

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

**File Ref: F1312000
Decision Ref: D0552000**

Participants: **Michael James Ryan**
Complainant

- and -

City of Belmont
Respondent

DECISION AND REASONS FOR DECISION

FREEDOM OF INFORMATION - refusal of access - documents containing terms of agreement relating to land exchange - letters with attachments - clause 3(1) - whether personal information - clause 3(6) - public interest - clause 4(2) - whether the documents contain information that has a commercial value to a person - section 102(1) - onus on agency to establish that its decision was justified - clause 6(1) - nature of the deliberative process - opinion, advice or recommendation obtained in the course of or for the purpose of the deliberative process of an agency - public interest factors for and against disclosure - clause 10(3) - whether documents contain information that has a commercial value to an agency.

Freedom of Information Act 1992 (WA) ss. 74, 102(1); Schedule 1 clauses 3(1), 3(6), 4(2), 10(3).

Interpretation Act 1984 (WA) s.5

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

Manly v Ministry of Premier and Cabinet (1995) 14 WAR 550

Re Waterford and Department of the Treasury (No2) (1984) 5 ALD 588

Ministry for Planning v Collins (1996) 93 LGERA 69

Re Ryan and City of Belmont [2000] WAICmr 42

Re Slater and State Housing Commission of Western Australia [1996] WAICmr 13

DECISION

The decision of the agency is set aside. In substitution it is decided that the material specified in paragraph 16 is exempt under clause 3(1), but that the disputed documents are not otherwise exempt.

B.KEIGHLEY-GERARDY
INFORMATION COMMISSIONER

27 October 2000

REASONS FOR DECISION

1. This is an application for external review by the Information Commissioner arising out of a decision made by the City of Belmont ('the agency') to refuse Mr Ryan ('the complainant') access to documents requested by him under the *Freedom of Information Act 1992* ('the FOI Act').
2. The documents requested by the complainant relate to a proposed land exchange under which a portion of Hardey Park, an 'A' class reserve owned by the Crown, is to be exchanged for Lot 712 Great Eastern Highway, owned by Cityscape Holdings Pty Ltd ('Cityscape'). Discussions between the agency and Cityscape to facilitate the land exchange have not been finalised and their successful conclusion is dependent on a number of matters that are outside the control of the agency.
3. The land exchange proposal does not have the support of some ratepayers who are concerned that if the exchange proceeds, the amount of public open space available will be significantly reduced. The complainant is opposed to the land exchange and has formed a local action group to oppose the deal.
4. At a meeting held on 17 November 1999 between representatives of the agency and Cityscape, it appears that agreement was reached on the terms governing the proposed exchange of land. At a meeting of the Council of the agency held on 22 November 1999, Council authorised the exchange to proceed on the terms agreed between the parties on 17 November 1999. That decision was conveyed to Cityscape and, by letter dated 24 November 1999, Cityscape accepted the terms offered by the agency for the exchange to proceed ('the Agreement').
5. On 24 May 2000, the complainant made an application to the agency under the FOI Act for access to the documents containing the terms of the exchange sent by the agency to Cityscape on 23 November 1999. The agency identified 4 documents, being a letter and 3 attachments to that letter, and gave the complainant access to 1 document (one of the attachments) and an edited copy of another document (the letter), but refused access to the other 2 attachments on the ground that those documents are exempt. The agency's decision was confirmed following an internal review. On 11 July 2000, the complainant lodged a complaint with the Information Commissioner seeking external review of the agency's decision.

REVIEW BY THE INFORMATION COMMISSIONER

6. I obtained the disputed documents from the agency. The two notices of decision provided to the complainant were so deficient and devoid of reasons that I did not consider the agency had made a decision on access that complied with the requirements of the FOI Act. Therefore, I sought further information from the agency to justify the decision it made to refuse access to the requested documents. The information that I requested from the agency was given to me in the form of a letter from the agency's solicitors.

