



Decision D0192026 – published in note form only

Re Alexander Creek Pty Ltd and Department of Mines, Petroleum and Exploration [2026] WAICmr 19

Date of Decision: 21 September 2026

Freedom of Information Act 1992 (WA): Schedule 1, clauses 4(2) and 4(3)

Decision

1. For the reasons given to the parties and summarised below, the Information Access Deputy Commissioner (**Deputy Commissioner**) set aside the decision of the Department of Mines, Petroleum and Exploration (**agency**) to refuse the complainant access to certain information (**disputed information**) in an annual technical report on the basis it is exempt under clauses 4(2) or 4(3) of Schedule 1 to the *Freedom of Information Act 1992 (WA)* (**FOI Act**).
2. In substitution, the Deputy Commissioner found:
 - disputed information that is publicly available is not exempt under clause 4(2) or clause 4(3);
 - disputed information comprising unpublished data tables is exempt under clause 4(2); and
 - the balance of disputed information is exempt under clause 4(3).

Reasons

Clause 4(2) – commercial value

3. Clause 4(2) of Schedule 1 to the FOI Act provides matter is exempt if its disclosure:
 - would reveal information (other than trade secrets) that has a commercial value to a person; and
 - could reasonably be expected to destroy or diminish that commercial value.

Some disputed information has commercial value

4. The principles for determining whether information has commercial value are well established.¹ Generally speaking:
 - information may have commercial value if it is useful for carrying on a person's or organisation's commercial activities, including for ongoing business operations or a pending 'one-off' commercial transaction;

¹ *Re West Australian Newspapers Limited and Salaries and Allowances Tribunal* [2007] WAICmr 20, [115]-[125]; *Re McGowan and Minister for Regional Development; Lands and Mineralogy Pty Ltd* [2011] WAICmr2, [33]; *Re Hart and Public Transport Authority* [2026] WAICmr 8, [13].

- information may have a commercial value if a genuine arms-length buyer would pay to obtain it;
 - it is not necessary to quantify the commercial value;
 - commercial value is determined by the context in which the information is used or exists;
 - investment of time and money alone does not establish commercial value;
 - aged, out-of-date information has no remaining commercial value; and
 - publicly available information generally has no commercial value.
5. The agency claimed the disputed information has commercial value because it was the product of funds, time, effort and experience of tenement holders. However, the Deputy Commissioner observed the investment of time and money alone is not sufficient to indicate commercial value. If it were, most business documents would have commercial value merely because resources were expended in their creation or acquisition.²
 6. Further, publicly available information generally has no commercial value. Although the agency acknowledged some of the disputed information was in the public domain because of the third party's ASX reporting obligations, neither it nor the third party responded to requests to identify specifically the publicly available disputed information.
 7. Accordingly, the Deputy Commissioner undertook a high-level review of the disputed information against the third party's ASX announcements published on its website. That review indicated a significant amount of the disputed information is already publicly available, in many instances with identical text, figures and tables in the third party's announcements to the ASX.
 8. To the extent the disputed information was already in the public domain, the Deputy Commissioner was not satisfied it had commercial value.
 9. In relation to the disputed information where it was unclear whether such information is already in the public domain, the Deputy Commissioner observed it included tables with more detailed exploration data. On balance, the Deputy Commissioner considered these tables were likely to remain commercially valuable.

Disclosure can reasonably be expected to destroy or diminish the commercial value of unpublished data tables

10. The Deputy Commissioner was satisfied disclosure of the tables could reasonably be expected to diminish their commercial value. The Deputy Commissioner acknowledged the third party has already published similar exploration data and has carried out further related exploration. However, he noted the publicly released data was not to the level of granularity in the tables. It also remains valuable for other purposes, such as potential investment, joint venture or acquisition dealings. Therefore, on balance, the Deputy Commissioner was satisfied disclosure of the relevant tables could reasonably be expected to diminish their commercial value.
11. Accordingly, the Deputy Commissioner was satisfied the exemption in clause 4(2) applies to the unpublished exploration data tables.

Clause 4(3) – business, professional, commercial or financial affairs

12. The Deputy Commissioner also considered whether disclosure of disputed information that is not publicly available or otherwise exempt under clause 4(2) (**remaining disputed information**) is exempt under Clause 4(3).

² *Re Cannon and Australian Quality Egg Farms Limited* (1994) 1 QAR 491, [52]; *Re Kabay and City of Armadale* [2026] WAICmr 4, [12].

13. Clause 4(3) of Schedule 1 to the FOI Act provides matter is exempt if its disclosure:
- would reveal information about the business, professional, commercial or financial affairs of a person;³ and
 - 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.
14. Even where both of those criteria are satisfied, matter is not exempt if its disclosure is, on balance, in the public interest (clause 4(7)).

Disputed information relates to business, professional, commercial and financial affairs of the third party

15. The Deputy Commissioner observed the expression ‘business, professional, commercial or financial affairs of a person’ is broad in meaning and was satisfied the remaining disputed information fell within this meaning.

