

**DECISION SUMMARY ISSUED BY THE INFORMATION COMMISSIONER (WA)**

**Decision title and citation: *Re Giffard and State Supply Commission* [2000] WAICmr 57**

**COMPLAINT No:** F1322000

**DECISION No:** D0572000

**PARTIES:** **Graham Thomas GIFFARD**

Complainant

**STATE SUPPLY COMMISSION**

Respondent

**No. of documents in dispute:** 11

**Exemption clause(s):** Clause 6

In December 1998, the State Supply Commission ('the agency') commenced development of a policy statement and guidelines to cover works contracting with the aim of achieving uniformity and consistency in the tendering and contracting for works throughout government agencies. Works contracts comprise construction, manufacture or extension of buildings and civil engineering works. The policy development process included conducting industry forums, seeking input from construction companies, engineering and architectural consultants, and consulting with other stakeholders both inside and outside of the public sector.

Subsequently, a document entitled "*Works Contracting Guidelines*" was prepared and circulated for comment by various stakeholder groups. The general view of the stakeholders was that the guidelines did not adequately address all of the issues and a decision was apparently taken not to proceed with that particular set of guidelines. Initially, the agency assumed the leadership role in developing the policy. However, as responsibility for works lies with the Department of Contract and Management Services (CAMS), the responsibility for the development of a new policy was transferred to CAMS.

By letter dated 30 March 2000, the Hon Graham Giffard MLC ('the complainant') made an application to the agency under the *Freedom of Information Act 1992* ('the FOI Act') for access to documents associated with the policy development process. Access was refused on the ground that the documents are exempt under clauses 4(3)(b) and 6(1). The agency's initial decision was confirmed following an internal review. On 12 July 2000, the complainant lodged a complaint with the Information Commissioner seeking external review of the agency's decision.

**Review by the Information Commissioner**

I obtained the disputed documents from the agency. On 12 October 2000, after examining those documents and 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 requested documents may be exempt under clause 6(1).

Subsequently, the agency withdrew its claims for exemption under clause 4(3). The complainant did not make any further submissions. I am not dissuaded from my preliminary view that the documents are exempt under clause 6(1). A summary of my reasons follows.

**Clause 6 – Deliberative processes**

Clause 6(1) provides that matter is exempt matter if its disclosure would reveal any opinion, advice or recommendation that has been obtained, prepared or recorded, or 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 would, on balance, be contrary to the public interest.

The disputed documents consist of a draft policy document, submissions from stakeholders, minutes of meetings recording discussions about works contracting, letters to the Minister for Works and Services, and internal agency memoranda relating to works contracting and policy matters. Having examined the disputed documents, I am satisfied that disclosure of those documents would reveal opinion, advice and recommendations that have been obtained, prepared or recorded in the course of, or for the purposes of the deliberative processes of the agency, and some of the consultations that have taken place in the course of developing the initial policy guidelines for works contracts. Therefore, I accept that the disputed documents contain information of the kind described in clause 6(1)(a).

*Clause 6(1)(b) – contrary to the public interest*

The agency submits that the development of an appropriate policy is currently underway and that consultation with agencies and industry associations is ongoing. The agency states that a number of consultative forums are planned and some are being conducted and that feedback from those forums will be used to refine and redraft the policy, if necessary. The agency submits that disclosure of the disputed documents would be contrary to the public interest because they are misleading and out of date, and disclosure could cause unwanted speculation and lead to lobbying that would distract from the policy process.

**Public interest**

I recognise that there is a public interest in the agency having access to a wide range of advice and opinions in the policy development process. I consider that that public interest is served by preserving the integrity of the deliberative processes, but only if disclosure of the documents would adversely affect the agency's deliberations to such an extent that it would, on balance, be contrary to the public interest to disclose them, or that disclosure would, for some other reason, be demonstrably contrary to the public interest.

On the other hand, I recognise a public interest in persons such as the complainant being able to exercise their rights of access under the FOI Act. I also consider that there is a public interest in the disclosure of information that would inform the public, or sections of it, about policy issues and enable interested parties to participate more effectively in governing the State. However, I am not persuaded that the development of policy guidelines relating to works contracting is so far advanced that either the complainant or members of his constituency are unable to participate in the consultation process. Clearly, it is open to any member of the public to make his or her views on the subject known to the agency. I do not consider that it is necessary to have access to the disputed documents to enable that step to occur. Therefore, I have given less weight to this public interest.

In the circumstances of this complaint, I have given more weight to the public interest in allowing the deliberative processes to occur without the disclosure of submissions and advice received by the agency relating to an earlier version of a policy that is clearly out of date. Whilst I agree with the complainant's view that the agency's claims are excessive and overstated, I have had the benefit of reading the disputed documents and forming my own view on the likely effects of disclosing the disputed documents.

It seems to me that the range of views in the disputed documents represent a variety of interests and no clear policy position on works contracting has yet been reached by the agency or by CAMS. Based on that fact and that consultation with stakeholders is ongoing, I consider that a final settled version of a works contracting policy is still in its early stages of development. In my view, disclosure of submissions made to the agency has the potential to disrupt the policy development process. I have formed that view because it would clearly be open to any industry group or business to seek to influence the agency, beyond merely the making of a submission, if documents disclosing what might be contrary points of view were to be disclosed.

In my view, the disclosure of draft guidelines that are out of date would be misleading, given that no reliance can be placed on their contents. Further, the disclosure of advice, opinion and recommendations would also be misleading at this point without knowing whether any of that advice, opinion or recommendations has been accepted or rejected by the agency.

Accordingly, I find that the disputed documents are exempt under clause 6(1) and confirm the agency's decision to refuse access to those documents.

B. KEIGHLEY-GERARDY  
INFORMATION COMMISSIONER

3 November 2000