7. In response to the complainant's access application, the agency initially identified 4 documents (a letter and 3 attachments to the letter). In the course of my dealing with this complaint, the agency found a letter to a third party that appears to be within the scope of the complainant's access application. That letter, which is dated 23 November 1999, and the one initially identified by the agency, are substantially similar, the only difference being the name and address of the intended recipient on the second letter and an additional attachment to it, designated Plan 1. The other 2 attachments to that letter are copies of 2 attachments to the letter initially identified by the agency.
8. On 12 September 2000, after considering the material before me, I informed the parties in writing of my preliminary view of this complaint, including my reasons. It was my preliminary view that the disputed documents may not be exempt. The agency responded in writing to my letter, and maintains its claim that the disputed documents are exempt. Although the agency was given the opportunity to meet with me and verbally clarify the basis of its claims, it did not do so.

THE DISPUTED DOCUMENTS

9. The disputed documents are similar letters dated 23 November 1999 from the agency to two third parties, with attachments described in paragraph 7 above. The agency claims exemption under clauses 3(1), 4(2), 6(1) and 10(3) of Schedule 1 to the FOI Act.

THE EXEMPTIONS

(a) Clause 3 – Personal information

10. Clause 3(1) provides that matter is exempt matter if its disclosure would reveal personal information about an individual (whether living or dead). The term "personal information" is defined in the Glossary in Schedule 2 of the FOI Act as:

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

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

11. Clearly, the exemption in clause 3(1) applies to any information or opinion about a person from which the identity of that person is either apparent or can reasonably be ascertained. In my view, the purpose of the exemption is to

protect the privacy of individuals about whom information may be contained in documents held by State and local government agencies.

12. The letters to the two third parties contain the names of four people who are not officers of agencies, and the address of each recipient of those letters. On its face, I consider that information to be personal information as defined in the FOI Act. In my view it is information that would identify the individuals concerned and, in the context of the disputed documents, in my view its disclosure would reveal personal information about those people. It is, therefore, *prima facie* exempt under clause 3(1). None of the attachments contains any personal information.
13. Clause 3(1) is subject to the limits on exemption in clauses 3(2)-3(6). In the circumstances of this complaint, I consider that the only limit that applies is the limit in clause 3(6) which provides that matter is not exempt matter under clause 3(1) if its disclosure would, on balance, be in the public interest.

Public interest

14. Although the registered proprietor of Lot 712 Great Eastern Highway is Cityscape, the agency's letters outlining the terms of the proposed land exchange with Cityscape were sent by the agency, not to Cityscape, but to two third parties. My inquiries have established that Cityscape is a registered Australian proprietary company the registered address of which is 300 Albany Highway Victoria Park and principal place of business is Unit 2, 190 Abernethy Road, Belmont, WA 6104. Certain information about Cityscape is publicly available from a Company extract available for a fee from the Australian Securities and Investments Commission. The publicly available information includes the names and addresses of the directors of Cityscape.
15. In my view, to the extent that disclosure of the disputed documents would reveal personal information that is available from the public record, I consider that disclosure of that information would, on balance, be in the public interest. In my view, no public interest would be harmed by the disclosure of personal information about the directors of Cityscape that is information already on the public record. Therefore, the public interest in the exercise of the right of access under the FOI Act is not outweighed by any competing public interest and I find that the names of the directors of Cityscape wherever those names appear in the disputed documents are not exempt under clause 3(1).
16. However, the names of two other third parties appear in the disputed documents, and both letters bear the signature of an officer of the agency. I do not have before me evidence that any of that information is on the public record. Further, there is nothing before me from the agency or the complainant to suggest that it is. I recognise that there is a strong public interest in maintaining personal privacy and consider that that public interest may only be displaced by some stronger countervailing public interest that requires the disclosure of personal information.

17. I recognise that there is a public interest in the complainant being able to exercise his right of access under the FOI Act, and a public interest in the accountability of the agency for the decisions that it makes on behalf of ratepayers. However, I do not consider that those public interests require the disclosure of the personal information in question. In my view, those public interests have been satisfied, as far as it is possible to do so, by the disclosures already made to the complainant.
18. As a result, I have given more weight to the public interest in maintaining the personal privacy of the individuals concerned. Therefore, I find that the first two names appearing in line 1 of paragraph one of both letters, and the signature of the Director of Development in the agency, are exempt under clause 3(1). Further, I consider that it would be practicable for the agency to delete that information from the documents.

