

**Decision D0412001 – Published in note form only**

***Re De Marco and City of Gosnells* [2001] WAICmr 41**

**Date of Decision: 13 November 2001**

***Freedom of Information Act 1992 Schedule 1 clause 8(1)***

In early 2001, the City of Gosnells ('the agency') awarded a contract to build, own and operate a waste-to-energy recycling facility to Brightstar Environmental ('Brightstar'). The complainant sought access under the *Freedom of Information Act 1992* ('the FOI Act') to a copy of the contract entered into by the agency with Brightstar relating to the proposed recycling facility ('the Contract') and a copy of the report titled "*Waste-to-Energy Plant – Final 2001*" ('the Report').

The agency refused the complainant access to the Contract but gave edited access to the Report. The complainant applied to the agency for internal review of the decision to refuse access to the Contract. Having regard to a confidentiality clause in the Contract, the internal reviewer confirmed the initial decision to refuse access to the Contract. Although the agency did not claim a specific exemption, it appeared from the notice of decision on internal review that the agency relied on clause 8(1) as the ground for exemption. The complainant then sought external review of the agency's decision.

The Information Commissioner obtained the original of the Contract from the agency and examined it. After examining the Contract and, in particular, the terms of the confidentiality clause in the Contract, the Information Commissioner formed the view that disclosure of the contract would breach the terms of the confidentiality clause of the contract and she advised the complainant of that view, in writing. In light of her obligations under s.74 of the FOI Act not to disclose exempt matter when dealing with a complaint or in reasons for decision, the Information Commissioner was unable to describe to the complainant, in any detail, the terms of the confidentiality clause.

The Information Commissioner decided that disclosure would be a breach of confidence for which Brightstar could obtain a legal remedy against the agency. The Information Commissioner varied the decision of the agency and found the Contract exempt under clause 8(1) of Schedule 1 to the FOI Act.