**MCNEILL AND WATA**

| **OFFICE OF THE INFORMATION COMMISSIONER (W.A.)** | **File Ref: 96006**<br>**Decision Ref: D02096** |
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Participants:

**John McNeill**
Complainant

- and -

**Western Australian Trotting Association**
Respondent

## DECISION AND REASONS FOR DECISION

FREEDOM OF INFORMATION - refusal of access - clause 1 of the Glossary in Schedule 2 - whether respondent is an agency.

FREEDOM OF INFORMATION - refusal of access - request for access to minutes of meeting - clause 6(1) - deliberative process - public interest for and against disclosure.

***Freedom of Information Act 1992 (WA)*** ss.3, 10, 63(1), 65(1)(d), 66(5), 68(1), 72(1)(b), 102; Schedule 1 clauses 6(1); Glossary in Schedule 2.
***Western Australian Trotting Association Act 1946-1948 (WA)*** ss. 3, 4(4), First Schedule.
***Associations Incorporation Act 1895 (WA)***
***Interpretation Act 1984 (WA)*** section 5.
***Freedom of Information Act 1992 (Qld)*** section 9.
***Income Tax Assessment Act 1936 (C'wlth)*** section 23.
***Racing Restriction Act 1917 (WA)*** s.3(1).

***Christie and Queensland Industry Development Corporation*** (1993) 1 QAR 1.
***Re Adams and The Tax Agents Board*** (1976) 1 ALD 251.
***Bryce v Curtis*** [1984] WAR 348.
***Thompson v Federal Commissioner of Taxation*** (1959) 102 CLR 315.
***Re English and Queensland Law Society*** (Information Commissioner, Qld, 4 August 1995, unreported).
***Queensland Law Society Inc v The Information Commissioner and S J English*** (Information Commissioner, Qld, 1 March 1996, unreported).
***Western Australian Turf Club v Commissioner of Taxation*** (1978) 139 CLR 288.
***Mayor and Corporation of Essendon v Blackwood*** (1877) 2 AC 574.
***Re Western Australian Racehorse Owners' Association and Office of Racing and Gaming*** (Information Commissioner, WA, 1 March 1996, unreported).

## DECISION

The decision of the agency is set aside. In substitution it is decided that the document is a document of an agency and is not exempt.

D A WOOKEY
ACTING INFORMATION COMMISSIONER

9th April 1996

# REASONS FOR DECISION

## BACKGROUND

1. This is a complaint arising out of a decision by the Western Australian Trotting Association ('the WATA') to refuse Mr McNeill ('the complainant') access to a document under the *Freedom of Information Act 1992* ('the FOI Act').

2. The complainant is a sporting events promoter who approached the WATA in 1995 with a proposal for a particular sporting event to be held at the WATA's Gloucester Park raceway. The complainant understood that the WATA initially accepted the proposal in principle and requested a more formal submission to be made in order that a submission could be put to a meeting of the Committee of the WATA ('the Committee').

3. By letter dated 30 August 1995, the complainant was informed that the Committee had resolved not to proceed with the event proposed by the complainant. By letter dated 22 September 1995, the complainant requested that the WATA send him a copy of the minutes of the committee meeting held on 11 July 1995, in order that he may be informed of the reasons why his proposal was turned down. The WATA subsequently refused to provide the complainant with a copy of the minutes requested.

4. On 31 October 1995 the complainant applied to the agency under the FOI Act for access to the minutes of the meeting of 11 July 1995. By letter dated 11 December 1995, solicitors for the WATA informed the complainant that they, the solicitors, were of the view that their client is not an agency and, accordingly, that the WATA is not subject to the FOI Act and the complainant did not have any entitlement to the documents requested.