(b) Clause 4(2) – Commercial or business information

19. Clause 4(2) 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."*

20. Clause 4(2) is concerned with protecting from disclosure matter which is not a trade secret, but which has "commercial value" to a person. The word "person" includes a public body, company, or association or body of persons, corporate or unincorporate: see s.5, *Interpretation Act 1984*.
21. Clause 10 deals with certain commercial or business information of the State and its agencies. Subclause (3) of clause 10 is drafted in substantially similar terms to subclause (2) of clause 4, except that the former refers to agencies, whereas the latter refer to "persons". In my view, as a matter of statutory construction, the inclusion in Schedule 1 to the FOI Act of an exemption clause specifically directed at protecting the commercial or business information of State government agencies means that the appropriate exemption to be used by those agencies seeking to protect their commercial or business information is clause 10 rather than clause 4.
22. I consider that clause 4 applies to documents containing information about the commercial or business information of any natural person, or any body or organisation, whether corporate or unincorporate, other than government agencies. In my view, it is primarily intended to protect certain of the

commercial or business affairs of private individuals and organisations having business dealing with Government.

23. In a number of my previous decisions, I have expressed the view that information may have a commercial value if it is valuable for the purposes of carrying on the commercial activities of a person: see, for example, *Re Precious Metals Australia Limited and Department of Minerals and Energy* [1997] WAICmr 12. I do not consider that the commercial value of the matter under consideration needs to be quantified or assessed in order to satisfy the requirements of clause 4(2)(a). However, the exemption consists of two parts and the requirements of both parts (a) and (b) must be satisfied in order to establish the exemption.
24. Although some third parties are referred to by name in the disputed documents, it does not appear to me that any of the information in the documents is information that has a commercial value to any of those persons. I required the agency to provide me with information to justify its decision to refuse access under clause 4(2). In response, the agency provided me with a copy of a letter from its solicitors, for which it claims legal professional privilege, and referred me to particular, numbered sections of that letter. The third parties were contacted and invited to make submissions or to be joined as parties, but they did not seek to be joined nor did they make submissions.
25. Without entering into debate about whether or not the agency has waived its privilege in the communication from its solicitors by disclosing it to me for the purpose of seeking to rely on it to persuade me to reach a decision adverse to the complainant in this matter, I have decided not to refer to its contents in detail in these published reasons. To do so may also reveal some of the matter which is claimed to be exempt and I consider that I am precluded by s.74 of the FOI Act from including material of that kind in my reasons or otherwise disclosing it. I have considered its contents carefully and, in my letter to the agency informing it of my preliminary view of this complaint, I have referred to the contents of that letter in more detail. However, for those reasons, I refer to it in these reasons in general terms only.
26. I have considered its contents and it is clear to me that nothing in that letter - and, in particular, in the sections to which I am referred - provides any factual basis for a claim of exemption under clause 4(2). Further, having examined the disputed documents, it is not apparent to me that the disputed documents contain any information that has a commercial value to the agency or to another person. None has been identified to me. In any event, if the disputed documents contain the kind of information described in clause 4(2), nothing has been put before me by the agency to explain how the value of that information could be destroyed or diminished by its disclosure.
27. Pursuant to section 102(1) of the FOI Act, the onus is on the agency to establish that its decision was justified or that a decision adverse to another party should be made. I refer to the comments of Owen J, in *Manly v Ministry of Premier and Cabinet* (1995) 14 WAR 550 at page 573, in relation to a claim for

exemption under clause 4(3) of the FOI Act, when he expressed the nature of the onus the agency bears in the following way:

“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.”

28. It follows that I do not consider that the agency has discharged the onus on it under s.102(1) of the FOI Act. There is nothing before me either in the documents or from the agency to enable a finding that the adverse effects contemplated by clause 4(2)(b) could reasonably be expected to follow from disclosure of those documents. Taking into account the lack of submissions by the agency and the lack of any other probative material, I find that the disputed documents are not exempt under clause 4(2).

(c) Clause 6 – Deliberative processes

29. 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.