Disclosure will not prejudice the future supply of information

16. Neither the agency nor the third party clearly explained how disclosure of the remaining disputed information would have an adverse effect the future supply of information to the government or an agency.
17. The relevant information is required to be submitted to the agency under section 115 of the *Mining Act 1978* (WA) (**Mining Act**). The relevant *Guidelines for Mineral Exploration Reports on Mining Tenements* detail the type of information required to be provided. Therefore, disclosure of the remaining disputed information could not reasonably be expected to prejudice the future supply of information of that kind to the government or to an agency

Disclosure will have an adverse effect on business or commercial affairs

18. The key issue was therefore whether disclosure of the remaining disputed information could reasonably be expected to have an adverse effect on the third party’s business affairs. An ‘adverse effect’ will most likely be pecuniary in nature, although not necessarily so.⁴
19. The phrase ‘could reasonably be expected to’ is given its ordinary meaning by the courts. It requires a decision-maker to assess whether it is reasonable, rather than irrational, absurd or ridiculous, to expect the relevant outcome.⁵
20. The Deputy Commissioner observed the remaining disputed information revealed aspects of the third party’s exploration methodology, data analysis and strategic thinking. While some of this information is summarised in publicly available materials, those materials were only of a general nature and lacked the detail contained in the remaining disputed information.
21. On balance, the Deputy Commissioner was satisfied disclosure of the remaining disputed information could reasonably be expected to have an adverse effect the third party’s business or commercial affairs by providing the third party’s competitors with insights into the holder’s exploration priorities, methodologies and activities, particularly when considered alongside other publicly available information.

³ The term ‘person’ includes bodies corporate: *Interpretation Act 1984* (WA), s 5.

⁴ *Re Oset and Office of Racing and Gaming* [2000] WAICmr 2, [31]; *Re Cannon and Australian Quality Egg Farms Limited* (1994) QAR 491, [82].

⁵ *Apache Northwest Pty Ltd v Department of Mines and Petroleum* [2012] WASCA 167, [60]; *Attorney-General’s Department v Cockcroft* (1986) 10 FCR 180, 190.

Clause 4(7) – disclosure is not in the public interest

22. Clause 4(7) states matter is not exempt under clause 4(3) if its disclosure would, on balance, be in the public interest. The expression ‘public interest’ is best understood as follows:⁶

The public interest is a term embracing matters, among others, of standards of human conduct and of the functioning of government and government instrumentalities tacitly accepted and acknowledged to be for the good order of society and for the well being of its members. The interest is therefore the interest of the public as distinct from the interest of an individual or individuals.

23. The complainant stated in its application for internal review it had reasonable grounds to believe expenditure reported on certain tenements was incorrect. It further stated it is in the public interest to disclose the disputed information because:
- the exploitation of Western Australia’s mineral wealth is in the public interest;
 - inaccurate reporting of expenditure information is unacceptable and against the public interest, and it undermines the integrity and self-policing nature of the Mining Act; and
 - exploration information is already protected to avoid third parties obtaining an unfair advantage by freely acquiring knowledge that tenement holders have incurred time and expense in developing.
24. The Deputy Commissioner acknowledged there is a public interest in transparency and accountability in the administration of the Mining Act and in the development of Western Australia’s mineral resources. However, these are general public interests and do not, on their own, mean the remaining disputed information should be disclosed under the FOI Act.
25. In this case, the confidentiality provisions in the reporting framework clearly recognise the public interest in protecting the commercial utility of exploration information. Further, compliance with the Mining Act is principally a matter for the agency through its regulatory and audit processes. Competitors do not need access to information of the type the complainant requested to monitor or enforce compliance. If there are concerns information a tenement holder reports is inaccurate or misleading, those concerns can be raised with and addressed by the Government through the relevant provisions of the Mining Act.
26. Accordingly, on balance, the Deputy Commissioner was satisfied the public interest favoured non-disclosure and the remaining disputed information was therefore exempt under clause 4(3).

Background to the complaint

27. The complainant applied to the agency, then the Department of Mines, Industry Regulation and Safety, under the FOI Act for access to annual technical reports for nominated tenements over a five year period.
28. By notice of decision, confirmed on internal review, the agency refused the complainant access to all annual technical reports falling within the scope of the access application on the basis they are exempt under clauses 4(2), 4(3) and 8(2). The complainant then sought external review.
29. During the external review, it became apparent reports and information falling within the scope of the access application had been published. Accordingly, only one annual technical report remained in dispute. Further, the complainant clarified it only sought information under the heading ‘Current Exploration Activities’ or equivalent in that report (i.e. the disputed information).

⁶ See, e.g. *Re V and Curtin University* [2020] WAICmr 3, [55] which adopts the decision of the Victorian Supreme Court in *Director of Public Prosecutions v Smith* [1991] VicRp 6; [1991] 1 VR 63, 65.

30. In December 2025, the Acting Information Access Deputy Commissioner (**A/Deputy Commissioner**) provided the parties with her preliminary view on the matter that the disputed information is not exempt in full under clauses 4(2), or 4(3), and not exempt under clause 8(2). The A/Deputy Commissioner invited the agency to identify what disputed information was now publicly available.
31. In January 2026, the agency withdrew its claim the disputed information is exempt under clause 8(2). However, it did not otherwise make submissions in response to the preliminary view.
32. The third party was invited to be joined as a party to the complaint but declined. It was also invited to make submissions as to whether the disputed information is exempt under clause 4 of Schedule 1 to the FOI Act. The third party made written submissions in February 2026, and claimed additional information in the relevant report was exempt under clause 4. Those submissions were reiterated in May 2026.
33. Despite repeated requests, neither the agency nor third party identified what disputed information was publicly available.