5. On 5 January 1996 the complainant contacted this office and on 9 January 1996 lodged a complaint. The Information Commissioner considered the matter and decided to exercise her discretion under section 66(5) of the FOI Act to accept the complaint even though internal review had not been applied for or had not been completed. It was the view of the Information Commissioner that, given the nature of the refusal by the WATA, no useful purpose would be served by requiring the complainant to apply for internal review. Accordingly, on 18 January 1996 the Information Commissioner accepted the complaint and, as required by section 68(1) of the FOI Act, notified the WATA that the complaint had been made.

## REVIEW BY THE INFORMATION COMMISSIONER

6. On 15 and 16 February 1996 respectively, the parties were informed of the Information Commissioner's preliminary view that the WATA is an agency for the purposes of the FOI Act. The WATA was invited to make submissions on the point or, alternatively, to ensure that a notice of decision was provided to the complainant in relation to the document identified as being within the ambit of the access application. The WATA was requested to provide its view on the

issue of whether the document contained matter which may be exempt from disclosure under the FOI Act, and the reasons for that view.

7. A submission on the question of whether the WATA is an agency was subsequently received from the solicitors for the WATA, who also objected that two weeks had not been a reasonable time within which to be required to make their submissions. Given that the matter must surely have been carefully considered by the WATA before it rejected the complainant's access application on the basis that it was not an agency, the Information Commissioner considered, and I agree, that the allocated period of some two weeks afforded the WATA a reasonable and adequate opportunity to make its submissions on the point and that the WATA was not disadvantaged by the time frame set.

8. Copies of some additional documents (correspondence between the WATA and the complainant) relating to the background of the matter were provided by the complainant and, in response to a notice to produce documents relevant to the complaint, pursuant to section 72(1)(b) of the FOI Act, the WATA on 19 March 1996 produced to the Information Commissioner a copy of the document in dispute in this matter.

9. By letter dated 28 March 1996 the agency was informed that it was my preliminary view that the disputed document is a document of an agency for the purposes of the FOI Act and that it may not contain any matter which is exempt from disclosure under the provisions of the FOI Act. The WATA was invited to make submissions as to the exempt status or otherwise of the disputed document.

10. On 4 April 1996, the solicitors for the WATA provided a submission regarding the exempt status of the document. The WATA claims that the disputed document is exempt from disclosure under clause 6(1) of Schedule 1 to the FOI Act. In making the submission, the solicitors for the WATA again objected to the short period of time given to consider my preliminary view. Given that the WATA had been requested to consider the exempt status or otherwise of the disputed document in the letter of the Information Commissioner dated 15 February 1996, I am satisfied that the WATA has had sufficient opportunity to consider whether the disputed document contains any exempt matter, and a reasonable opportunity to make submissions.

## PRELIMINARY ISSUE - JURISDICTION

11. The WATA refused the complainant's request for access to the minutes of the committee meeting on the basis that the WATA is not an agency for the purposes of the FOI Act and that, therefore, its documents are not accessible under the FOI Act. Further, the WATA submits that the Information Commissioner has no jurisdiction to investigate or review the decision of the WATA to refuse the complainant's access application.
12. The main function of the Information Commissioner is to deal with complaints about decisions of agencies in respect of access applications and applications for amendment of personal information: section 63(1). A complaint may be

made against, *inter alia*, an agency's decision to refuse access to a document: section 65(1)(d).

13. The complainant applied to the WATA purportedly under the FOI Act, clearly on the understanding that the WATA is amenable to its provisions, for access to documents. If the WATA is an agency for the purposes of the FOI Act then clearly an access application has been made and refused and the statutory rights of review arise.

