24 December 1992. A copy of the report and findings of that Committee was provided to the complainant and he submitted a written reply on its findings to the Vice-Chancellor. On 10 June 1993, the complainant was advised that the Vice-Chancellor had decided not to convert his appointment to *"a permanent appointment not subject to review"*. As a consequence, the complainant's appointment and hence his employment in the agency came to an end on 13 June 1993.

8. In late 1993, the complainant requested access to documents relating to the process of his tenure review and he sought certain other information from the agency. That request appears to have been dealt with by the agency outside the ambit of the FOI Act by agreement between the parties. However, in January 1994, the request to access documents was formally converted to a request under the FOI Act.

9. Although the agency accepted the formal FOI application, the ambit of the complainant's request was so broad, and involved so many documents, that the agency was unable to comply with the statutory time frames under the FOI Act. Instead, it proceeded to decide the question of access to various documents, as and when those documents were received from various sections of the agency. During this period, the complainant lodged 3 further formal access applications and made numerous verbal requests for other documents following his receipt of some of those documents. The agency accepted, and attempted to comply with, each of those requests.

10. During that period the agency formally denied the complainant access to documents on 13 occasions, claiming that documents were exempt under various clauses of Schedule 1 to the FOI Act, and dealt with two requests for internal review. Between January 1994 and May 1994, over 500 separate documents were released by the agency to the complainant on at least 34 occasions.

11. On 8 March 1994, the complainant applied to the Information Commissioner for external review of the agency's decision to refuse him access to a number of documents arising from the tenure review procedures of the agency.

REVIEW BY THE INFORMATION COMMISSIONER

12. On 10 March 1994, in accordance with my obligation under s.68(1) of the FOI Act, I notified the agency that I had accepted this complaint for review. Pursuant to my authority under s.75(1) and s.72(1)(b) of the FOI Act, I also sought the production to me of the documents in dispute, together with the file maintained by the agency with respect to the access application. I also required the agency to provide me with a schedule listing and describing the documents in dispute and the exemptions claimed to be applicable to each document or part of a document. At that stage, the complainant had been provided with a letter dated 14 February

1994 and a letter dated 25 February 1994 purporting to be a notice of decision upon the application and a notice of decision upon internal review respectively. However, those notices dealt with only a part of the access application and a number of other aspects remained unresolved by the agency.

13. Therefore, by letter dated 18 March 1994, I informed the parties that I would proceed to consider the disputed documents that had been produced to me. However, my formal consideration of the matter would be suspended until the agency had finished dealing with the outstanding matters and issued a final notice of decision. The agency and the complainant then negotiated an agreed extension of time for the agency to finalise its dealing with the access application. The complainant was subsequently provided with an additional notice of decision and a notice of decision on internal review dated 11 and 26 April 1994 respectively.

14 On 3 May 1994, the complainant informed me that the agency had completed dealing with his access application and he provided my office with a submission relating to the documents to which he had been denied access. In the following months, my office received a series of correspondence from the complainant in which he alleged that various documents were missing from the schedule provided by the agency or that certain others had not been supplied to him. Those allegations were put to the agency on each occasion by my office and attempts were made to identify the exact number of documents in dispute between the parties.

15. That process of review was unsatisfactory from my point of view, for a number of reasons. Firstly, the ambit of the complainant's initial request was so broad that relevant documents could not readily be identified or located by the agency. Secondly, the agency had attempted to deal with the complainant's initial requests outside of the procedures prescribed in the FOI Act pertaining to access applications. Thirdly, the applicant lodged further access applications for related documents before the agency had dealt with his first request and the agency continued to deal on a piecemeal basis with the various requests as they arose. Fourthly, the complainant continued to raise concerns about additional "missing" documents which required further action and searches by the agency. Fifthly, agreement could not be reached between the parties, early on in the process, to identify the precise documents upon which I was required to make a decision about access.

16. However, following a meeting between my officers and the parties, a visit to the agency by one of my officers and extensive discussions and negotiations between my office and the parties in the ensuing months, a schedule listing and describing the documents to which access had been refused was finally settled by my office and agreed to by the parties. Another list was compiled of documents which the complainant said should exist in the agency but which the agency had not been able to find. A third list was prepared which detailed those documents that the complainant had claimed to be missing but which had either been subsequently located and provided to the complainant or which he no longer sought to pursue.

17. On 30 November 1994, I provided the complainant with my preliminary view in relation to that part of his complaint which concerned those documents that he claimed should have been included on the agency's schedule but had not been included. It was my preliminary view that the searches conducted by the agency to locate those documents were, in all the circumstances, reasonable. Those inquiries involved two members of my staff visiting the agency on a number of occasions to make inquiries with the relevant staff in the office of the Vice-Chancellor, the Registrar, Central Records, the Departments of Archaeology and Anthropology and the Human Resource Directorate. The agency also detailed, in writing, the places and manner in which it had searched for the documents described by the complainant. The complainant was informed of the extent of those search efforts and the results.

18. Taking all of those matters into consideration, I formed the view that all reasonable steps had been taken by the agency to locate the documents which the complainant claimed should exist, but that those documents either could not be found or did not exist. The complainant was advised of my preliminary view and did not pursue that part of his complaint.

19. As I did not consider that I had been provided with sufficient information as to the basis of the agency's decisions to refuse access to the documents remaining in dispute, I sought additional information from the agency to justify its claims that some or all of the matter in the documents is exempt. Some additional information was subsequently provided by the agency and another detailed submission in response was made by the complainant. Following further negotiations by my office, the agency reconsidered its exemption claims and decided to abandon its claims in respect of 8 documents - copies of which were released to the complainant - leaving 23 documents in dispute.

20. On 17 February 1995, I advised the complainant that, on the material then before me, it was my preliminary view that the documents remaining in dispute between the parties were exempt under clauses 7(1) or 6(1) of Schedule 1 to the FOI Act. I provided the complainant with my reasons for my view that the disclosure of deliberative process documents was contrary to the public interest. A copy of my letter to the complainant was also provided to the agency. After receiving my preliminary view letter and considering its contents, the complainant subsequently withdrew his complaint relating to documents that would, in my preliminary view, be privileged from production in legal proceedings on the ground of legal professional privilege.

