

Decision D0012025 – Published in note form only

Re Forrest and Forrest Pty Ltd and Department of Energy, Mines, Industry Regulation and Safety [2025] WAICmr 1

Date of Decision: 6 January 2025

Freedom of Information Act 1992 (WA): sections 13(2), 33, 69(2) and 76(1)(b); Schedule 1, clause 4(3)

On 24 November 2023, Forrest & Forrest Pty Ltd (**the complainant**) applied to the Department of Energy, Mines, Industry Regulation and Safety (**the agency**) under the *Freedom of Information Act 1992 (WA)* (**the FOI Act**) for access to the section 58 statement filed in respect of exploration licence 08/1480. The complainant agreed to the deletion of all personal or commercial information, to remove the requirement for third party consultation under sections 32 and 33 of the FOI Act.

The agency did not give the complainant a notice of decision within the permitted period as prescribed under the FOI Act. Therefore, under section 13(2) of the FOI Act, the agency was taken to have refused access to the requested documents.

On 22 January 2024, the complainant sought internal review of the agency’s deemed decision to refuse access to documents.

By internal review decision dated 29 February 2024, the agency confirmed its decision to refuse access to the requested documents.

On 24 April 2024, the complainant applied to the Information Commissioner (**the Commissioner**) for external review of the agency’s decision.

During the external review, the agency gave the complainant an amended notice of decision, and identified three documents within the scope of the access application, namely the requested section 58 statement and attachments (collectively, **the disputed documents**). The agency decided to give access to an edited copy of the section 58 statement (**the statement**), deleting information it claimed was exempt under clause 4(3) of Schedule 1 to the FOI Act and full access to the attachments to the statement (**the attachments**).

The agency informed the complainant that, following consultation under section 33 of the FOI Act, a third party objected to disclosure of the disputed documents and that access would therefore be deferred.

On 5 July 2024, Energy Metals Ltd (**the third party**) applied to be joined as a party to this matter, pursuant to section 69(2) of the FOI Act, and was so joined.

Section 76(1)(b) of the FOI Act provides that the Commissioner may decide any matter in relation to an access application that could have been decided by the agency. On 8 August 2024, after considering the material before her, the Commissioner provided the parties with her preliminary view. It was the Commissioner’s preliminary view that all information in the disputed documents is outside the scope of the complainant’s access application and that access should be refused to those documents in their entirety on that basis.

The complainant did not accept the Commissioner's preliminary view and made further submissions. The agency and third party also made further submissions.

The complainant advised in their further submissions that they were not pursuing access to the attachments to the statement. Therefore, the Commissioner did not consider the attachments further and only the statement remained in dispute (**the disputed document**) for the Commissioner's determination.

The Commissioner observed that the terms in which an access application is framed set the parameters for an agency's response under Part 2 of the FOI Act, and in particular, set the parameters for the agency to identify which documents come within the scope of the access application and, what information in those documents comes within the scope of the access application. The Commissioner noted that an agency is entitled to delete information from documents that is outside the scope of the relevant access application: see *Re G and Department for Community Development* [2002] WAICmr 28, at [15]-[16]. Further, if information is outside the scope of an access application, it is not necessary to consider whether or not that information is exempt: see for example, *Re Michel and Office of Health Review* [2009] WAICmr 33.

The Commissioner had regard to the terms of the access application and the complainant's agreement to the deletion of all commercial information from the disputed document. The Commissioner considered that, because of that agreement, all commercial information in the disputed document was outside the scope of the access application and the agency was entitled to refuse access to all information of that kind on that basis.

The complainant contended that the entirety of a section 58 statement does not contain commercial information and that prescribed headings in those documents do not consist of commercial information. Based on her examination of the disputed document, the Commissioner was of the view that it was comprised entirely of commercial information. The Commissioner considered that the document as a whole, by its nature, contains commercial information and the headings are part of the context of the document. The Commissioner also noted that disclosure of only the headings in the disputed document would result in the disclosure of a meaningless document.

As a result, the Commissioner was of the view that all information in the disputed document fell outside the scope of the complainant's access application. Accordingly, the Commissioner found that access should be refused to the disputed document in its entirety on that basis and varied the agency's decision.