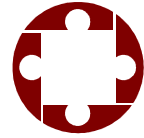


**FREEDOM OF INFORMATION REVIEW
UNDER S.48 OF THE *FREEDOM OF INFORMATION ACT* 1991**



**OMBUDSMAN
TASMANIA**

REFERENCE: FILE NO 700-0803023

MR D JASKIERNIAK AND FORESTRY TASMANIA

REASONS FOR DECISION

1. INTRODUCTION

On 26 March 2008, Mr D Jaskierniak (the access applicant) applied to this Office for a review under s 48 of the *Freedom of Information Act* 1991 (the FOI Act) of a decision that information requested from Forestry Tasmania (FT) is exempt information.

2. THE FOI REQUEST AND BACKGROUND INFORMATION

The access applicant is developing a collection of water resource management tools as part of his PhD research. The research requires statewide data to identify the most appropriate sites for gauging stream flow by classifying catchments according to hydrological processes.

In November 2006, the access applicant requested forest inventory data and location of pipe culvert data from FT. FT agreed to provide the access applicant with the culvert dataset and attempts were made by both parties to negotiate a Data Licensing Agreement (DLA) to govern the release of the data. The parties were unable to agree on the terms of the DLA. A further unsuccessful attempt to gain access to the data was made by the access applicant in January 2007. Issues in relation to the terms of the DLA were unable to be resolved and the access applicant suspended his PhD.

On 16 December 2007 the access applicant made a request to FT under the FOI Act for the following digital format datasets –

Culvert data

From the assets register database I would like to request information on each culvert's diameter, material, length and XY coordinates locating all culverts in the State Forests of Tasmania. This may be provided in an Excel spreadsheet digital format.

Photographic Interpretation Type Dataset

I would like to request Photographic Interpretation (PI) Type data for all State Forests of Tasmania with attributes that provide the following spatial data: the predominant canopy trees; stand height; crown density; stem-count class (indicator of over-mature forest); condition of forest class (relating to fires and other natural disturbances); harvesting history; silvicultural systems used: year and method of regeneration; stand age when age is known; relative stand age when age is not known; plantation distribution; and regenerating stocking rates.

If the Concise PI-code contains the attributes outlined above, I would like to request the Concise PI-code data layer to characterise the vegetation in Tasmania's catchments from a forest hydrological perspective. I would like the requested dataset to have the same resolution as that of Concise PI-code data which is stored in a vector format with an average patch size of 10ha. I would like the requested dataset to be in a vector format compatible with ArcGIS.

I would like to request documentation outlining the attributes and information relating to the attributes contained in the Concise PI-code. I would also like to request documentation to help me interpret the attributes of the requested data.

Longitudinal data and permanent plot data

I would like to request forest inventory field sampling plots data that have been collected to measure the changes in forest diameter at breast height and stand height over time. If the field sampling procedure includes an assessment of the species and crown form class of each sample site I would like to request this information as well. I am requesting the following datasets to be provided in an Excel spreadsheet format with XY coordinates for each sample plot –

- *All Tasmanian State Forest longitudinal datasets that have measured total basal area per hectare.*
- *All Tasmanian State Forest longitudinal datasets that have measured the dominant stand height for sample plots.*
- *The treatment (harvesting regime and/or natural disturbance) that the above sample plots have been exposed to.*
- *The age of the stand at each of the above sample plots (if this is known).*
- *The species and crown form class at each of the above sample plots.*
- *List of comments/attributes that may be attached to each requested sample plot. This may include comments relating to a forest disturbance that has affected the resulting measurements or other attributes/comments of this nature.*

I am also requesting documentation that outlines the field sampling methodology that has been undertaken at each forest inventory field sampling plot location.

The request can be conveniently narrowed down to the following 5 categories –

1. Culvert data
2. PI-type data
3. PI-type data manual
4. Sample plot data
5. Sample plot data manual

On 14 January 2008, Dr Hans Drielsma, the FOI Officer from FT, determined that the culvert data could be released. In relation to the balance of the request, Dr Drielsma stated that the data and manuals are ‘valuable commercial Intellectual Property assets’ of FT and were therefore exempt under s 32 (information relating to trade secrets and competitive disadvantage of agency) of the FOI Act. He stated that the release of this information would expose FT to ‘competitive disadvantage’ in the following ways –