21. Thereafter, it came to my attention that a copy of my preliminary view letter had been circulated to various members of the media by the agency. It was wrongly described by the agency as an "FOI ruling" and "the FOI finding" concerning the exempt status of the disputed documents. It was also referred to in a press statement issued at that time by the agency

22. I expressed to the Vice-Chancellor of the agency my grave concern about the circulation and misinterpretation by the agency of my preliminary view at a stage when my deliberations had not concluded. After establishing that my letter had,

in fact, been distributed to the media by the agency, the Vice-Chancellor informed me that she had instituted an immediate inquiry and would be taking disciplinary action *"...to ensure that our usual high standards in these matters are not compromised again."* I have not, to date, been informed of the outcome of that investigation.

23. It is my practice, before proceeding to a formal decision on a complaint, to inform the parties to the complaint of my preliminary view of the matter and reasons for that view. Where the complaint is against an agency's decision to refuse access to documents, the purpose of providing my preliminary view to the parties is to give an indication of my view, on the material then before me, of whether the claims for exemption have been established. Additional evidence or submissions received following my preliminary view may, indeed, change my preliminary view and, on occasion, have done so in the past (see, for example, my decision in *Re Weeks and Shire of Swan* (24 February 1995, unreported), at paras 11-14).

24. Following receipt of the letter advising him of my preliminary view, the complainant provided a further submission in reply to my preliminary view that some of the documents were exempt under clause 6(1) of Schedule 1 to the FOI Act. The complainant's assertions directly contradicted certain information I had received from the agency and upon which I had relied in reaching my preliminary view. As a result, I put a series of questions to both the complainant and the agency in an attempt to resolve those areas of disagreement as I considered that the answers to be given were crucial to my determination of this matter.

25. Although I required both parties to provide their answers in the form of statutory declarations, the answers provided to me by the agency were not in that form. Having received and considered those answers and the additional information placed before me, I consider some, but not all, of the documents in dispute to be exempt under various clauses of Schedule 1 to the FOI Act. My reasons follow.

THE DISPUTED DOCUMENTS

26. There are 14 documents remaining in dispute between the parties. Those documents, and the exemptions claimed by the agency for each of them, are described below. The documents are numbered according to the schedule prepared by my office, which has been provided to both parties.

No	Date	Document description	Exemption
1	17/6/91	Report entitled "Tenure Report: Dr D Rindos" by Professor Sandra Bowdler, Head, Department of Archaeology, and covering letter from Professor Bowdler to Professor Michael Taylor, Head, Department of Geography.	8(2); 11(1)(c)

6	13/8/91	Letter from Professor Taylor to Professor Charles Oxnard, Head, Division of Agriculture and Science.	8(2); 11(1)(c)
14	31/3/92	Letter D. H Clyde and S. D. Hotop to Professor F. Gale, Vice-Chancellor, The University of Western Australia (the" Clyde/Hotop Report").	3(1)
15A	10/11/92	r Sylvia J Hallam to Professor Jory (part only).	3(1)
15B	10/11/92	Copy of document 15A with distribution list, office stamp and different format of data (part only).	3(1)
16A	25/2/92	Signed copy of letter from Sylvia J Hallam, FAHA, to Professor Gale.	3(1)
16B	25/2/92	Unsigned copy of document 16A with parts highlighted.	3(1)
23	23/11/92	Document entitled "Dr D. Rindos - Tenure Review (Supplementary Report)", signed by Dr Partis with three attachments.	8(2); 11(1)(c)
24	24/11/93	Letter from Michael Partis to Ms S Zanetic, Director, Personnel Services.	8(2)
25	7/5/92	Copy of unsigned letter to Professor F. Gale, Vice-Chancellor (parts only).	3(1)
27	undated	Unsigned 3 page hand-written notes.	6; 11(1)(c)
29	16/2/93	Letter from Professor E. J. Jory, Head, Division of Arts and Architecture, to Associate Professor Bob Wood, Acting Deputy Vice-Chancellor, The University of Western Australia.	8(2); 11(1)(c)
32	24/6/93	Parts of letter from Sandra Bowdler to Professor Fay Gale, Vice-Chancellor.	3(1)
33	11/11/92	Letter from Iain Davidson to Professor Fay Gale, Vice-Chancellor, The University of Western Australia.	3(1)

THE EXEMPTIONS

(a) Clause 8 - Confidential communications

27. The agency claims that Documents 1, 6, 23, 24, and 29 described above, are exempt under clause 8(2) of Schedule 1 to the FOI Act. Clause 8(2) provides:

> *"(2) Matter is exempt matter if its disclosure -*
>
> *(a) would reveal information of a confidential nature obtained in confidence; and*
>
> *(b) could reasonably be expected to prejudice the future supply of information of that kind to the Government or to an agency.*
>
> ***Limits on exemption***
> *(3)...*
> *(4) Matter is not exempt matter under subclause (2) if its disclosure would, on balance, be in the public interest.*

28. In order for matter to be exempt under clause 8(2), an agency must not only establish that, if the matter were disclosed, it would reveal information of a confidential nature obtained in confidence, but also that the disclosure of that information could reasonably be expected to prejudice the future supply of information of that kind to the Government or to an agency.