14. The question then arises as to the extent of the Information Commissioner's power to determine questions as to her own jurisdiction. This question was considered by the Queensland Information Commissioner in his decision in *Re Christie and Queensland Industry Development Corporation* (1993) 1 QAR 1. The Queensland Information Commissioner in that matter referred to the following passage from the decision of Brennan J in the *Re Adams and The Tax Agents Board* (1976) 1 ALD 251, at 254:

> *"An administrative body with limited authority is bound, of course, to observe those limits. Although it cannot judicially pronounce upon the limits, its duty not to exceed the authority conferred by law upon it implies a competence to consider the legal limits of that authority, in order that it may appropriately mould its conduct. In discharging its duty, the administrative body, will, as part of its function, form an opinion as to the limits of its own authority. The function of forming such an opinion for the purpose of moulding its conduct is not denied to it merely because the opinion produces no legal effect. In* R v Hickman; ex parte Fox and Clinton *(1945) 70 CLR 598, Dixon J, whilst denying the power of a Local Coal Reference Board to determine judicially the meaning of a statutory phrase upon which its jurisdiction depended, distinguished the Board's function of forming an opinion upon the question. He said, at p.618: 'I do not mean to say that the Board may not, for the purpose of determining its own action, "decide" in the sense of forming an opinion upon the meaning and application of the words "coal mining industry". It must make up its mind whether this or that particular function on the borders of the coal mining industry does or does not fall within the conception.'*
>
> *Blackburn J, sitting in an administrative jurisdiction in* Re Cilli's Objection *(1970) 15 FLR 426 at 428; [1970] ALR 813 at 815, noted that an administrative body 'must satisfy' itself that all its proceedings are in accordance with the law. It must therefore receive and consider, whenever the point is taken, an argument that it has no jurisdiction. To say that is, in truth, to say no more than that it must at all times act lawfully."*

15. The Queensland Information Commissioner concluded at paragraph 13 of his decision in *Re Christie* that it is well established in law *"..that an appeal tribunal of limited jurisdiction has both the power, and a duty, to embark upon a consideration of issues relating to the limits of its jurisdiction, when they are*

*raised as an issue in an appeal lodged with the tribunal*". With respect, I agree with that view. The preliminary issue to be determined by me, therefore, is whether the WATA is an agency for the purposes of the FOI Act.

## Is the WATA an agency?

16. The term "agency" is defined in the Glossary in Schedule 2 to the Act to mean:

> *"(a) a Minister; or*
>
> *(b) a public body or office,"*

"Public body or office" is defined to mean:

> *"(a) a department of the Public Service;*
>
> *(b) an organisation specified in column 2 of the Schedule to the Public Service Act 1978;*
>
> *(c) the Police Force of Western Australia;*
>
> *(d) a municipality or regional council established under the Local Government Act 1960;*
>
> *(e) a body or office that is established for a public purpose under a written law;*
>
> *(f) a body or office that is established by the Governor or a Minister; or*
>
> *(g) any other body or office that is declared by the regulations to be a public body or office being -*
>
> > *(i) a body or office established under a written law; or*
> >
> > *(ii) a corporation or association over which control can be exercised by the State, a Minister, a body referred to in paragraph (a), (b), (e), (f) or (g) (i), or the holder of an office referred to in paragraph (f) or (g)(i);"*

A body must fall within one of those descriptions to be subject to the provisions of the FOI Act.

17. It is clear that the WATA does not fall within any of the descriptions in paragraphs (a), (b), (c), (d), or (g) of the definition of "public body or office". Therefore, for the WATA to be an agency, it must be within the terms of paragraph (e) or paragraph (f) of the definition. To determine whether or not the WATA falls within either of those descriptions requires a consideration of the circumstances of its establishment.

18. The WATA is a body corporate constituted as such under section 3 of the *Western Australian Trotting Association Act 1946-1948* (the WATA Act). The WATA Act constitutes and incorporates the WATA, and declares its objects, function and powers. As a result of the WATA Act, the Western Australian Trotting Association (Incorporated) as constituted under the *Associations Incorporation Act 1895* ceased to exist, and its incorporation was dissolved.

19. The main object of the WATA is stated in clause 2 of the By-laws of the WATA (the by-laws) in the First Schedule to the WATA Act. Clause 2 of the by-laws also provides the further objects and powers of the WATA.