- *Forestry Tasmania would no longer be able to benefit from providing the information as either direct or in-kind contributions towards its equity and/or influence in collaborative research programs or operational projects.*
- *Forestry Tasmania would have reduced opportunity to benefit from the sale of products and services derived from its own information.*
- *Commercial competitors would benefit, without cost, from Forestry Tasmania’s investment in the development and formulation of detailed technical procedures.*

Dr Drielsma referred to the decision in *Brown v Forestry Tasmania (No 2)* [2006] FCA 468 and stated that some of the requested information was subject to a ‘rigorous discovery process’ in the Federal Court and was ‘ultimately determined to be confidential commercial information’. Dr Drielsma further stated that the request for PI-type data and sample plot data could also be ‘refused’ under s 20 of the FOI Act as it was not ‘appropriately selective’ and would ‘substantially and unreasonably divert the resources’ of FT.

On 25 January 2008, the access applicant amended his original FOI request to include the PI-type attribute – *mature height potential*, and the permanent sample plot data attribute – *site index*. FT accepted the access applicant’s request as an extension of his original FOI request and the exemption claimed by FT to his original request was likewise claimed with respect to his amended request.

The access applicant applied for an internal review of Dr Drielsma’s decision under s 22 of the FOI Act and stated –

*...the information I have requested does **not** represent the sophisticated computer-based modelling and growth projection systems that Forestry Tasmania produce when calculating timber yields. I am not requesting the Expanded PI and permanent plot data which contains a comprehensive set of attributes representing the forest inventory’s timber yield calculations and planning applications from a commercial point of view. The data I have requested represents the spatial description of forest vegetation and temporal changes in the vegetation structure only.*

In relation to FT’s submission under s 20 of the FOI Act, the access applicant stated –

The datasets I am requesting are all in digital format within Forestry Tasmania’s database management system. Forestry Tasmanian [sic] uses the PI-Type Decoder Library (PIDL) to convert PI-Type code into any required condensed format. One of the formats available through PIDL is the Concise PI which contains predetermined attribute [sic] of the original PI-type. Attributes are stored in the Concise PI format to allow easy analysis and data extraction of PI-type information. The permanent plot data is also used regularly by Forestry Tasmania and for research purposes would be contained with an easily accessible database management system.

The access applicant further stated that he had not been given an opportunity to consult FT with a view to him being helped to make a request in a form that would remove the ground for refusal, as required by s 20 (4) of the FOI Act. He also stated that it was consistent with the intention of s 19 (5) of the FOI Act that FT should have accommodated his preference for data to be supplied in digital form. The culvert data was provided to the access applicant by way of printed data which required him to manually insert the data into his computer. The access applicant has stated that this is time consuming and introduces the risk of human error.

Bob Gordon, Managing Director of FT, confirmed Dr Drielsma’s decision on 15 January 2008. Mr Gordon stated that FT would continue to be willing to negotiate an agreement for the use of the requested information provided that the agreement contained appropriate protection for FT’s commercial position.

Further attempts were made to negotiate a DLA with mutually suitable terms and this has been an ongoing process. To date, the parties have not been successful.

This Office requested FT to provide the information claimed to be exempt information so as it could be inspected to determine whether exemption could be properly claimed.

In a letter to this Office dated 14 April 2008, Dr Drielsma stated that the information in dispute is 'extremely voluminous and primarily held in digital format' on FT's computer systems. As an alternative Dr Drielsma suggested that FT would facilitate inspection of the information at FT's premises. Attached to the letter was an affidavit that was tendered to the court during *Brown v Forestry Tasmania* outlining the basis on which FT argued that its resource datasets are commercially valuable and should be kept confidential, and an Order made in that case by Justice Marshall dated 15 September 2005.

The affidavit contains the following relevant information –

The geographic information system (GIS) is computer software which allows information about the location and attributes of spatial entities (eg forest stands, roads, streams, administrative boundaries, etc) to be encoded, stored, modified and manipulated, analysed, and published (eg in the form of maps, reports, plans, etc). In simple terms, GIS is often referred to as "computerised mapping". ...

... The spatial data within Forestry Tasmania's GIS is stored in a range of formats: some of those formats are accepted industry standards, some are proprietary formats developed by software vendors for use within their own products, and some are customised formats developed and maintained by Forestry Tasmania.

Notwithstanding the variety of formats in which spatial data is stored within Forestry Tasmania's GIS, most of these are able to be copied and transformed into standard formats which are routinely used within the GIS industry to transfer and exchange spatial data sets. Data stored according to these standard formats could then be readily interpreted by a competent technical specialist using commercial GIS software packages.