29. The Concise Oxford Dictionary, Eighth Edition, defines "prejudice" as meaning, *inter alia, "harm or injury that results or may result from some action or judgement"*. The meaning of the phrase "could reasonably be expected to prejudice" was considered by all the judges of the full Federal Court in *News Corporation Limited v National Companies and Securities Commission* (1984) 57 ALR 550. In that case, Woodward J. said, at page 561:

> *"...I think that the words "would, or could reasonably be expected to...prejudice" mean more than "would or might prejudice". A reasonable expectation of an event requires more than a possibility, risk or chance of the event occurring...In my view it is reasonable to expect an event to occur if there is about an even chance of its happening and, without attempting to suggest words alternative to those chosen by the draughtsman, it is in that general sense that the phrase should be read."*

30. It is also my view, that the phrase "*could reasonably be expected to prejudice the future supply of information of that kind to the Government or an agency*" is not to be applied by reference to whether the particular person whose confidential information is being considered for disclosure could reasonably be expected to refuse to supply such information in the future, but by reference to whether disclosure could reasonably be expected to prejudice the future supply of such

information from other sources available or likely to be available to the Government or an agency.

31. In *Ryder v Booth* [1985] VR 869, the Full Court of the Victorian Supreme Court considered whether the Victorian equivalent of clause 8(2) applied to medical reports provided in confidence to the State Superannuation Board. On the question of whether disclosure would be reasonably likely to impair the future supply of similar information, Young C.J. said, at p 872:

> *"The question then is, would disclosure of the information sought impair (i.e. damage) the ability of the Board to obtain similar information in the future. Put in terms of the present appeals this means that the question is, would the disclosure of the information damage the ability of the Board to obtain frank medical opinions in the future. It may be noted that it is the ability of the Board that must be impaired. The paragraph is not concerned with the question whether the particular doctor whose report is disclosed will give similar information in the future but with whether the agency will be able to obtain such information. There may well be feelings of resentment amongst those who have given information "in confidence" at having the confidence arbitrarily destroyed by the operation of the legislation, but it is another thing altogether to say that they or others will not provide such information in the future. It is not sufficient to show that some people may be inhibited from reporting so frankly if they know that their report may be disclosed. More is required to satisfy the onus cast upon the agency by s.55(2) of the Act."*

32. I accept those comments as being relevant to my consideration of the agency's claims for exemption under clause 8(2) and, applying those tests to the disputed documents, in my view, the questions that should be asked by the agency in respect of each of them are:

- Could disclosure of the particular document reasonably be expected to pose more than a possibility or small risk of harm in the future to the supply to the agency of information of the class or character contained in the document under consideration?

- Are there any competing interests to be weighed against that risk such that disclosure of the particular document, nevertheless, would, on balance, be in the public interest?

The agency's claims

33. To support its claims for exemption for some of the disputed documents under clause 8(2) of Schedule 1 to the FOI Act, the agency said:

> *"To ensure the health of the discipline and to ensure the prospects of inter-university promotion and transfer of staff, it is imperative that the members of the discipline and profession are able to make free and*

unfettered comments and to give considered opinions of the academic worth of their colleagues who aspire to promotion and appointment.

The interests of the public are therefore best served by the University being able to access honest and unfettered information and to make decisions based on its collective wisdom and appropriate evaluation of information provided to it. Any process which negates or reduces the value of its decision-making with regard to its staff cannot be in the public interest. Any process which reduces the amount of information available to the University cannot be in the public interest."

34. The agency claims that it is standard practice to deny access to tenure and referee reports, except where the author of such a report consents to its release. It is also claimed that a convention of confidentiality exists within universities that tenure and referee reports are requested and provided in confidence. The agency informed me that the traditional practice of not granting access to reports of that type no longer applies to universities in the United States. The result, it is claimed, is that little value is placed on such reports because not all referees or supervisors are prepared to make negative comments about other staff without a guarantee of confidentiality. The agency also informed me that, in universities in the United States, comments are increasingly being sought by telephone and that this results in a less open system.

35. The agency also claims that it has a strict policy, that accords with accepted personnel procedures, of counselling staff when necessary and that such counselling is based on the information provided to it as part of its decision-making process. The agency claimed that the complainant received counselling in accordance with that policy.

The complainant's submission

36. On my reading of his letter to the agency of 21 February 1994 seeking internal review, it appears to me that the complainant accepted the arguments of the agency for exemption based on confidentiality as it applies to referee reports supplied by people external to the agency. However, the complainant does not accept the validity of the proposition that officers of the agency, who have a duty or a responsibility to provide reports on colleagues, will not provide those reports to the agency in the future, if the documents requested by him are disclosed under the FOI Act.

Analysis of claims

37. It is apparent to me that the agency's claims amount to a "candour and frankness" argument. That is, it is the submission of the agency that if the documents are disclosed the information contained in future reports will be less candid and frank, and that the integrity of those reports must be preserved by denying access to them. That argument has been consistently rejected by the Commonwealth Administrative Appeals Tribunal and I have also rejected it (see my decisions in *Re Veale and Town of Bassendean* (25 March 1994, unreported); *Re Gahan and*

City of Stirling (21 October 1994, unreported)). In *Re Murtagh and Commissioner of Taxation* (1984) 54 ALR 313, at 326, the Commonwealth Tribunal said:

> *"The candour and frankness argument is not new. It achieved pre-eminence at one time but now has been largely limited to high level decision-making and to policy-making...No cogent evidence has been given to this Tribunal either in this review or, so far as we are aware, in any other, that the enactment of the FOI Act 1982 has led to an inappropriate lack of candour between officers of a department or to a deterioration in the quality of the work performed by officers. Indeed, the presently perceived view is that the new administrative law, of which the FOI Act 1982 forms a part, has led to an improvement in primary decision-making."*

38. If I were to accept the agency's arguments based on "candour and frankness", that would mean that I acknowledge as reasonable its claim that professional academic members of the agency, and other like agencies, will only make honest but adverse comments and criticisms about other members of their profession if they can do so behind the cloak of confidentiality. In my view, such a claim is inconsistent with the ethical standards expected of professionals in the academic world and elsewhere. Further, it is not supported by any credible evidence before me.

39. The consequences of releasing written referee reports under FOI have been considered by the Commonwealth and Victorian Administrative Appeals Tribunals with differing results. I also considered the matter of access to a file note containing a record of a telephone reference check in my decision in *Re Gahan and City of Stirling* (21 October 1994, unreported). In *Re Gahan*, I rejected the City's arguments based on the "candour and frankness" argument as it pertained to a claim for exemption based on clause 8(2) of Schedule 1 to the FOI Act.