20. It is clear, by virtue of the establishment of the WATA under statute, that the WATA is not a body or office established by the Governor or a Minister as described in paragraph (f) of the definition. Therefore, I am required to consider whether the WATA is within the terms of paragraph (e). Paragraph (e) of the definition of "public body or office" in the FOI Act requires that the relevant body be *"established for a public purpose under a written law."* The term "written law" is defined in section 5 of the *Interpretation Act 1984* (the Interpretation Act) to mean, *inter alia, "...all Acts for the time being in force and all subsidiary legislation for the time being in force"*. The word "Act" is also defined in section 5 of the Interpretation Act to include *"an Act passed by the Parliament of Western Australia"*.

21. The WATA Act is clearly a "written law" within the definition in the Interpretation Act. The question then arises as to whether the WATA can be said to be established under the WATA Act. The word "under" is defined in section 5 of the Interpretation Act to include, in relation to a written law or a provision of a written law, "by", "in accordance with", "pursuant to" and "by virtue of ".

22. The WATA is incorporated and constituted under the WATA Act. In accordance with the decision of *Bryce v Curtis* [1984] WAR 348, in which Burt CJ, at p350, stated that the "*...primary meaning of the word "to constitute" is to establish*", I am of the view that for the purposes of the definition in paragraph (e) of the definition of "public body or office" in the FOI Act, the WATA, which is constituted under the WATA Act, can be said to be established under that written law. In any event, the WATA concedes that it is a body or office established under a written law. As it is not in dispute that the WATA is a body established under a written law, the question to be determined is whether the WATA is established for a "public purpose".

23. The concept of what is a "public purpose" has been discussed in a number of decisions of various courts, in various contexts. For example, in the decision of *Thompson v Federal Commissioner of Taxation* (1959) 102 CLR 315, the High Court considered that an organisation can be said to have been set up for a public purpose if the organisation is intended to benefit the public as a whole, or a substantial section of the public, provided that the organisation has not been set up for a private purpose such as the private profit or advantage of an individual or class of individuals.

24. The question has been considered by the Queensland Information Commissioner, for the purpose of defining the term "agency" in the Freedom of Information legislation in Queensland, in the decision of *Re English and Queensland Law Society* (Information Commissioner Qld, Decision No. 95022, 4 August 1995, unreported). In that decision, the Queensland Information Commissioner considered whether the Queensland Law Society is an agency for the purposes of the Queensland FOI Act. The definition of agency in that Act includes a "public authority", which is defined in section 9 to mean, *inter alia*, *"(a) a body (whether or not incorporated) that - (i) is established for a public purpose by an enactment..."*

25. At paragraph 74 of the decision, the Queensland Information Commissioner stated that he considered the meaning of the phrase "public purpose" in the Queensland FOI Act to be relatively straightforward. He said:

> *"The word "purpose" directs attention to the objects or aims for which a body has been established as evidenced by the relevant powers, functions or duties conferred on it by Parliament. The word "public" imposes a requirement that a purpose be one for the benefit of members of the community generally (or a substantial segment of them...)."*

26. The Queensland Information Commissioner also discussed the inclusion of the word "a" in the phrase "for a public purpose." He considered, at paragraph 78, that the effect of this was that the correct test to be employed in determining whether a body is established for a public purpose is "*...whether at least one of the major purposes for its establishment (as distinct from minor or ancillary purposes) is a public purpose*." I agree and accept that to be the correct test for Western Australia. Accordingly, it is not necessary that all of the purposes for which a body has been established be able to be characterised as public in nature in order for the body to be within the definition of "public body or office" in the FOI Act.

27. The approach of the Queensland Information Commissioner in *Re English* was confirmed by the Supreme Court of Queensland when it reviewed the decision in *Queensland Law Society Inc v The Information Commissioner and S J English* (1 March 1996, unreported). At page 8 of that decision, the Court said:

> *"...although a body may engage in significant private activities, where it performs functions within the province of government which have a public nature such as by providing for public welfare, it is a public authority, at least in respect of those functions. That is directly applicable to the present case. It is more emphatically so where the relevant definition speaks of the establishment of a body by an enactment for a public purpose and the enactment which incorporated and established the relevant body is clearly directed to providing for the performance of such public functions by that body."*

28. The Court in that case, in considering the nature of the Queensland Law Society Incorporated, was of the view that *"...to the extent that the regulation of the (legal) profession is within the jurisdiction of government, and because the*

*legislature has seen fit to take steps to exercise that jurisdiction through the agency of the Society, there is no reason why the public nature of the activities which it was established to undertake should not be regarded as governmental within the meaning of the Act"* (at page 9).

