

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

**File Ref: F0932000
Decision Ref: D0482000**

Participants: **QMS Certification Services Pty Ltd**
Complainant

- and -

Department of Land Administration
First Respondent

- and -

Quality Assurance Services
Second Respondent

DECISION AND REASONS FOR DECISION

FREEDOM OF INFORMATION – refusal of access – documents relating to a re-certification audit – clause 4(2) – information having “commercial value” to a person – requirements to establish exemption under clause 4(2) – whether documents contain information of commercial value – whether disclosure could destroy or diminish commercial value – clause 4(3) – whether documents reveal information about the business, professional, commercial or financial affairs of a person – whether reasonable to expect adverse effect on those affairs – clause 4(7) – public interest factors for and against disclosure.

Freedom of Information Act 1992 (WA) s. 102(3); Schedule 1 clauses 3(1), 4(2), 4(3) and 4(7).

Interpretation Act 1984 (WA)

Re Precious Metals Australia Ltd and Department of Minerals and Energy [1997] WAICmr 12

Attorney-General’s Department and Australian Iron and Steel Pty Ltd v Cockcroft (1986) 10 FCR 180

Re Collier Knyn and Associated Pty Ltd and City of Perth [1995] WAICmr 62

DECISION

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

- the names and personal signatures of individual employees of the Second Respondent are outside the scope of the complaint;
- the “audit record sheets” contained in Documents 2, 3, 6 and 14 are exempt under clause 4(2); and
- the matter described in the last sentence of paragraph 63 of my reasons for this decision is exempt under clause 4(3) of Schedule 1 to the *Freedom of Information Act 1992*,

but the documents are not otherwise exempt.

B KEIGHLEY GERARDY
INFORMATION COMMISSIONER

5 September 2000

REASONS FOR DECISION

1. This is an application for external review by the Information Commissioner arising out of a decision made by the Department of Land Administration ('the agency') to refuse QMS Certification Services Pty Ltd ('the complainant') access to documents requested by it under the *Freedom of Information Act 1992* ('the FOI Act').
2. In October 1999, the agency called for verbal tenders for a re-certification audit of its Geographic Services Branch against one of the standards established by the International Organisation for Standardisation ('ISO'), ISO 9002. The ISO 9000 series of standards are standards for quality management. The complainant and Quality Assurance Services Pty Ltd ('QAS') are both suppliers of certification services and are accredited by the Joint Accreditation System of Australia and New Zealand ('JAS-ANZ'). QAS is a wholly owned subsidiary of Standards Australia. The complainant and QAS are listed on the JAS-ANZ register of accredited bodies, which is composed of 26 organisations. In respect of the tender, both the complainant and QAS tendered for that work, and it was subsequently awarded to QAS.
3. On 27 January 2000, the complainant made an application to the agency seeking access under the FOI Act to documents produced between 27/1/99 and 27/1/00 relating to the certification and re-certification of the Geographical Services Branch.
4. The agency identified 19 documents that were within the scope of the request. On 27 April 2000, the agency granted the complainant access to 7 documents, but denied it access to 12 documents, and claimed exemption under clauses 4(1) and 4(2) of Schedule 1 to the FOI Act for those 12 documents.
5. The complainant applied for an internal review of the agency's decision. On 9 May 2000, the internal reviewer confirmed the agency's initial decision to refuse access to those documents. However, the internal reviewer decided to grant the complainant access to additional material in 4 documents, and the agency withdrew its claim for exemption under clause 4(1) for the balance.
6. On 15 May 2000, the complainant lodged a complaint with the Information Commissioner seeking external review of the agency's decision.

REVIEW BY THE INFORMATION COMMISSIONER

7. I obtained the disputed documents from the agency, together with the file maintained by the agency in respect of the access application. My Investigations/Legal Officer met with the complainant and with the agency. In the course of my dealing with this complaint, QAS applied to be joined as a party to it and was so joined. Subsequently, QAS was invited to provide submissions to clarify the nature of the material claimed to be exempt, and

provided a written submission. Discussions were also held with JAS-ANZ to obtain information relating to its certification process.