40. In *Re De Souza-Daw and Gippsland Institute of Technology* (1987) 2 VAR 6, the Victorian Administrative Appeals Tribunal found that a confidential written report sent by a senior academic of an agency to an academic in another agency, regarding the suitability of a particular applicant for an appointment, was an exempt document under the Victorian equivalent of clause 8(2). The Victorian Tribunal found that disclosure would be reasonably likely to impair the ability of the agency to obtain similar information in the future because there could be considerable embarrassment and a break-down in personal relationships leading to a serious decline in the efficiency of the agency in which both the writer and the subject of the reference worked.

41. In *Re Kamminga and Australian National University* (1992) 15 AAR 297, the full Commonwealth Administrative Appeals Tribunal considered whether access to six written referees' reports should be refused. In that case, the University sought to argue that referees would provide reports which were less frank, and thus less helpful to selectors, if they thought that the reports might be made

available to the applicant. It was also argued by the University that less candid reports would lead to the selection of poorer quality staff and that it was in the public interest that the best staff be selected in order to maintain the high quality of staff at the University.

42. The Commonwealth Tribunal found that disclosure of the relevant documents would found an action for breach of confidence under the general law and hence those documents were exempt under s.45 of the Commonwealth FOI Act. However, s.45 of the Commonwealth FOI Act is different from the equivalent clause 8(1) in the FOI Act. The Commonwealth Tribunal, nevertheless, found that the referee reports were not exempt under s.36(1), the Commonwealth FOI equivalent to clause 6(1) of the FOI Act, nor under s.40(1)(c), the Commonwealth FOI equivalent to clause 11(1)(c). On the argument that disclosure of the written referees' reports would lead to the selection of poorer quality staff, the Commonwealth Tribunal said, at p.302:

> *"...Even if the argument that disclosure would lead to less candid reports is accepted, it is also necessary to consider any way in which non-disclosure would be adverse to achieving the goal of selection of the best staff. The Tribunal considers that there may be cases where adverse comment is made on an applicant which is unfounded or out of context. The goal of selecting the best staff in such cases would be facilitated by allowing applicants access to the reports. When this matter was put to witnesses for the University they said that existing procedures, such as the use of multiple references nominated by the applicant, provided adequate safeguard. The Tribunal does not accept this opinion."*

43. I have found neither of those two cases to be particularly helpful to my consideration of this complaint. Of course, neither is binding upon me and in any event both are distinguishable on their facts and involved different considerations to the matter before me. Both of those cases dealt with written referee reports from referees nominated by the applicant for a particular position in the relevant university in each instance. None of the disputed documents in the matter before me is such a document. The claims by the agency in this instance are similar to the claims considered by the Queensland Information Commissioner in his decision in *Re Pemberton and The University of Queensland* (5 December 1994, unreported). That decision concerned an application for external review lodged by an Associate Professor against a decision of The University of Queensland to refuse to disclose various documents connected with his application for promotion. Although also distinguishable and similarly not binding upon me, I consider it to be a case that is relevant to, and helpful in considering, the issue before me. In that case, the evidence filed with the Information Commissioner on behalf of The University of Queensland consisted of hundreds of pages of submissions and included responses from various academics to a questionnaire concerning their attitudes to the disclosure of confidential reports and a policy on confidentiality apparently ratified by the University Senate some six days after the FOI application was lodged.

44. In that case, the Queensland Information Commissioner decided, *inter alia*, that documents consisting of reports or assessments of the applicant's suitability for promotion to Professor were not exempt under the Queensland equivalents to clauses 8(2), 6(1) and 3(1) of Schedule 1 to the FOI Act, although parts of those documents consisting of names and sources of additional references were found to be exempt under the equivalent of clause 11(1)(c).

45. In *Re Pemberton*, the Queensland Information Commissioner was provided with a considerable amount of material from the University in support of its claims, including material from a number of leading academics in that agency as to the possible effects of disclosure of referee and assessment reports. Information of that kind is not before me in this instance. However, I have considered the submissions of both parties and examined the documents and noted relevant decisions in other jurisdictions in order to reach my conclusions.

46. **Document 1** consists of a covering letter and a twelve page report submitted by Professor Sandra Bowdler, Head, Department of Archaeology, commenting on the complainant's tenure. It is addressed to Professor Taylor, Head, Department of Geography, and it is apparent that it was requested rather than volunteered. It appears from the documents before me that the complainant had been transferred by Professor Oxnard, the Head of the Division of Agriculture and Science, to the Department of Geography. Professor Taylor was requested by Professor Oxnard, to prepare a tenure report on the complainant. Professor Taylor did not have expertise in archaeology and had only been the complainant's supervisor for a short time. As a result, he requested Professor Bowdler, the complainant's previous supervisor, to provide him with the tenure report.

47. Given those facts, it appears to me that heads of departments in the agency, as part of their managerial responsibilities, are required to report on the claims of members of their staff for promotion or for permanency of employment by way of tenure. Indeed, in its submissions to me the agency said of Documents 1 and 6, *"[t]hese...tenure reports were prepared by the authors as a result of specific requests and in keeping with their supervisory responsibilities."* That being the case, I reject the claim of the agency that its ability in the future to obtain tenure reports could reasonably be expected to be prejudiced by the disclosure of that document.

48. There is no material before me that would persuade me that supervisors who occupy positions of departmental head and the like will, if Document 1 is disclosed, be less than frank in the future in their assessments of their colleagues. All that is before me are the mere assertions of the agency as to the consequences it claims may flow from disclosure. Without material to establish a factual basis for that assertion, it is mere speculation as to the possible outcome of disclosure. The agency has not persuaded me that its ability to obtain information of that kind, namely information on which it could decide the tenure of an academic employed within the agency, in all the circumstances, could reasonably be expected to be prejudiced in any way.