30. To establish an exemption under clause 6, the agency must satisfy the requirements of both paragraphs (a) and (b). If the disputed documents contain matter of a type described in paragraph (a), then it is necessary to consider the requirements of paragraph (b), that is, whether disclosure of that matter would, on balance, be contrary to the public interest. In the case of this exemption, the complainant is not required to demonstrate that disclosure of deliberative process matter would be in the public interest; he is entitled to access unless the agency can establish that disclosure of the particular deliberative process matter would be contrary to the public interest.
31. I consider that the deliberative processes of an agency are its “thinking processes”, the process of reflection, for example, on the wisdom and expediency of a proposal, a particular decision or course of action: see *Re Waterford and Department of the Treasury (No 2)* (1984) 5 ALD 588; also the comments of Templeman J in *Ministry for Planning v Collins* (1996) 93 LGERA 69 at 72.

Clause 6(1)(a) – The nature of the information

32. In its initial notice of decision, the agency informed the complainant that the documents are exempt under clause 6(1) because the matter to which they refer has not yet been formally finalised and no signed agreement has been obtained. The agency claimed that the disclosure of the disputed documents may jeopardise the negotiations and result in a financial loss, and that disclosure would be contrary to the public interest because it will impair the effectiveness of the land exchange process. In response to my notice of requirement to give information identifying the opinion, advice, recommendation, consultation or deliberation which would be revealed by disclosure of the documents, and the particular deliberative process or processes of the government, Minister or agency to which the documents relate, the agency once again referred me to various sections of the solicitor’s letter in support of the claim for exemption.
33. I have considered those sections of the solicitor’s letter but do not consider that they provide the required information. However, the agency did identify the deliberative process to which it contends this claim for exemption relates as being “[n]egotiations between City and Owners and consideration of these matters through meeting procedure under the LG Act”. The agency also provided me with further information on its negotiations with Cityscape, advising that the disputed documents are considered to be sensitive and pivotal to the success of its negotiations, stating: “*It is considered that release of an edited copy or even only the attachments could result in the reader deducing the nature of our negotiations and/or making inaccurate assumptions. The Legal Opinion provided clearly outlines the City’s concerns regarding such impacts on the opportunity for success in our negotiations.*”
34. Having considered this statement, and the agency’s comments referred to above, I informed the agency that it remained unclear to me whether the deliberative process referred to by the agency is:

- its negotiations with the owners of Lot 712 in respect of the Agreement;
 - the agency's current deliberations in respect of the Agreement;
 - the deliberations of the agency and/or the State Government which will lead to the finalisation of the land exchange; or
 - all, or some combination, of these.
35. The agency has provided nothing further to clarify this issue. In my view the negotiations that led to the Agreement is a discrete deliberative process, separate from the broader land exchange approval process of which it forms a part. I understand that the parties to the Agreement finalised that particular deliberative process on 24 November 1999. Even if I were to accept that all of those deliberative processes were the processes to which the agency refers, having examined the disputed documents, I do not consider that disclosure of those documents would reveal opinion, advice or recommendation obtained, prepared or recorded in the course of, or for the purposes of the deliberative processes of the agency or the State Government.
36. The documents set out the terms approved by the Council of the agency to apply to the exchange of land. In my view, the terms themselves do not constitute advice, opinion or recommendation. I accept that a document containing the terms when they were first submitted to the Council for endorsement may contain information of the kind described in clause 6(1)(a), but I do not consider that the disputed documents are documents of that kind. Rather, in my view the disputed documents contain a factual list of the terms endorsed by the Council. In that form they are not recommendation, or opinion or advice.
37. Further, nothing in the documents reveals any consultation or deliberation that has taken place in the course of, or for the purpose of, any of the deliberative processes listed above. That is, the documents do not reveal any consultation undertaken on the subject matter of the documents or any evaluation of competing arguments or considerations that have a bearing upon the agency's course of action. Instead the disputed documents reveal various matters put to the owners of Lot 712 by the agency for agreement, which were afterwards agreed. They reveal nothing of the "thinking processes" of the agency that led to its proposal to the owners of Lot 712. In my opinion, the disputed documents do not reveal information of the kind described in clause 6(1)(a). Even if they did, the exemption will only apply if disclosure would be contrary to the public interest.