29. In determining for what purposes the WATA is established under the WATA Act, it is necessary to examine the objects and the functions of the WATA as provided for in the WATA Act and the by-laws. Clause 2 of the by-laws states that *"[t]he main object of the Association shall be to foster and extend the sport of trotting throughout Western Australia and the importation and breeding of trotting horses, and to keep the sport of trotting clean and free from abuse, and also to regulate and control that sport wherever carried on in the State"*. In my view, that object as provided for in the statute establishing the WATA is a "major purpose" as discussed in the decision in *Re English*. Therefore, the question is whether the main object can correctly be categorised as a purpose for the benefit of the public.

30. It was submitted on behalf of the WATA that it *"...is in all relevant aspects identical to the WA Turf Club, found by the High Court to lack sufficient "public" orientation to secure tax exempt status in* Western Australian Turf Club v Commissioner of Taxation *(1978) 139 CLR 288."* The WATA referred me, in particular, to pages 297-9 of the leading judgment of Stephen J.

31. That case is clearly distinguishable in that the High Court was there concerned with whether or not the Western Australian Turf Club ('the Turf Club') was a "public authority constituted under any Act or State Act" as defined in section 23(d) of the *Income Tax Assessment Act 1936*. The majority of the Court held that it was not a public authority, as it possessed some features that were inconsistent with the status of a "public authority". The question in the matter before me is not whether the WATA is a public authority, but whether it is a body or office established for a public purpose under a written law. Little assistance is therefore to be gained from the decision in the *Western Australian Turf Club* case.

32. However, it is noted that, at page 294, Stephen J referred to the effect of the *Racing Restriction Act 1917* upon the nature of the Turf Club. It was his Honour's view that that Act imposed upon the Turf Club a public function, that of licensing horse-races throughout the State. His Honour said that the club had ever since been involved in the exercise of powers and functions not possessed by the ordinary citizen and which have been conferred by statute and are essentially of a public nature.

33. In that sense, I agree that there is a similarity between the nature of the Turf Club and the WATA. Section 4(4) of the WATA Act provides that any reference in any other Act to the WATA's predecessor, the Western Australian Trotting Association (Incorporated), is a reference to the WATA. Accordingly, section 3(1) of the *Racing Restriction Act 1917* provides that no trotting race meeting, and no trotting race for any stake or prize shall be held without the license in writing of the WATA. The section also limits the number of such meetings for which the WATA may issue licences each year.

34. Section 3 of the *Racing Restriction Act 1917* clearly, in my view, imposes upon the WATA a public purpose, that of licensing trotting race meetings throughout the State. The *Racing Restriction Act 1917*, whilst endowing the WATA with exclusive power to license trotting race meetings, also restricts the number of trotting race meetings which may be held within the metropolitan area in any year. It is clear from the Parliamentary debates at the time, that the restriction was considered to be in response to public demand and for the public good, and the bestowing of the restricted monopoly on the WATA to be a public purpose.

35. It also appears, from the Hansard records of the proceedings in the Western Australian Parliament at the time, that the enactment of the WATA Act came about following a Royal Commission of Inquiry into the administration, conduct and control of the sport of trotting in Western Australia and in consequence of recommendations made by the Royal Commissioner.