49. In my view, the words "information of that kind" in clause 8(2)(b) refer to information of a similar class or character rather than the medium in which it is transmitted. Even if I were to accept the claim that disclosure could reasonably be expected to result in a written assessment that was less than candid and honest, it is, nevertheless, the submission of the agency that a similar kind of information could well be provided orally to the agency. That outcome may be unsatisfactory, particularly if it were to result in an agency's records relating to the decision-making processes being incomplete. However, file notes of such conversations can be made, and frequently are made.

50. I understand that the agency informed the complainant that certain documents would be released to him if the appropriate consent was provided by the author. The agency did not attempt to obtain the views of any of the authors itself. The complainant contacted many of the authors of the various documents to which he was seeking access in order to seek their consent to the release of those documents. The complainant subsequently received responses from some but not all of the authors of documents. The agency did, in some instances, release documents following written consent from the authors.

51. In response to such a request from the complainant, Professor Bowdler wrote to the FOI Co-ordinator at the agency informing him that she had no objection to the complainant being shown anything that she had written about him that the agency had on file. Despite that fact, and its submission to me that it will depart from its policy of refusing access to tenure and referee reports in circumstances where the author of the documents gives specific permission to provide the applicant with a copy, the agency maintained its claim that the document is exempt. I do not accept that, in circumstances where the author clearly has no objection to disclosure of the document, disclosure of Document 1 could reasonably be expected to prejudice the future supply to the agency of information of that kind. For that reason and, in any event, for the reasons given above, I find that Document 1 is not exempt under clause 8(2) of Schedule 1 to the FOI Act.

52. However, Document 1 does contain some personal information about other parties. In particular, page 7 contains personal information about two students. In the absence of any evidence that those students consent to disclosure of the personal information about them, and in the absence of any compelling public interest in its disclosure having been demonstrated, I find the third and fourth paragraphs on page 7 of Document 1 exempt under clause 3(1) of Schedule 1 to the FOI Act.

53. **Document 6** is a report on the complainant's tenure submitted by Professor Taylor. From my examination of that document, and having considered the agency's submissions including its claims that a convention of confidentiality governs the submission of such reports, I am satisfied that Document 6 meets the requirements of paragraph (a) of clause 8(2) of Schedule 1 to the FOI Act. However, I am not persuaded by the "candour and frankness" argument alone that the agency's ability in the future to obtain comments for tenure reports from its officers in senior positions such as Professor Taylor, where those officers have

the managerial responsibility and a duty to provide such reports, could reasonably be expected to be prejudiced by the disclosure of that document. For similar reasons to those in respect of Document 1, I find that Document 6 is not exempt under clause 8(2) of Schedule 1 to the FOI Act.

54. **Document 23** is a supplementary tenure review report submitted to the Vice-Chancellor by Dr Partis, the Head of the Division of Agriculture and Science. It is also headed **"CONFIDENTIAL AND IN CONFIDENCE".** The complainant has a copy of that document and has withdrawn his complaint in respect of the report itself. However, there are three attachments to Document 23 and the complainant seeks access to two of those attachments. One of those attachments is an unsigned copy of Document 1. For the reasons given at paragraphs 46-52 above, I find that the copy of Document 1 attached to Document 23 is not exempt under clause 8(2) of Schedule 1 to the FOI Act.

55. The agency does not claim exemption for the second attachment to Document 23, which consists of one covering letter to the Vice Chancellor of the agency and a copy of a two page letter from the University of Copenhagen, and it has been released by the agency to the complainant. The third attachment is a one page letter to Dr Partis from a source within the agency. Although unclear, it appears to have been a solicited comment as to the complainant's working relationship with its author. Although the author of the document was not obliged by managerial responsibilities to provide such a comment, as were the authors of Documents 1 and 7, from the material before me, and given the nature and brevity of the comment, I am not persuaded that the third attachment is exempt under clause 8(2) of Schedule 1 to the FOI Act. However, its exempt status under other clauses in Schedule 1 to the FOI Act is considered in paragraphs 58-68 and 80 below.

56. **Document 24** is a letter dated 24 November 1992 from Dr Partis to Ms Zanetic, the Director of Personnel Services in the agency. It appears that it was the covering letter which accompanied the transmission of Document 23 and its attachments. The document is clearly marked "Confidential and in Confidence". I accept that the contents of that document are of a type described in paragraph (a) of clause 8(2). Clearly, the information contained therein was not widely known and was known only to a limited number of people. Further, I accept that in the circumstances of such a sensitive issue, the letter was both given and received in confidence.

57. However, the agency has not persuaded me that disclosure of Document 24 could reasonably be expected to prejudice the future supply to the agency of information of that kind. I would expect that, as Head of the Department, Dr Partis would be obliged to provide such information in order to ensure that the relevant personnel file is complete. The confidential information contained in the document only represents some of the sources of information in respect of consideration of the complainant's tenure. Given the nature of those sources, I do not accept that their disclosure could reasonably be expected to prejudice the future supply of information of that kind to the agency. Accordingly, I find that Document 24 is not exempt under clause 8(2).

58. **Document 29** is a memorandum submitted to the Acting Deputy Vice Chancellor of the agency, in his role as Chairman of the Tenure Review Committee, by Professor Jory, Head, Division of Arts and Architecture. Professor Jory was a member of the Tenure Review Committee but was overseas at the time of its second meeting. I am informed by the agency that Document 29 was prepared at the specific request of the Chairman of that Committee and, from my own examination of it, it appears to contain Professor Jory's comments on the material taken into account by the Committee, and expresses Professor Jory's tentative conclusion subject to a further inquiry being made. Although the document is headed **"CONFIDENTIAL"** and I am prepared to accept that it was given and received in confidence, I am not persuaded that it contains information that is inherently confidential. The complainant has received a copy of the final report of the Tenure Review Committee. Therefore, taking into account that fact and from my own examination of the contents of Document 29, I am not satisfied that Document 29 meets the requirements of paragraph (a) of clause 8(2) of Schedule 1 to the FOI Act. Therefore, I find it is not exempt under clause 8(2). However, the claim for exemption under clause 11(1)(c) for that document is considered in paragraph 59-69 below.

