

TASMANIAN OMBUDSMAN



Freedom of Information Review under s.48 of the *Freedom of Information Act 1991*

KIM BOOTH MP AND THE DEPARTMENT OF PRIMARY INDUSTRIES AND WATER
Case Reference: 700-0805028

REASONS FOR DECISION

The FOI request

On 3 April 2008, Kim Booth MP requested information from the Department of Primary Industries and Water (DPIW) under the *Freedom of Information Act 1991* (the Act) in the following terms :

“Please supply the details, including but not limited, to GPS coordinates, wind speeds, mist conditions etc, of the spraying operation that occurred on or around Friday Feb 15 2008 coinciding with the opening of Meander Dam, and also the details of the spray operation including GPS coordinates that occurred at Western Creek later on the same date. Please also supply the names and quantities of all chemicals used in the operation and the area (in hectares) of the spray sites. Please also supply all correspondence from the Spray Drift Referral Unit or to the Unit with regard to this matter and any briefing notes, Ministerial or otherwise, that may have been prepared in relation to this matter.”

Mr Booth expressly sought copies of the information requested, and asked to be provided with any part of the information to which he was entitled.

By email dated 26 June 2008, a member of Mr Booth's staff limited the request, by stating:

“...we agree to an amended request that does not require third party correspondence on this matter but simply the details regarding what chemicals were sprayed where, on this date, at the locations mentioned. We still require specific details of the quantity and type of chemicals and the precise locations they were used.”

Given that Mr Booth requested "details" of the spraying operation, including certain specified information and documents, my understanding of the request is that Mr Booth was seeking a copy of any information held by DPIW relating to the operation. Although the request was specific in certain respects, it was overall very wide in ambit.

The application for review, and an extension of time to deal with request

DPIW did not deal with the request in the prescribed time. By letter dated 23 May 2008 Mr Booth applied to me for a review on the basis of a deemed refusal by DPIW to grant the request (s 50 (1) of the Act). By letter dated 4 June 2008 the Secretary of DPIW applied to the Ombudsman under s 50 (3) of the Act to allow DPIW further time to deal with the request. The extension of time was granted, with the extension being until 2 July 2008.

The decision on the request

The Secretary made the decision on the request. By letter dated 1 July 2008 he advised Mr Booth that a search had located 53 pages of information that were responsive to the terms of the request, of which 25 pages would be released in full and 23 pages with deletions. The deleted material and 5 particular pages of information were said to be exempt from release under the Act. The sections of the Act which were cited as providing exemption were, variously, ss 27, 30 and 33. A Schedule was attached to the Secretary's decision, giving detail on the claims for exemption, and a copy of that Schedule is attached to these reasons. The page numbers indicated in this Schedule correspond with page numbers placed by DPIW on the documents identified by it as being responsive to Mr Booth's request. I have been provided with a folder of these documents for the purposes of the review.

This review

After the Secretary had made his decision, I asked Mr Booth whether he wished me to continue with the review. He confirmed by email on 14 August 2008, through a member of his staff, that he wished me to continue. This decision therefore examines whether the information withheld from Mr Booth by the Department is exempt from release under the Act.

I attach a Schedule, to be read with these Reasons, in which I give details of my decision with respect to each document. This should be read in connection with pencilled markings which I have made on the folder of documents earlier mentioned. This folder will be returned to DPIW with this decision.

I note that I am satisfied that the only exemption provisions in the Act which require my consideration are those identified by the Department in making its decision.

The claims for exemption

s 27

This is the section which provides exemption for internal working information.