36. In his Second Reading speech, the then Chief Secretary, the Honourable W H Kitson, quoted the comments of the Royal Commissioner that: *"...the evidence has, in my opinion, clearly shown that in its conduct of the sport at Gloucester Park, handling large contributions from the public, paying large sums in taxation, and catering for the requirements of such a large percentage of the population and of those engaged in the sport, under the protection of the monopoly conferred on it by the Racing Restriction Act 1917, some measure of Governmental control is necessary."*

37. The Royal Commissioner then went on to recommend the establishment of the WATA, through which the requisite control could be exercised. The then Chief Secretary recommended that the Parliament accept, as the Government had done, the recommendations of the Royal Commissioner in their entirety *"...in the hope that they will lead to a better feeling between the two Associations which were the main parties in the trouble during 1944 and 1945; and that the sport of trotting in this State, which has reached a really high plane and which is an important factor in the public life of this State, may continue to maintain the high standing it has achieved and will continue to be a very valuable sport in this State"* (at page 1733).

38. As I have said, the main object of the WATA is stated in its by-laws to be *"...to foster and extend the sport of trotting throughout Western Australia and the importation and breeding of trotting horses, and to keep the sport of trotting clean and free from abuse, and also to regulate and control that sport wherever carried on in the State."* In my opinion, it is difficult to characterise that as anything other than a public purpose.

39. I was also urged on behalf of the WATA to follow the case of *Mayor and Corporation of Essendon v Blackwood* (1877) 2 AC 574 as it was claimed to be analogous to this matter. That was a decision of the Privy Council that a particular racecourse in England was not exempt from rating by a provision exempting "Crown Land used for public purposes". Their Lordships expressed some doubt that *"...a racecourse to be enjoyed by those only of the public who are able and willing to pay for admission...can be deemed to be so used"*. However, their Lordships did not decide the appeal on that point and the case

cannot therefore be cited as authority for the proposition that such a use of land is not a use of the land for public purposes. In any event, I do not consider that case to be analogous to the matter before me as it was concerned with whether the land was used for public purposes; the question in this matter is whether the WATA is established for a public purpose. Those are, in my opinion, quite different questions.

40. The WATA also referred to the following passage from *Thompson*, per Dixon CJ, at 323-4:

> *"Having regard to the composition of the public, certain large groups may readily be recognised, the members of which have a common calling or adhere to a particular faith or reside in a particular geographical area. There is no bar which admits some members of the public to those groups and rejects others. Any member of the public may, if he will, follow a particular calling, adhere to a particular faith, or reside within a particular area. Of the members of such a group it may be said in a real sense that they are primarily members of the public, and such a group may well constitute a section of the public. They stand on one side of the line. Each group, it is true, may consist of many individuals, but number alone is not the criterion by which to determine whether the group consists of a section of the public.*
>
> *A club, a literary society, a trade union may all have numerous members, but I think that none of these could properly be called a section of the public. They stand on the other side of the line. The distinguishing feature of each of these latter bodies is that it is an association which takes power to itself to admit or exclude members of the public according to some arbitrary test which it sets up in its rules or otherwise. Each of them does oppose a bar to admission within it. It is not one of the groups into which the community as a matter of necessary organisation or by convention is divided, but it is in a sense an artificial entity which exists for the benefit of its members as members thereof and not as members of the public."*

41. The WATA contends that, because it controls its own membership and has the ability to exclude members of the public from entry to its meetings, it is not, therefore, established for a public purpose. Were it the requirement of the FOI Act that to fall within the relevant definition, the body or office must be established solely for a public purpose, then there may have been something in that argument. However, as I discussed in paragraph 26 above, that is not the case. In any event, the manner in which the WATA satisfies its objects and discharges its functions is not the crucial factor in determining whether the WATA is established for a public purpose, in circumstances where those objects and functions are clearly enumerated.

42. I am satisfied that the main object of the WATA is wider than simply creating a benefit for members of the WATA. By focussing on the purpose of fostering and extending the sport of trotting throughout Western Australia, and regulating and controlling the sport wherever carried on in the State, I consider that the main purpose for which the WATA is established under the WATA

Act is a public one. The control and promotion of the sport of trotting throughout the State, without any limitation to any particular group of people or location or specific purpose, can, in my view, be seen to be for the benefit of the public generally, so as to be a "public purpose" within the meaning of the FOI Act. The fact that other stated objects in the by-laws are directed more at benefiting the members and officers of the WATA does not detract from the main object of the WATA as provided in the by-laws.