(b) Clause 11(1)(c)

59. The agency also claimed that Documents 1, 6, 27, 29 and the first and third attachments to Document 23 are exempt under clause 11(1)(c) of Schedule 1 to the FOI Act. Clause 11(1) provides:

> ***"11. Effective operations of agencies***
>
> ***Exemptions***
>
> *(1) Matter is exempt matter if its disclosure could reasonably be expected to -*
>
> *(a) impair the effectiveness of any method or procedure for the conduct of tests, examinations or audits by an agency;*
>
> *(b) prevent the objects of any test, examination or audit conducted by an agency from being attained;*
>
> *(c) have a substantial adverse effect on an agency's management or assessment of its personnel; or*
>
> *(d) have a substantial adverse effect on an agency's conduct of industrial relations.*
>
> ***Limit on exemptions***

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

60. The Federal Court in *Harris v Australian Broadcasting Corporation* (1983) 78 FLR 236 considered the meaning of the words "substantial adverse effect" in s. 40(b) of the Commonwealth FOI Act. Beaumont J. said, at p. 249:

> *"...In my view, the insertion of a requirement that the adverse effect be "substantial" is an indication of the degree of gravity that must exist before this exemption can be made out."*

61. In my view that requirement applies to the words "substantial adverse effect" wherever they appear in the exemption clauses in the FOI Act, and especially in this instance in clause 11(1)(c) (see also: my comments in *Re Jones and Shire of Swan* (9 May 1994, unreported); *Re Healy and Australian National University* (Commonwealth Administrative Appeals Tribunal, 23 May 1985, unreported) and *Re James and Australian National University* (1984) 2 AAR 327 at 341).

62. Documents 1, 6, 29 and the two attachments to Document 23 have been described above. Document 27 consists of three pages of hand-written notes on the response of the complainant to the report of the Tenure Review Committee. The agency has identified the author of those notes to be the Chairman of the Tenure Review Committee.

The agency's claims

63. In his submission dated 29 September 1994, the Registrar of the agency set out a number of effects which he claimed would follow from the disclosure of those and other documents. In particular, the Registrar said:

> *"To effectively manage and assess its personnel, the University must always be in a position whereby it may request and/or receive information relevant to its employees. For information to be honest, unambiguous and meaningful, the University must be in a position where it can guarantee total confidentiality of the information received. Without that assurance the value of the reports received could be seriously eroded to a point where they may be inimical to the University's ability to manage or assess its personnel...However, the extensive counselling opportunities provided to Dr Rindos are such that he is aware of the input of the contents of the documents in question...The strength of the University, more so than in most other institutions, departments, or agencies, lies in the strength of its employees and its ability to effectively manage them. The provision of information relating to staff and the manner in which the University chooses to disseminate that information are integral to the University's success. Any attempt to subvert this right must be contrary to the interests of the public."*

64. The agency contends, essentially, that the adverse effect expected to follow from the disclosure of those documents consists of an erosion of the value of referee

and tenure reports because they will contain ambiguous comments that are less than honest and meaningful. The inference to be drawn from this claim is that such a result will be harmful to the agency's management or assessment of its personnel. However, I was not provided with any material to explain the nature or extent of those harmful effects.

The complainant's submission

65. It was the complainant's submission that there could be no substantial adverse effect flowing from disclosure as claimed by the agency, if the contents of the disputed documents were truthful, made without bias and based on grounds that could be substantiated. However, he disputed the claims by the agency that he had been advised and counselled about the alleged deficiencies in his performance. Of course, the agency bears the onus under s.102(1) of the FOI Act, of establishing that its decision to refuse access to the documents was justified. It is for the agency, therefore, having claimed exemption under clause 11(1)(c), to establish that the requirements for exemption under clause 11(1)(c) of Schedule 1 to the FOI Act are met.

Analysis of the arguments

66. In my view, the arguments of the agency are similar to the arguments in *Re Pemberton,* and they include the same matters submitted in support of its claims for exemption under clause 8(2). As I said in paragraphs 36-57 above, there is no material before me to support those assertions of the agency. A valid claim for exemption is not established by a mere recitation of the words of an exemption clause, nor by bald statements of belief about the alleged effects of disclosure. To discharge the onus an agency bears under s.102(1) of the FOI Act, and to persuade me that the effects it is claimed could reasonably be expected to follow if the particular document were to be released, the agency must provide some material to support those claims. On this point, I respectfully refer to the comments of Owen J. in *Manly v Ministry of Premier and Cabinet* (Supreme Court of Western Australia, Appeal No. SJA 1143 of 1994). His Honour said, at p.44:

> *"How can the Commissioner, charged with the statutory responsibility to decide on the correctness or otherwise of a claim to exemption, decide the matter in the absence of some probative material against which to assess the conclusion of the original decision maker that he or she had "real and substantial grounds for thinking that the production of the document could prejudice that supply" or that disclosure could have an adverse effect on business or financial affairs? 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."*

67. On the basis of the agency's submissions and my own examination of Documents 1,6, 27, 29 and the first and third attachment to Document 23, I am not persuaded

that adverse effects to the agency's management or assessment of its personnel, let alone effects that are substantially adverse, could reasonably be expected to follow from the disclosure of those documents.

68. For the reasons given at paragraphs 37-58 above, I do not accept that disclosure of Documents 1, 6, 29 and the first and third attachments to Document 23 could reasonably be expected to prejudice the future supply to the agency of information of the kind that each of those documents represents. It appears that the basis for the agency's claims under clause 11(1)(c) is that disclosure may prejudice the future supply to the agency of information of that kind and thereby have a substantial adverse effect on the agency's management or assessment of its personnel. As I have rejected the claim of any potential prejudice to the future supply of such information, I find that those documents are not exempt under clause 11(1)(c).