The Department has claimed that all of the information in pp 49 to 53 is exempt under this section. These pages represent a paper entitled "Parliamentary Labor Party Paper - Aerial Spraying at Meander Dam", and a cover sheet indicating that the paper was provided to the Minister by Alex Schaap, General Manager of the Biosecurity and Product Integrity Division in connection with a Notice of Motion in the Parliament. The paper states that the purpose of the paper was -

" ... to seek the Party's approval for a response to a motion put by Mr Kim Booth MP on 1 April 2008, relating to aerial spraying of forestry plantations in the Meander Dam area being undertaken in a manner that caused contamination of water catchments and drinking water supplies, was in breach of product labels and to investigate and prosecute where applicable." [sic]

The paper concludes with a recommendation in relation to the position to be adopted by the Parliamentary Labor Party (PLP) in relation to Mr Booth's notice of motion.

I am not satisfied that the paper is exempt under s 27. Most of it contains factual information, in that the paper recites the notice of motion, and then outlines the facts of the matter, before concluding with the recommendation mentioned. S 27(2) explicitly states that the exemption given by s 27(1) does not apply to purely factual information.

The concluding recommendation might be thought to be caught by the section, as being a recommendation prepared by an officer or a Minister, within the terms of s 27(1)(a). However, I am not satisfied that the recommendation was prepared "in the course of, or for the purposes of, the deliberative processes included in the functions of an agency or a Minister or of the Government", as required by the concluding words of s 27(1)(a). I note that I have been given no evidence in relation to these matters, and must rely on the contents of the document itself and general knowledge of the workings of Government and the Parliament. On its face, the paper was not connected with any deliberative process of the Department or the Minister, but was designed to elicit a response by the PLP to the notice of motion. In other words, it was connected with activities of the PLP within the Parliament.

On one view, one might say that the PLP is the Government, in that it is the party which has the majority in the House of Assembly, but that is inexact. The Government is the administration formed by the Premier upon the invitation of the Governor, and the Premier is the nominated leader of the party which has control of the Lower House of the Parliament - in this case the leader of the PLP. The Government is an entirely distinct entity from the PLP.

Furthermore, the PLP has no functions, within the meaning of s 27. It exists as a grouping of Labor members within the Parliament, for the management of Parliamentary business, but it has no formal functions within government.

I conclude that the totality of pp 49 to 53 should be released.

s 30

This is the section which provides exemption for information which would involve "unreasonable disclosure of information relating to the personal affairs of a person".

The Department has incorrectly claimed this exemption in numerous instances. I note in particular that -

- It is well settled that a company does not have "personal affairs" for the purposes of the exemption (*News Corporation Ltd v. National Companies and Securities Commission* (1984) 1 FCR 64; *Re Stewart and Department of Transport* (1993) 1 QAR 227, 237) - see p 1 of the folder.
- There are a number of instances where it is said that the names and business telephone numbers of individuals working for Gunns Limited represent the personal affairs information of those persons, where these details appear in such documents as Plantation Pesticide Spray Plans lodged by the company with the Department, or in file notes made by officers of the Spray Information and Referral Unit in the Chemical Management Branch of the Department after dealings with officers of the company - see e.g. pp 6, 8, 16, 18, 42 and 44. This is not information relating to the personal affairs of these individuals, but information relating to their business affairs.

I am satisfied that the section does serve to exempt information which identifies private citizens who made representations to the Department about the spraying operation, or who may have been personally affected by the spraying. This applies to such documents as pp 9-11, 19, 21-30, 33-34 and 42. I am satisfied that to release any information which might lead to the identification of these individuals without their consent would under all the circumstances be unreasonable. In most instances, protecting the privacy of these individuals requires no more than deletion of their names, enabling the surrounding information to be released.

s 33

I do not accept that any of the information provided falls within this section. I have no evidence that any of the information to which this section has been said to attach was communicated in confidence to the Department, let alone evidence which shows that the information meets the requirements of ss 33(1)(a) or (b).

Conclusion

I conclude that all of the information in the folder of documents provided to me by DPIW for the purposes of the review should be provided to Mr Booth, other than the information identified in the Schedule attached to this decision as being exempt, as being outside the terms of the request (as limited on 26 June 2008), or as having already been provided. In this respect, I remind DPIW of its obligation under s 48(7) of the Act to take all such action as may be necessary to implement the decision.