Clause 6(1)(b)

The complainant's submission

38. The complainant submits that there is a public interest in the disclosure of the disputed documents to allay public concerns as to the proposed land exchange. Those concerns relate to the exchange being based on land of equal or 'deemed' equal value and are referred to in my decision in *Re Ryan and City of Belmont* [2000] WAICmr 42, at paragraphs 63-64. The complainant submits that disclosure of the disputed documents will enable the community to assess the agreement reached between the agency and Cityscape, as recorded in the

minutes of the agency's Council meeting in December 1999, in the context of the relative fairness of the proposed land exchange. The complainant submits that that agreement has been finalised, as recorded in those minutes.

39. The complainant submits that it is in the public interest for the community to be made aware of the information in the disputed documents so that interested persons can make informed representations, on these or other issues, to their Members of Parliament who, at the date of his complaint to the Commissioner, were considering a submission, tabled in Parliament, on the land exchange proposal.

The agency's submission

40. The agency informs me that there will be substantial benefits to the general public and to local residents if the exchange of land can be achieved. The agency submits that the benefits include public access to the river foreshore, a view of the river for motorists travelling along Great Eastern Highway, improved access to the river for cyclists and pedestrians and the provision of parking adjacent to the river foreshore.
41. The agency submits that those potential benefits will not be attained if the land exchange does not proceed and that there is a public interest in ensuring that the process is not jeopardised in any way. The agency contends that disclosure of its negotiations on the Agreement will be likely to place those negotiations under such pressure as to jeopardise any possibility of the land exchange proceeding.

Public interest

42. I accept that the land exchange proposal has to pass through a number of stages before it can be finalised, including gaining the approval of the Parliament of Western Australia for the exchange of an 'A' class reserve. I also accept that discussions with Cityscape are continuing and that there is both agreement and disagreement in the local community about the proposal.
43. Generally, I consider that it would be contrary to the public interest to prematurely disclose deliberative process documents whilst deliberations are current, if there is material before me to establish that disclosure would adversely affect those deliberations or that disclosure would, for some other reason, be demonstrably contrary to the public interest. I recognise that there is a public interest in ensuring that the parties have access to all relevant material to assist them in their deliberations and to allow the deliberative processes to proceed in a logical and informed fashion.
44. In the circumstances of this matter, I am not persuaded that any future discussions with Cityscape are likely to be adversely affected by the disclosure of documents that contain the terms upon which each party has agreed the proposal may proceed. Disclosure, in my view, would reveal nothing that is not already known to both the agency and to Cityscape. Therefore, I do not consider that disclosure could adversely affect future deliberations about the exchange.

45. I accept that it is possible that disclosure of the disputed documents may place negotiations between the agency and Cityscape under scrutiny. However, there is no probative material before me to show that such pressure would jeopardise any possibility of the land exchange proposal proceeding to a successful conclusion, as claimed by the agency. Whilst I accept that the agency perceives that the land exchange will be of benefit to the public and, therefore, that it may be contrary to the public interest for the land exchange proposal not to proceed, I do not consider that the agency has provided any persuasive support for its assertion that the disclosure of the disputed documents would be likely to prevent the land exchange proposal from being finalised.
46. I recognise that there is a public interest in the complainant being able to exercise his right of access under the FOI Act and a public interest in local communities being given access to information to enable interested members of the community to have input into decisions of the agency that affect the local community. I also consider that there is a public interest in the accountability of the agency and its Council for decisions made on behalf of ratepayers.
47. I have also taken into account the fact, as reported in *The West Australian* newspaper on 10 October 2000, that a petition containing 300 signatures, together with over 150 letters of protest concerning the proposed exchange have apparently been handed to the Mayor of the agency. On the other hand, it was also reported by the agency that there is overwhelming public support for the proposal. Clearly, it is a matter of concern and debate in the community and, given the apparent level of disagreement in the community, I have given more weight to the public interest in making information available to the public so that informed discussions may ensue.
48. I consider that there is a public interest in members of the community being able to assess for themselves whether the decision to exchange public land and the mechanics of that exchange are appropriate decisions. In the particular circumstances of this case, I consider that there is a public interest in interested members of the community being able to satisfy themselves that the basis of the proposed land exchange is fair and for the benefit of the community.
49. Related to that, I consider that there may well be a public interest in that scrutiny occurring before there is a concluded agreement and the exchange irreversible. Whilst I accept that the agency considers the proposed exchange, and the agreed terms, to be in the public interest, that view should be able to withstand public scrutiny and informed public debate. If it cannot, then it appears to me that the proposal would need to be reconsidered. In either case, there appears to be a public benefit in disclosure.
50. I also recognise that there is a public interest in the accountability of agencies for the manner in which those agencies discharge their obligations on behalf of the public in Western Australia. In my view, that accountability includes informing the public, wherever possible, of the basis for decision-making and of the material considered relevant to the decision-making process.