69. Document 27 consists of hand-written notes but it is not clear, from either the material before me or the notes themselves, what the purpose of creating that document was. The agency claims that disclosure of Document 27 would discourage candid analysis of staff performance and staff assessment thereby having a substantial adverse effect on the management and assessment of personnel. It was also submitted that disclosure would inhibit the proper and candid analysis of submissions from staff on matters relating to their employment with the result that the agency would not receive proper advice, either generally or in a particular instance. However, the basis for those assertions was not given. It appears to me that the Chairman of the Tenure Review Committee, the author of Document 27, was duty bound to consider the complainant's response to the report of that Committee and to its findings and recommendation concerning his tenure. As the agency has not provided me with any material to support its claims for exemption under clause 11(1)(c) for Document 27, I find that Document 27 is not exempt under that clause.

Clause 6(1) - Deliberative processes

70. The agency claims exemption for Document 27 under clause 6(1) of Schedule 1 to the FOI Act. In my letter of 17 February 1995 informing the complainant of my preliminary view, a copy of which was forwarded to the agency for its information, I expressed the view that all of the disputed documents might be exempt under clause 6(1) of Schedule 1 to the FOI Act. Clause 6(1) provides:

> ***"6. Deliberative processes***
>
> ***Exemptions***
>
> *(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."

71. In my letter to the complainant I said:

"Each of the documents listed above provides part of the pre-decisional material on which the final decision of the Tenure Review Committee and the decision of the Vice Chancellor in relation to the operation of the Department of Archaeology were based. That is, I am satisfied, from my reading of the documents and consideration of the submissions of the parties, that the documents contain opinion, advice, or recommendations obtained, prepared or recorded in the course of, or for the purpose of, the deliberative process of the agency.

Further, I am of the view that it would, on balance, be contrary to the public interest to disclose this material for a number of reasons.

I recognise that there is a public interest in agencies following and applying fair procedures in the recruitment, promotion and dismissal of personnel. I also recognise that there is a public interest in agencies having access to the full range of information on which such decisions are based.

The agency claims that its ability to obtain free and unfettered comments from members of the academic fraternity is essential for sound decision-making and that its access to candid advice would diminish if the established convention of confidentiality in these matters were ignored.

In support of this argument the agency cites the experience of Universities in the United States where access to reports is granted on demand. The agency claims such reports are now of little value and reliance is now only placed on verbal comments.
I also recognise a public interest in a member of the staff of an agency, such as you, having access to comments written about him or her. Where closed systems exist in agencies, in my view, consideration of these competing interests requires an examination of the means employed by agencies to inform the individual of its processes and the bases for its decisions.

It is my understanding that the final recommendation and reasons of the Tenure Review Committee were provided to you in accordance with

standard University procedure. It is also my understanding that the policy of counselling staff following such procedures applied to you in this instance.

I also understand that you were provided with a copy of the report of the Tenure Review Committee and given an opportunity to respond in writing to its findings.

Further, I understand that you and other members of staff in the Department of Archaeology were counselled on the reasons for the various changes implemented in that Department over a period of time.

Based on that information, and having examined the final report of the Tenure Review Committee, a copy of which I am informed was provided to you by the agency, I am satisfied that the public interest in ensuring the accountability of agencies with respect to selection, promotion and dismissal procedures is satisfied by the processes outlined above.

Finally, the exemption provided by clause 6(1) is limited by clause 6(3) which provides that matter that is merely factual or statistical is not exempt under subclause (1). On examining the documents, I considered that a small amount of matter may be merely factual. However, on further examination, I have been unable to clearly distinguish such matter from the opinion, advice and recommendations contained within those documents, and I am of the view that any factual matter in the documents cannot be separated from the exempt matter, and access to edited copies of the documents is not, therefore, an option."

Documents relating to complainant's tenure

72. From my examination of those documents and from a consideration of the material before me, I am satisfied that Documents 1, 6, 24, 27, 29 and the two disputed attachments to Document 23 are part of the deliberative processes of the agency. That is, I am satisfied that those documents contain opinion, advice or recommendation that has been obtained, prepared or recorded, or consultations that have taken place, in the course of, or for the purpose of, the deliberative processes of the agency.

73. In considering whether disclosure of those deliberative process documents would, on balance, be contrary to the public interest, I have identified the public interest factors which were accorded weight during my preliminary considerations of this complaint. In my view, there are three aspects of the public interest which operate in the circumstances of this complaint. Firstly, there is a public interest in maintaining the integrity of the decision-making processes by ensuring that agencies have access to a full range of relevant information for informed decision-making. Secondly, there is a public interest in ensuring that agencies follow and apply fair and equitable procedures, especially in the areas governing the employment and dismissal of staff, and that they are seen to do so. Thirdly, there is a public interest in officers of agencies, such as the complainant, being informed

of unfavourable comments about their performance and being given an opportunity to refute, where necessary, unsubstantiated comments, or to otherwise improve their performance.

74. My preliminary view was based, in a large part, on information from the agency that the complainant was made aware of concerns about his performance and given the opportunity to improve and that he had been fully informed of the reasons for refusal of his tenure, by various means including counselling as to his performance. The complainant disputes the fact that he has been counselled about his performance. The documents supplied to me, by both the complainant and the agency, contain a number of references to meetings that have taken place between officers of the agency and the complainant during the period of his appointment and review.

75. The difficulty, in my view, is that both parties appear to have placed a different interpretation on the purpose of those meetings. In his submission dated 15 March 1995, following receipt of my preliminary view, the complainant claimed that he had not been provided with either oral discussions nor written evaluations of his performance. Further, he claimed that Dr Partis did not give any grounds or reasons for not recommending tenure.