43. Accordingly, I am satisfied that the WATA is an agency as defined in the FOI Act and is therefore subject to the FOI Act.

## THE DOCUMENT

44. The only document identified by the WATA ('the agency') as being within the ambit of the access application is one item of the minutes of the committee meeting held on 11 July 1995. Having considered the terms of the complainant's access application of 31 October 1995, I consider that the document appears to have been correctly identified.

## THE EXEMPTION

45. Without conceding that it is a document of an agency, the agency claims that the document is, in any event, exempt under clause 6(1) of Schedule 1 to the FOI Act. Clause 6(1) of Schedule 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."*

46. The Information Commissioner has discussed the meaning and scope of the exemption in clause 6(1) in a number of her formal decisions, including *Re Western Australian Racehorse Owners' Association and Office of Racing and Gaming* (1 March 1996, unreported). To establish an exemption under clause 6, an agency must satisfy the requirements of both paragraphs (a) and (b) of the exemption. If the disputed document contains matter of a type described in

paragraph (a), then it is necessary to consider the requirement of paragraph (b), that is, whether the disclosure of the document would, on balance, be contrary to the public interest. Pursuant to section 102(1), the onus is on an agency to establish that the requirements of clause 6(1)(b) have been met.

47. The agency submits that disclosure of the disputed document would reveal the thinking processes of the agency, being matter of the type referred to in clause 6(1)(a), as the document contains information regarding the wisdom and expediency of a proposal, a particular decision or a course of action.

48. I am of the view from my examination of the disputed document that it contains information of a type described in paragraph (a) of clause 6. Brief though it may be, the document contains matter that may be characterised as advice and recommendation obtained and recorded in the course of the deliberative process of the agency in determining whether or not to approve the complainant's proposal. Therefore, I am required to consider whether the agency has discharged its onus under section 102(1) of the FOI Act in relation to the requirements of clause 6(1)(b).

49. The agency also submits that, on balance, disclosure of the document would be contrary to the public interest. The submissions made on behalf of the agency in support of this are as follows:

> *"The WATA submits that the application by McNeill is not an application made for the benefit of the community, or a section of the public. It is solely for the purpose of assisting McNeill to decide whether to commence litigation against the WATA. The interest is a purely private interest, and does not contain any "public" element.*
>
> *Access to the document sought by McNeill would be obtained by way of discovery in any action commenced against the WATA. He would not therefore be prejudiced if access under the Act were denied.*
>
> *It cannot be suggested that there is serious interest by the community, or that the benefit from disclosure of the document will flow to the general community, or that the information will make a valuable contribution to the public debate on the issue.*
> *..[A] relevant factor against the disclosure of the document is whether it will affect the proper workings of Government. There is a need to protect the integrity and ability of the decision making processes of Government. If individuals are particularly aggrieved by certain decision of "agencies" then the correct method for them is to commence proceedings against the "agency", rather than question the decision making process of the "agency".*
>
> *Further and/or alternatively, if the Act is allowed to be used by private individuals to ascertain, e.g. the opinion, advice or recommendations that have taken place in the course of the deliberative processes of the agency, then the ability of the WATA to negotiate commercial agreements with members of the community will be undermined. For example, if the rates that the WATA is considering charging, including*

> *the amount of deposit required, to hire the grounds of the WATA becomes public knowledge, the WATA's bargaining position will be weakened. The proper workings of the agency would clearly be affected by a decision to give access to the minutes of any committee meeting of the WATA where (inter alia) commercial negotiations are discussed. In the WATA's opinion the document falls into this category as the document discusses the negotiations that have taken place with McNeill."*

50. Although, by virtue of section 10 of the FOI Act, an applicant's reasons for seeking access to documents do not affect his or her right to be given access, those reasons may be relevant to a consideration of where the public interest lies in respect of disclosure or non-disclosure. The complainant has submitted that he seeks access to the document in order, firstly, to satisfy himself that his proposal was, in fact, put before the committee and, secondly, in order that he may be informed of the reasons why his proposal was rejected.