51. One of the stated aims of the FOI Act is to enable the public to participate more effectively in governing the State. In my view, the public can only participate in the democratic process if timely access to relevant information becomes the rule rather than the exception. It cannot be contrary to the public interest, in my view, for the public to know the terms of the land exchange that have been endorsed by the Council, the elected representatives of the local community. Accordingly, I find that the disputed documents are not exempt under clause 6(1).

(d) Clause 10(3) – The State’s financial or property affairs

52. Clause 10(3) provides:

"10. The State's financial or property affairs

Exemptions

(1)...

(2)...

(3) Matter is exempt matter if its disclosure -

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

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

(4)...

(5)...

Limit on exemptions

(6) Matter is not exempt matter under subclause (1), (2), (3), (4) or (5) if its disclosure would, on balance, be in the public interest."

53. Clause 10(3) is concerned with protecting information that has a “*commercial value*” to an agency. The FOI Act recognises the increasing commercial reality of government business in contemporary society. The exemptions in clause 10 reflect that commercial reality and ensure that the business and commercial affairs of government agencies, conducted by those agencies for, and on behalf of, the public of Western Australia, are not jeopardised by the disclosure of documents under the FOI Act containing commercially valuable information, unless there is a public interest that requires the disclosure of such documents.

54. The Concise Oxford Dictionary of Current English, 8th Edition, defines “commercial” as meaning “*of, engaged in, or concerned with, commerce*” and “commerce” as meaning “*financial transactions, esp. the buying and selling of merchandise, on a large scale*”. Similarly, the Collins English Dictionary (Australian Edition) defines “commercial” as meaning “*of, connected with or*

engaged in commerce; mercantile", and "commerce" as meaning "the activity embracing all forms of the purchase and sale of goods and services".

55. In my view, the exemption in clause 10(3) refers to information that is valuable for the purposes of carrying on the commercial activities of an agency: see my decision in *Re Slater and State Housing Commission of Western Australia* [1996] WAICmr 13. I consider that it is by reference to the context in which the particular information is used, or exists, that the question of whether that information has a commercial value can be determined.

The agency's submission

56. The agency's claim for exemption under clause 10(3) was only made at internal review. As a reason for claiming that exemption, the agency merely recited the words of the exemption clause. I required the agency to provide me with information to justify its decision to refuse access under clause 10(3). In response, the agency once again referred me to the letter from its solicitors and, in particular, to sections 1.4, 1.5, 1.6 and 2.1(b) and (c) of that letter.
57. For the reasons I have given, I do not detail the contents of that letter. However, having considered it carefully, in my view, none of the information in that letter provides any factual basis for a claim of exemption under clause 10(3). Further, I have examined the disputed documents, and it is not apparent to me, from the disputed documents themselves, that they contain any information that has a commercial value to the agency. None has been identified to me by the agency. In any event, if the documents do contain the kind of information referred to in clause 10(3)(a), nothing has been put before me by the agency to explain how the commercial value of that information could be destroyed or diminished by its disclosure.
58. In respect of the claim for exemption under clause 10(3), I do not consider that the agency has discharged the onus it bears under s.102(1) of the FOI Act. Accordingly, I find that the disputed documents are not exempt under clause 10(3).
