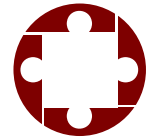


OFFICE OF THE TASMANIAN OMBUDSMAN
Freedom of Information Review under s.48 of the *Freedom of Information Act 1991*



Clark and the Department of Justice
Case 700-0608002 - Decision dated 7 December 2006

Summary

A Journalist requested information about the Beaconsfield Gold Mine from the Department of Justice under the *Freedom of Information Act 1991*. The Department claimed the information was exempt under s 28 of the Act (the law enforcement exemption). Section 28 protects against harm from the disclosure of law enforcement information.

The cause of the rock fall at the Beaconsfield Mine was at the time of the request (and is currently) the subject of two investigations. The first investigation is into the cause of the mine collapse (the Causation Enquiry). The second investigation by the Coroner will be held after the completion of the Causation Enquiry.

The Department argued that the release of information to the public before the investigations were finalised had the capacity to impact adversely upon the integrity of the investigations. The Department said it would reconsider the release of the information at the conclusion of the investigations if the information had not already been made public.

In a review under the Act the decision about the application of an exemption provision must necessarily be based upon the material provided by the parties during the review process. The outcome of each case depends upon the facts presented.

For s 28 (1) to apply, an Agency must be able to provide material demonstrating that disclosure of the information “would, or would be reasonably likely to” result in the consequences described in the exemption. In this case the Department, despite being given the opportunity to do so, was unable to provide the Ombudsman with submissions or material which demonstrated that s 28 applied - for example material demonstrating how an investigation would be compromised by the release of the information in issue. Belief by an Agency that information might in the future prove to be significant to an investigation, and at that time become subject to an exemption provision, is not a basis upon which the Ombudsman can decide, in carrying out a review under s 48 of the Act, that information is exempt information.