51. In my view, there is a public interest in an agency being able to make informed decisions in the course of carrying out its functions. That requires an agency to have access to the widest possible range of information and advice, and to feel free to discuss all the issues relevant to the decision without fear of interference. I also recognise a public interest in agencies being able to maintain the confidentiality of their deliberative process in some circumstances, particularly where those deliberative processes relate to ongoing negotiations.

52. However, there is nothing before me in this case to suggest that the agency's deliberative processes would be in any way prejudiced by disclosure of the disputed document. It appears on the information before me that any negotiations with the complainant had ceased at the time of the creation of the document and, accordingly, the deliberative processes of the agency with respect to the complainant's proposal were at an end. Further, there is no evidence before me to suggest that disclosure of this document could reasonably be expected to prevent the agency from effectively conducting its deliberative processes.

53. In addition, I recognise that there is a public interest in members of the community having access to information regarding the decision-making processes of agencies, in order that they may be aware of the processes by which an agency makes a decision, and the reasons for which a particular decision is made, and be confident that the proper processes have been observed. This is particularly so in circumstances where a decision has been made which directly affects the interests of an individual. In this case, the document contains information which relates to a decision made by the committee regarding a proposal by the complainant. The complainant claims that he does not know whether or not his proposal was put before the Committee, and he claims that he has not been informed of the reasons for its rejection. There is no evidence before me which indicates that the agency took any steps to inform the complainant of the Committee's reasons for its decision in respect of his proposal, such that that particular public interest has been satisfied without requiring disclosure of the document.

54. Further, it is my view that the public interest in members of the public being able to participate in the processes of government is an important public interest factor. That public interest is served by the enactment of FOI legislation. I do not accept the submission of the agency in this case that if individuals are aggrieved by a decision of an agency, then the correct method is for that individual to commence proceedings against the agency, rather than question the decision making process of the agency.

55. Section 3 of the FOI Act provides the objects of the FOI Act, and states, so far as is relevant:

> ***"Objects and intent***
>
> *3. (1) The objects of this Act are to -*
>
> *(a) enable the public to participate more effectively in governing the State; and*
>
> *(b) make the persons and bodies that are responsible for State and local government more accountable to the public.*
>
> *(2) The objects of this Act are to be achieved by -*
>
> *(a) creating a general right of access to State and local government documents;*
>
> *(b) providing means to ensure that personal information held by State and local governments is accurate, complete, up to date and not misleading; and*
>
> *(c) requiring that certain documents concerning State and local government operations be made available to the public."*

56. In my view, a great deal of weight needs to be placed on the public interest in members of the public being able to participate in the process of government, and in making public bodies more accountable to the public, by people being able to, *inter alia*, access information regarding the basis on which decisions are made by an agency. I do not consider that, in this instance, the submissions made on behalf of the agency, and its consideration of the balance of the public interest, adequately address this factor.

57. The agency further submits that, if the FOI Act is used to enable individuals to ascertain documents reflecting the decision-making processes of the agency, then the ability of the agency to negotiate commercial agreements with members of the community will be undermined, as its bargaining position may be weakened. Even if I were to accept that there is such a public interest, the disputed document does not contain any information of the type referred to in the agency's submissions, such as the amount of deposit for the hire of the grounds of the WATA. Accordingly, any such public interest is not relevant to the determination of whether the disputed document contains exempt matter.

58. On the basis of the material before me, having balanced the competing public interests, I am of the view that disclosure of the disputed document would not be contrary to the public interest. Accordingly, I find that the document is not exempt under clause 6, and is not exempt from disclosure.

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