76. The Tenure Review Committee's report contains an explanation of the grounds and reasons for the recommendation against tenure. On the sworn evidence of the complainant, which evidence is corroborated by the agency, that report was in the complainant's possession on or about 2 March 1993. In my view, copies of Documents 7 and 23 which are in the possession of the complainant also contain some of those reasons. However, the evidence to support the agency's claims about the counselling provided to the complainant is less clear.

77. The agency was unable to provide me with any documents recording the nature and extent of any "counselling", as I understand that term, provided to the complainant during the period covered by the documents in dispute. I would expect to find such documents in existence if the agency's practices were as I was led to believe them to be. The correspondence between the agency and the complainant does not, in general, reflect any discussions with, or guidance of, the complainant in relation to his performance, nor does it evidence any concerns officially held by the agency regarding the complainant's academic performance, nor is there any suggestion or explanation of any methods by which the complainant could improve his performance so as to address the issues of concern to the agency. The agency submitted that much of the counselling was verbal and was not recorded or evidenced in documentary form.

78. I am not suggesting that the agency does not follow proper procedures or adhere to acceptable standards relating to the management of these matters. However, I was not provided with any evidence to enable me to resolve the differences that appear to exist between the sworn evidence of the complainant and the claims of the agency in this regard. I am of the view that it is difficult to determine, with any certainty, whether the complainant has indeed been counselled, in the general meaning of that word, and if so, to what extent.

79. Therefore, it is my view, based on the material before me, that the public interest in a member of the staff of an agency being fully informed of the nature of adverse comments against that person, and being given the opportunity to answer them, outweighs the public interest in ensuring the integrity of the deliberative processes of the agency in this instance. I have reached that conclusion taking into account the academic standing of the complainant with some of his colleagues and the impact on his professional affairs of denying him tenure. In my view, a denial of tenure has national and international significance in the academic world and requires that the agency's procedures leading up to that decision be able to withstand scrutiny in detail. Under those circumstances, and for the reasons given, in my view it would not be contrary to the public interest to disclose Documents 1, 6, 24, 27 and 29 and the first attachment to Document 23 and I find that those documents are not exempt under clause 6(1) of Schedule 1 to the FOI Act, other than the third and fourth paragraphs of the first attachment to Document 23 which, for the reasons given at paragraph 52 above, are exempt under clause 3(1) of Schedule 1.

80. In my view, the third attachment to Document 23 is not exempt under clause 6(1) of Schedule 1 to the FOI Act. It contains an opinion about the complainant, which, by virtue of s.21, is a factor in favour of its disclosure to the complainant. For the reasons I have given in paragraph 55 above, I am not persuaded that disclosure of that document could reasonably be expected to harm the agency's ability to obtain such information in the future. Further, taking into account the contents of that document, I am of the view that its disclosure to the complainant would not, on balance, be contrary to the public interest. Therefore, I find that it is not exempt under clause 6(1) of Schedule 1 to the FOI Act.

Documents relating to review of department

81. Documents 14, 16A, 16B, 32 and 33 and the deleted parts of Documents 15A, 15B and 25 relate to the operation of the Department of Archaeology and not directly to the issue of the complainant's tenure. Although the agency claimed exemption for those documents only under clause 3(1) (personal information) of Schedule 1 to the FOI Act, my preliminary view was that those documents may be exempt under clause 6(1), although, in my opinion, different considerations to those in respect of the documents discussed in paragraphs 72-80 above apply to Documents 14, 16A, 16B, 32 and 33 and the deleted parts of 15A, 15B and 25. In respect of those documents the complainant has provided no further evidence or submissions sufficient to change my preliminary view.

82. I am of the view that each of those documents contains matter that is properly characterized as opinion, advice, or recommendation prepared, recorded or obtained in the course of, or for the purposes of the deliberative processes of the agency. There is, in my view, very little in those documents that could be classified as personal information about the complainant, although his name appears in several of them.

83. In my opinion, those documents form part of the deliberative processes of the agency, being those relating to the reorganization of the Department of Archaeology and the management decisions required to be made by the Vice-Chancellor on this point and surrounding issues. Document 14 was commissioned by the Vice-Chancellor and is based on numerous written submissions sent to the Vice-Chancellor by interested parties outside the agency. I am satisfied, from my examination of those documents, that each of them contains information of a type described in clause 6(1)(a).

84. In my view, all of those documents were created for the purposes of the deliberative processes of the agency in respect of its own internal issues. They deal with particular problems identified in the Department of Archaeology and they contain sensitive personal information, including serious allegations about a party other than the complainant.

85. The complainant submits that disclosure would be in the public interest because it would show that the problems in the Department of Archaeology were not solely attributable to his presence in that department. However, I consider that to be a personal interest in disclosure, and not a public interest.

86. The purpose of the exemption in clause 6 is to preserve the integrity of the decision-making processes. In this instance, that process requires that the Vice-Chancellor have access to a full range of information and opinions, including information volunteered from external sources, in order that she may make informed decisions regarding the future management of the agency or parts of the agency.

87. I consider there is a public interest in the proper management of the agency and in ensuring that its resources are used to the maximum efficiency for the best possible outcomes for students and the wider community. In my view, it would be contrary to that public interest to disclose deliberative process documents which may have a negative impact on the collegiate atmosphere of the agency.

88. Further, in my view, disclosure of Document 14 would not accord with the right of at least one party to natural justice. In addition, from my examination of the documents, I consider that disclosure of one or more of those deliberative process documents would present an incomplete picture about an issue personal to another party and not directly related to the question of the complainant's tenure.

89. Without knowing what part, if any, those documents played in the decisions taken by the Vice-Chancellor, disclosure could well impact adversely on the privacy interests of third parties. In my view, it is contrary to the public interest to disclose documents that could have that effect without any countervailing public interest which requires disclosure for reasons of accountability.

90. Accordingly, I find that Documents 14, 16A, 16B, 32 and 33 and the deleted parts of Documents 15A, 15B and 25 are exempt under clause 6(1). Therefore, I do not consider it necessary to decide whether those documents are exempt under clause 3(1) as claimed by the agency.

****