8. Although the complainant made some concessions and agreed to accept access with certain information deleted from the documents, the agency decided that access in the manner proposed was not an option. After considering all the material before me, on 5 July 2000, I informed the parties in writing of my preliminary view of this complaint, including my reasons. It was my preliminary view that parts of 4 documents may be exempt under clause 4(2); that some information in the remaining 8 documents may be exempt under clause 4(3); and that some information, the names and personal signatures of individual employees of QAS, may be exempt under clause 3(1). Following receipt of my preliminary view, the complainant confirmed that it was not seeking access to personal information pursuant to clause 3(1) or the number of QAS personnel engaged to undertake the audit and, accordingly, I need not consider those matters further.
9. The complainant and the agency responded to my preliminary view, but did not make any further submissions. QAS did not respond.

THE DISPUTED DOCUMENTS

10. The disputed documents are listed and described on the agency's schedule. For the purposes of clarity and convenience, I use the numbering system in the agency's schedule attached to its notice of decision dated 26 April 2000:

Document No.	Date	Author	Description
2	15/03/99	QAS	Surveillance Audit Report dated 12/3/99
3	23/06/99	QAS	Surveillance Audit Report
4	22/10/99	QAS	Statement of Cost
5	28/10/99	QAS	Invoice (NB. same as Document 13)
6	22/10/99	QAS	Surveillance Audit Report (NB. unsigned copy of Document 14)
9	22/06/99	QAS	Invoice
10	28/09/99	QAS	Invoice
13	28/10/99	QAS	Invoice (NB. same as Document 5)

14	11/11/99	QAS	Surveillance Audit Report dated 22/10/99 (NB. signed copy of Document 6)
16	22/11/99	QAS	Audit Service Specification
18	26/03/99	DOLA	Purchase Order No. S009939
19	02/07/99	DOLA	Purchase Order No. S010956

THE EXEMPTIONS

(a) Clause 4(2)

11. The agency claims that each of the disputed documents is exempt under clause 4(2) of Schedule 1 to the FOI Act. Clause 4, so far as is relevant, provides:

"4. Commercial or business information

(1)...

(2) *Matter is exempt matter if its disclosure -*

(a) *would reveal information (other than trade secrets) that has a commercial value to a person; and*

(b) *could reasonably be expected to destroy or diminish that commercial value.*

(3) *Matter is exempt matter if its disclosure -*

(a) *would reveal information (other than trade secrets or information referred to in subclause (2)) about the business, professional, commercial or financial affairs of a person; and*

(b) *could reasonably be expected to have an adverse effect on those affairs or to prejudice the future supply of information of that kind to the Government or to an agency.*

Limits on exemptions

(4)...

(5)...

(6)...

(7) *Matter is not exempt matter under subclause (3) if its disclosure would, on balance, be in the public interest."*

12. Clause 4(2) is concerned with the protection of information which is not a trade secret but which has a 'commercial value' to a person. The definition of the word 'person' in the *Interpretation Act 1984* makes it clear that the exemption in clause 4 applies to bodies corporate or unincorporate, as well as to natural persons.
13. In order to establish an exemption under clause 4(2), the matter for which a claim for exemption is made must be shown to have a commercial value, although, in my view, it is not necessary that the commercial value be quantified or assessed. However, that alone is not sufficient to establish the exemption. When the requirements of clause 4(2)(a) are satisfied, it must also be established that disclosure could reasonably be expected to destroy or diminish the commercial value of the information in question. Accordingly, the requirements of both paragraphs (a) and (b) of clause 4(2) must be satisfied in order to establish a *prima facie* claim for exemption under that provision.

Clause 4(2)(a) – information that has a commercial value

14. In my view, matter will have a 'commercial value' if it is valuable for the purpose of carrying on the commercial activities of any person: see my decision in *Re Precious Metals Australia Ltd and Department of Minerals and Energy* [1997] WAICmr 12. Further, I consider that it is by reference to the context in which the information is used, or exists, that the question of whether it has a 'commercial value' to a person may be determined.