DATED: DECEMBER 2008

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SIMON ALLSTON
OMBUDSMAN

SCHEDULE – APPLICATION FOR REVIEW

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PAGE	DATE	DOCUMENT	DETERMINATION
1-4	18/02/08	Document: Aerial Spraying. Western Creek and Huntsman Lake. Friday 15/02/80	The only exempt information in these pages is the information marked on p 4 that identifies a particular individual. Disclosure of this information would involve the unreasonable disclosure of information relating to the personal affairs of that person: s 30.
5	18/02/08	Note for File	Not exempt
6		Plantation Pesticide Spray Plan: Western Creek	Not exempt
7		GDA Map: D03MQ267a – Tuson	Already released
8		Plantation Pesticide Spray Plan: Meander Road	Not exempt
9	19/02/08	Note to File: Re GDA Map – Tuson	Not exempt
10		GDA Map: GPS recording: Tuson GPS Aerial insecticide	The information marked on this page which identifies a particular individual is exempt. Disclosure of this information would involve the unreasonable disclosure of information relating to the personal affairs of that person: s 30.
11		Note to File: Site visit	As for 10
12-13	18/02/08	Analytical Services Tasmania: Job summary 34731	Deleted information is not responsive to the request.
14-15	18/02/08	Analytical Services Tasmania: Report number 34731 Job summary	Deleted information is not responsive to the request.
16		Note to File: Explanatory Notes for Maps	Not exempt
17		GDA Map: GPS recording Huntsman TH Aerial insecticide GPS	Already released
18	15/02/08	Job Risk Assessment	Not exempt

19-20	15/02/08	File Note: Huntsman Lake details and drawing	The only exempt information in these pages is the information marked on p 19 that identifies a particular individual. Disclosure of this information would involve the unreasonable disclosure of information relating to the personal affairs of that person: s 30.
21	19/02/08	Note to File: Print outs	The only exempt information on this page is the information marked that identifies a particular individual. Disclosure of this information would involve the unreasonable disclosure of information relating to the personal affairs of that person: s 30.
22-28	07/03/08	Document Summary	The only exempt information in these pages is the information marked that identifies particular individuals. Disclosure of this information would involve the unreasonable disclosure of information relating to the personal affairs of those persons: s 30.
29-30	22/02/08	Email summary of information	The only exempt information in these pages is the information marked on p 29 that identifies a particular individual. Disclosure of this information would involve the unreasonable disclosure of information relating to the personal affairs of that person: s 30. The email under reply is outside the terms of the request, as limited on 26 June 2008.
31-32	29/02/08	Analytical Services Tasmania: Report number 34860 Job Summary	Already released
33-34	13/03/08 – 18/03/08	Email summary of tests	The only exempt information in these pages is the information marked that identifies particular individuals. Disclosure of this information would involve the unreasonable disclosure of information relating to the personal affairs of those persons: s 30. The emails under reply are outside the terms of the request, as limited on 26 June 2008.
35-37	18/03/08	Analytical Services Tasmania: Report number 34860 Laboratory report	Already released
38-41	25/02/08	Analytical Services Tasmania: Report number 34731 Laboratory report	Already released

42		Letter regarding insect control works	Not exempt
43		GDA map Neighbour Notification Map	Already released
44		Plantation Pesticide Spray Plan: Caveside and Western Creek	Not exempt
45		GDP Map: MQ162a GPS	Deleted information is not responsive to the request
46		GDP Map: Woodberry Oakden MQ162 Byards MQ223	Already released
47-48	25/02/08	DPIW QTB: Meander Dam/Western Creek – Aerial Spraying of alpha-cypermethrin	Already released
49-53	31/03/08	Parliamentary Labor Party Paper - "Aerial Spraying at Meander Dam", and accompanying cover sheet to Minister	Not exempt