The submissions from QAS

15. On 11 April 2000 and 3 May 2000, QAS made submissions to the agency in respect of the exemptions then claimed under clauses 4(1) and 4(2). In those submissions QAS stated that its audit reports, completed observation sheets, invoices and statement of costs are compiled:

"in a specific way, comprising:

- (i) *a process or device for continuing use in the operation of QAS' business; and*
- (ii) *one of the tools which provides QAS with an advantage over its competitors, who have and follow different processes."*

16. QAS submits that it has invested considerable sums of money in training its auditors to identify opportunities for improvement, areas of commercial risk and major non-conformance, and how to summarise and report on those matters. It notes that its audit processes are not in the public domain. QAS submits that the disputed documents are the 'end product' for which the client is prepared to pay a premium price and that the disputed documents reveal *"audit planning, duration and sampling techniques; how opportunities for improvement are*

identified and documented in the audit process; how QAS charges for these services and how it presents its accounts”.

17. QAS claims that its competitors will go to extreme lengths to obtain copies of documents, such as the documents in question, so that they can benefit commercially from the company's investment in training and process development. QAS submits that its audit processes and procedures are effectively proprietary techniques and that their disclosure will be to its commercial detriment. QAS maintains that its methodology is different from many of its competitors and that it is the world leader in the development of this unique approach.
18. As I understand it, the thrust of QAS's argument is that it positions itself at the high end of the management certification market *“by applying a proprietary ‘business focused’ auditing methodology at a competitive price”* and it is this methodology, together with its pricing policy and procedures, that it claims has a commercial value.

The agency's submissions

19. In its notice of decision dated 9 May 2000, the agency accepted that, on the basis of its examination of the disputed documents and the submissions of QAS:
 - QAS may be considered to be a market leader in the industry;
 - considerable sums of money and other resources have been invested by QAS in development of its methodology, staff training, preparation and presentation of reports; and
 - QAS has a particular approach in the observation and assessment of business and in the structure and presentation of its reports.
20. Accordingly, the agency submits that Documents 2, 3, 6, 14 and 16 have a commercial value based on QAS's processes and procedures. The agency also accepts that Documents 4, 5, 9, 10 and 13 would reveal hourly rates and costs agreed with QAS in accordance with the submitted tender, together with the amount of time spent on, and the number of staff concerned in, a particular task and that such information may have a commercial value to QAS in view of the small, competitive industry in which QAS operates.
21. The agency submits that Documents 18 and 19, although originating from the agency, are based on, and contain the same information as, Documents 4, 5, 9, 10 and 13. For the sake of consistency, the agency submits, Documents 18 and 19 are also exempt under clause 4(2).

The complainant's submissions

22. The complainant submits that the audit reports produced by certifying bodies such as QMS and QAS are not generally considered to be confidential documents. The complainant contends that it is customary for such reports to be disclosed by the client and that much of the information which the agency claims is exempt is in the public domain, for example, on the QAS website.
23. The complainant submits that the methodology of all certifying bodies such as QAS has to be accredited by JAS-ANZ since those methodologies are based on ISO standards. The complainant does not accept that the methodology of any accrediting body could be so different from that of any other accrediting body as to be held out as a "proprietary technique". Moreover, the complainant submits that the training of auditors has to conform to the Quality Society of Australia requirements and that training is generally the same throughout the industry. In brief, the complainant does not accept that QAS's methodology is a proprietary technique that has a commercial value.

Is the information contained in the disputed documents in the public domain?

24. In its "Guide to Applicants", published on its website, QAS sets out a broad summary of the steps involved in its assessment and certification process. Step 6 of this process relates to the certification audit and is described in the following terms:

"This is an extensive examination of your management system, to ensure that in operation it meets both the requirements of the relevant standard, your business processes and your own stated objectives. To verify this, the audit team looks for objective evidence using your management system as a reference. This is achieved by concentrating on aspects of your business where objectives, risks and opportunities are identified.

...

You'll receive an Audit Report detailing the strengths and weaknesses of your system, with references to areas where further work is required for compliance. Aspects of your system which could be simplified or improved will also be highlighted."

25. In my opinion, the broad outline of QAS's approach to a certification audit is published on its website and is, consequently, in the public domain. Nevertheless, I accept that there may be audit processes and procedures developed by QAS which would be of commercial value. I base this opinion on advice from the Chief Executive of JAS-ANZ that each accredited company has its own way of conducting its audit, albeit that the accredited system must be in accordance with international standards, and that some items in audit reports that reflect those techniques could be of value to competitors.
26. I also note the terms of the contract between the agency and QAS. The standard "Terms and Conditions - Acknowledgement of Acceptance" form was released to the complainant by the agency. That form provides that the agreement between the agency and QAS for the certification services is governed by:

- (a) QAS Terms and Conditions of Certification Services (including the Schedule of Fees) ('the Services document'); and
 - (b) QAS Terms and Conditions of Certification Mark Licence ('the Licence document').
27. A third document listed on the form is described as "*Certification Procedures relevant to the Certification Services requested (where applicable)*" ('the Procedures document'). On the form, the agency has acknowledged its acceptance of, and agreement to abide by, the Services and Licence documents by marking the references to them with a tick. However, the reference to the Procedures document has been marked with a cross. The agency informs me that it did not receive a copy of that document.
28. From the website of QAS, I obtained copies of the Services and Licence documents (although not its Schedule of Fees). The Procedures document is not accessible from the website and I conclude that it, and the Schedule of Fees, are not in the public domain, at least from that source. Clause 2 of the Services document defines 'Certification Procedures' as "*procedures developed by QAS and used in assessing a product, process or service for the purpose of grant or maintenance of Certification*". In addition, 'Certification Services' is defined as the "*assessment of a product, process or service in accordance with Certification Procedures...*".
29. Clause 8 of the Services document is a confidentiality clause that includes the following:
- "8.2 *The Client must treat as confidential and not disclose to any third party without the prior written consent of QAS any proprietary or confidential information belonging to QAS.*
 - 8.3 *The obligations of confidentiality under these terms and conditions do not extend to information that:*
 - (a) *is rightfully known to or in the possession or control of the receiving party and not subject to an obligation of confidentiality owed by the receiving party;*
 - (b) *is public knowledge (otherwise than as a result of a breach of these terms and conditions);...*
- The terms "proprietary information" and "confidential information" are not defined. Clause 8.1 is a reciprocal obligation to clause 8.2, in favour of QAS's client.
30. I note that the coversheets of the audit reports, which comprise four of the disputed documents (Documents 2, 3, 6 and 14), contain the following footnotes:

“A third party can only obtain right of perusal of this report following permission from the client” and “Commercial in Confidence”.

31. I understand that the agency considers the footnotes to be a reference to the reciprocal obligations of confidentiality imposed on both parties by clause 8 of the Services document. The agency confirms that it has the right to give access to the audit reports, but claims that such access would be granted only to persons such as prospective clients of the agency. It would not grant access, for example, to any certification organization succeeding, and thus in competition with, QAS, in order to avoid a possible breach of its agreement with QAS.
32. Having considered those facts and the information before me, I am not persuaded by the complainant’s submission that audit reports are generally not considered to be confidential documents and that the disputed documents that are audit reports are not, therefore, confidential. Clause 8 of the Services document imposes reciprocal obligations on QAS and its client to ensure that any proprietary or confidential information belonging to either is treated as confidential. Accordingly, those documents may be confidential if they contain proprietary or confidential information belonging to the agency or to QAS.
33. I am also not persuaded by the complainant’s submission that information such as that contained in the disputed documents is available on QAS’s website and thus in the public domain. There is no information before me to show that such information is in the public domain either by way of that website or otherwise. However, as noted above, I accept that the broad outline of QAS’s approach to a certification audit is information that is in the public domain.
34. In my opinion the disputed documents fall broadly into 2 categories. Category 1 consists of audit reports prepared by QAS. Category 2 consists of documents relating to the costs of the audit, including an audit service specification, statement of cost, invoices and purchase orders.
35. QAS has not claimed that the printed format of its documents is exempt material under clause 4(2) or any other exemption provision. However, since the complainant seeks access only to the data in the documents, that is not an issue with which I have to deal.

Category 1 documents: Clause 4(2)(a)

36. Documents 2, 3, 6, and 14 are audit reports prepared by QAS. Each report consists of a coversheet, a summary of audit, checklist and, in the case of Document 2, an observation sheet. During the course of my dealing with this complaint, QAS was asked to identify the specific material in those audit reports that it claims reveals its methodology in the form of its processes or procedures. In response, QAS provided me with its comments on those documents.

Document 2

37. With regard to Document 2, QAS drew my attention to material in the summary of audit sheet that identifies specific opportunities for improvement. I accept that specific opportunities for improvement are identified and suggestions for improvement made in that material. Nevertheless, I am not persuaded that this material reveals *“how opportunities for improvement are identified”* as QAS claims. In my opinion, the material simply identifies particular aspects of the agency’s operation that could be improved and suggests how such improvements might be made, as noted in its *“Guide to Applicants”*. I can discern no process or procedure that reveals how those opportunities were identified.

Document 3

38. With regard to Document 3, QAS submitted as follows: *“This, and the ‘Audit Summary – FINDINGS – System Management’ document reveals details of the QAS function/process approach to auditing, and the business performance orientation of the QAS Auditor.”* However, QAS did not provide any further explanation and did not identify specific material. Nor did it explain in what way details of its function/process approach, or the particular orientation of its auditor, were revealed in this material. Further, I can identify no material in Document 3 that would reveal the company’s methodology in the form of the particular approach referred to by QAS.

Documents 6 and 14

39. With regard to Documents 6 and 14, QAS referred to material in the summary of audit sheet *“which reveals decision-making in relation to sampling and the process-based approach. Also refer to ‘FINDINGS – Survey’ this provides an example of an Opportunity for Improvement”*. Having examined that material, it seems to me that the information simply records the scope of the audit with references to:
- (a) what was reviewed;
 - (b) past audits; and
 - (c) how elements of the ISO standard under review are recorded on the audit record sheet.

Findings

40. I am not persuaded that the relevant material reveals decision-making or any methodology that amounts to a proprietary technique. I accept that opportunities for improvement are identified but it does not appear to me that the process or procedure leading to that identification is revealed as QAS claims.

41. On the basis of the information currently before me, I consider that QAS's Procedures document, or information that reveals those procedures in the disputed documents, may be 'proprietary information' that amounts to a proprietary technique insofar as it reveals the methodology used by QAS in the course of its provision of certification services. I accept that information that relates to those procedures could have a commercial value to QAS.
42. However, I am not persuaded that the audit reports generally disclose anything so novel in the way of procedures or methodology as to warrant a finding that it is information that has a commercial value in the relevant sense. It appears to me that much of the information contained in those documents refers to aspects of the management system under review and the audit findings. Opportunities for improvement are identified, but I do not consider that that, of itself, can be described as a particular methodology. No mechanism for identifying such opportunities is evident to me in these documents. I accept that the audit reports reveal the broad outline of QAS's approach to the certification audit, but I consider the information to be no more than that published in the company's "Guide to Applicants".
43. However, I accept that the audit record sheets that form part of the Category 1 documents would disclose the methodology used by QAS, since those sheets list specific items for the attention of QAS's auditors. I accept that the processes undertaken by QAS as part of its certification procedure would be revealed by their disclosure, and that that matter has a commercial value to QAS. In my opinion, the requirements of clause 4(2)(a) are satisfied in respect of the audit record sheets.
44. I am not satisfied that there is any other matter in Documents 2, 3, 6 and 14 that could be said to reflect a methodology (amounting to a proprietary technique) such as to warrant a finding that it is information which has a commercial value in the sense required by clause 4(2)(a) of Schedule 1 to the FOI Act.

Clause 4(2)(b)

45. To establish a prima facie exemption under clause 4(2), the agency or QAS must establish that the commercial value of the relevant information could reasonably be expected to be destroyed or diminished by its disclosure under the FOI Act. The words "... could reasonably be expected" in clause 4(2)(b) should be given their ordinary meaning and require a judgement to be made by the decision-maker as to whether something is reasonable, as distinct from something that is irrational, absurd or ridiculous: see *Attorney-General's Department and Australian Iron and Steel Pty Ltd v Cockcroft* (1986) 10 FCR 180 at 190.

Category 1 documents: clause 4(2)(b)

46. I accept that disclosure of the audit record sheets in Documents 2, 3, 6 and 14 could reasonably be expected, in a small competitive industry of this kind, to diminish the commercial value of the particular methodology used by QAS, in that the methodology provides QAS with a commercial advantage which

advantage would be lost by its disclosure. In my view, disclosure of the methodology could reasonably be expected to enable a competitor to review and adjust its own methodology to give it a commercial advantage over QAS.

47. Accordingly, I find that the audit record sheets in Documents 2, 3, 6 and 14 are exempt under clause 4(2) of Schedule 1 to the FOI Act, but that Documents 2, 3, 6 and 14 are not otherwise exempt under clause 4(2).

Category 2 documents: Clause 4(2)(a)

48. Documents 4, 5, 9, 10 and 13 consist of a statement of cost and invoices prepared by QAS. Documents 18 and 19 are purchase orders prepared by the agency that contain similar information to that in Documents 4, 5, 9, 10 and 13. Document 16 is an audit service specification. These Category 2 documents contain a variety of information, including customer and invoice numbers, client details, the unit price of particular services and the total cost to the agency.
49. The agency submits that Documents 4, 5, 9, 10, 13, 18 and 19 disclose hourly rates and costs as well as the amount of time spent on a task and the number of staff engaged on a task, and that such information has a commercial value to QAS. QAS submits that disclosure of those same documents would reveal its pricing techniques, agreed hourly rates (which may not be standard rates), negotiation techniques and the audit duration. It claims that this information would be invaluable to a competitor when competing against QAS in future tenders.
50. I consider that Document 16 also contains pricing information and is more appropriately included in Category 2. Neither the agency nor QAS has made specific submissions in respect of Document 16.
51. In the course of my dealing with this matter, QAS was asked to clarify its claim with respect to audit duration. QAS responded with the following information:

“When scoping customers’ requirements we perform a risk assessment which determines the audit specifications, scope and audit duration.

This methodology differs from our competitors where audit duration is primarily driven by an audit reporting focus at a very different level, e.g. ticking boxes on pro-formas, identifying minor non-conformances (etc)...Knowledge of how QAS scope audit duration would diminish the value of intellectual property generated through a substantial learning and development investment.”

However, this did not assist my understanding of the matter.

Document 4

52. Document 4 is a statement of cost by QAS. It records the total cost of the service specified and the individual costs that make up the total. There is one handwritten notation that may be a reference to audit duration.

Documents 5, 9, 10 and 13

53. Those four documents are invoices produced by QAS. Documents 5 and 13 are identical. Documents 5, 9 and 13 contain references to the service provided, the duration and the costs of that service. Document 10 records the amount of a fee payable.

Document 16, 18 and 19

54. Document 16 is described in the agency's schedule as an audit service specification. It appears to be a standard form used by QAS to record client details and the services required by the client. It records the amount of a fee payable, audit hours and intervals. Documents 18 and 19 are purchase orders produced by the agency. They record references to fees payable and services rendered.
55. I have examined the Category 2 documents. None of those documents appears to me to disclose information relating to the methodology applied by QAS to its audits. However, I accept that they reveal rates and fees agreed between the agency and QAS, the time taken to perform the services and the number of personnel undertaking the audit. QAS submits that this information has a commercial value in that it could reveal its pricing policy, any departure from normal pricing structures and the amount of time negotiated for a particular service. Although QAS apparently considers that the latter is, in itself, a negotiation technique, I take the view that it is more appropriately considered as a method of costing.
56. Further, I cannot identify any information that would reveal the pricing policy of QAS (other than the actual prices quoted) or "*Knowledge of how QAS scope audit duration*". I am not persuaded that the costs and fees agreed between the agency and QAS, references to the duration and scope of the services or the number of QAS personnel providing those services, have a commercial value to QAS in the sense required by clause 4(2)(a). That is, I do not consider that that information is valuable for the purpose of carrying on the commercial activities of that company. My view, on the information before me, is that neither the agency nor QAS has established that the Category 2 documents contain information of the kind described in clause 4(2)(a). Accordingly, I find that the Category 2 documents are not exempt under clause 4(2).

(b) Clause 4(3)

57. Notwithstanding my findings that, other than the audit records sheets contained in Documents 2, 3, 6 and 14, the documents are not exempt under clause 4(2), the information in some of the documents clearly concerns the business, commercial or financial affairs of QAS and I have considered whether the documents may be exempt under clause 4(3).
58. The exemption in clause 4(3) protects from disclosure information about the business, professional, commercial or financial affairs of a person in

circumstances where disclosure could reasonably be expected to have an adverse effect on those affairs, or to prejudice the future supply of information of that kind to the Government or to an agency. The exemption recognises that neither the business dealings of private bodies, nor the business of government, should be adversely affected by the operation of the FOI Act. The exemption in clause 4(3) consists of two parts and both paragraphs (a) and (b) must be satisfied before a claim for exemption is established.

Clause 4(3)(a)

59. Although some of the information in the Category 1 documents might very broadly be said to relate to business affairs of QAS, the information is, in my view, more properly described as information about the operations of the agency. For the reasons I have given in previous decisions, I am of the view that clause 4(3) is not intended to exempt information concerning the business, professional, commercial or financial affairs of an agency, as information concerning the commercial affairs of an agency is specifically dealt with in clause 10(4): see, for example, *Re Collier Knyn and Associates Pty Ltd and City of Perth* [1995] WAICmr 62. Therefore, I do not consider that the Category 1 documents contain information of a kind described in clause 4(3)(a) and, in my view, they cannot be exempt under clause 4(3).
60. By way of comment, although the Category 1 documents contain information concerning the operation of the agency, they do not appear to me to contain information concerning its commercial affairs. There has been no suggestion from the agency that its commercial affairs could be adversely affected by disclosure of the documents, nor is there any material before me to indicate that may be the case. Accordingly, I do not consider that clause 10(4) applies to those documents.
61. However, in my view, information contained in the Category 2 documents about QAS's hourly rates, costs, the amount of time spent on a task and the number of staff undertaking the services, is information about the business, commercial and financial affairs of QAS that falls within the terms of clause 4(3)(a).

Clause 4(3)(b)

62. The Category 2 documents originating from QAS are invoices, a statement of cost and an audit service specification. In my opinion, the future supply of that kind of information (for example, the services provided, audit hours or duration and the charges and amount to be paid) by contractors to government agencies, could not reasonably be expected to be prejudiced by the disclosure of the disputed matter. Further, I am not persuaded that disclosure of the audit duration and the scope of the audit, where that was evident to all tenderers, could reasonably be expected to have any adverse effect on QAS's business, professional, commercial or financial affairs.
63. However, I consider that information in the Category 2 documents about the fees for particular services paid to QAS by the agency could reasonably be expected to have an adverse effect on QAS's business or commercial affairs. I

accept that disclosure of that information could reasonably be expected to disadvantage QAS against its competitors (including the complainant) in future business dealings because the competitors, armed with that knowledge, would be in a position to tailor their operation and fee structure to undercut QAS in future tenders, whilst QAS would not be in a position to do so as its competitors are not obliged to disclose similar information. Taking into account the fact that QAS operates its business in a small, specialised market, I consider that QAS would be less competitive than its competitors in any future tendering process if that information were to be disclosed. In my view, the requirements of clause 4(3)(b) are satisfied in respect of material of that kind in the Category 2 documents. Accordingly, I consider that matter in Documents 4, 5, 9, 10, 13, 16, 18 and 19 concerning the fees charged for itemised services, is exempt under clause 4(3).

64. However, I consider that, in those documents in which individual fees are added together to form a total amount (Documents 4, 5, 9, 13, 16, 18 and 19), disclosure of the total amount, in the absence of information as to the number of personnel engaged in that work and the costs of individual items of work, could not reasonably be expected to have an adverse effect on the business or commercial affairs of QAS. Accordingly, I consider that the total amounts in those documents are not exempt under clause 4(3).

Limit on exemption

65. Clause 4(7) provides that matter is not exempt matter under clause 4(3) if its disclosure would, on balance, be contrary to the public interest. Pursuant to s.102(3) of the FOI Act, the onus is on the complainant to establish that disclosure of the matter that I consider may be exempt under clause 4(3) would, on balance, be in the public interest. The complainant has provided me with no submissions on this point.
66. I recognise a public interest in maintaining the confidentiality of information about the business, professional, commercial or financial affairs of third parties recorded in documents held by State and local government agencies and in ensuring the viability of commercial bodies that do business with government agencies. Against that public interest, I recognise that there is a public interest in the accountability of the agency for the proper discharge of its duties and expenditure of public moneys, and a public interest in the complainant being able to exercise its right of access under the FOI Act.
67. In my view, the disclosure of edited copies of the disputed documents will provide the complainant with a substantial part of the information sought by it. In balancing the competing interests, I am not persuaded that the public interest in disclosure of the matter I have found to be *prima facie* exempt outweighs that of protecting the business, professional, commercial or financial affairs of QAS. Accordingly, I find that the information referred to in the last sentence of paragraph 64 is exempt under clause 4(3) of Schedule 1 to the FOI Act.