Accordingly, the provision of Forestry Tasmania's spatial data to another party in digital format would enable that party unrestricted opportunity to interpret, modify, publish, and analyse the business information encoded within it.

Forestry Tasmania's digital spatial data is commercially valuable, in that –

- (a) firstly, even where the spatial data is a representation of externally published information, (eg a road or river line on a map), Forestry Tasmania has expended staff time, technical skill, and specialised equipment in digitizing and encoding that data into a computer-readable format. To provide another party with free access to such data would save them the cost of these processes;*
- (b) secondly, a significant number of Forestry Tasmania's digital spatial datasets represent the product of specialised skills and internal business processes which are unique to Forestry Tasmania and could not be easily duplicated, if they could be duplicated at all, by another party. As an example, Forestry Tasmania's photo-interpreted forest-type mapping requires expensive aerial photography, skilled photo-interpreters, spatial rectification of photographic data, and digital encoding into GIS format. To provide another party with free access to such data would save them the cost of and difficulty inherent in these processes; and*
- (c) thirdly, as illustrated in the previous sub-paragraphs, Forestry Tasmania's digital spatial datasets also encapsulate significant intellectual property that would be immediately available to any party to which such data was provided in digital format.*

The Order by Justice Marshall included an order that FT discover to the applicant party PI-type and other digital data in electronic form. Further, that the applicant party give an undertaking that the data be loaded onto a designated new computer and used exclusively by the applicant party for use in the proceedings before the court. Justice Marshall further ordered that the data was to

be kept safe and wholly confidential and that no copies were to be made. The data was to be returned at the conclusion of the proceedings.

I requested further submissions from FT in regards to the release of the information in dispute in relation to the following issues –

- In what particular markets FT might sustain competitive disadvantage.
- Who the competitors are who might obtain an advantage over FT.
- How FT uses, and intends to use, the information in dispute to its own advantage.
- In what ways FT might sustain disadvantage.
- Whether FT has previously been able to benefit from providing the information requested.
- Whether FT has previously sold products and services from the requested information.
- Whether any of the information requested is a trade secret within the terms of s 32 (a) (i) of the FOI Act.

Dr Drielsma made further submissions by letter dated 16 May 2008. In relation to the PI-type data and sample plot data he stated –

Market: These datasets are valuable in the market for obtaining and/or leveraging external research funds. Under a range of schemes, Australian Government funding can be attracted for research activities, subject to cash and/or in-kind contributions from the researcher and/or their business partner(s). Under these schemes, relevant datasets and scientific expertise contributed by applicants can be acknowledged as ‘backgroundIP’ or ‘input IP’ or ‘in-kind contribution’; these can off-set requirements for cash contributions, and are taken into account in allocating management responsibility for the research program and attributing ownership of the IP generated by the research. Examples of these mechanisms (in which Forestry Tasmania is an active participant) include Cooperative Research Centres and Australian Research Council Grants.

These data furthermore have direct value to FT in the provision of direct saleable products and consultancy services. These include the sale of PI-type maps (NB: hard copy PI maps are freely available for purchase from FT). FT is increasingly seeking to provide consultancy services to a range of markets, including those seeking to develop infrastructure on State forest (e.g. water developments). These data, particularly in the digital form, are critical proprietary assets that underpin our activities in these areas.

Thirdly, these datasets give FT real negotiating advantage in the commercial market for supply of wood products. They allow FT to use its superior knowledge of its forest resource when negotiating stumpage prices, supply quantities, and related conditions.

Competitors: Within the research funding market, Forestry Tasmania’s competitors include other forest managers and other research providers. Forestry Tasmania is both a forest manager and a research provider. Other forest managers are interested in ownership of the research IP outputs, and in influencing the scope and direction of research programs to be more relevant to their particular management objectives, forest types, and regional areas; they include Gunns Ltd, Norske Skog, Forest Enterprises of Australia, and Great Southern Plantations. Other research providers are interested in securing funds for their own researchers and research facilities, influencing the direction of research towards their academic interests, and ownership of the research IP outputs; they include CSIRO, Utas, and other universities.

Competition also includes forest consultancy firms who could take our datasets and provide consultancy services in competition with us to our own customers and a wide range of others interested in developments on State forest.

In relation to the supply of wood products, FT competes with other forest owners and managers, including Gunns Ltd, Norske Skog, Forest Enterprises of Australia, Great Southern Plantations and many private landowners.

FT Usage: Within the above context, Forestry Tasmania uses its ownership and understanding of its resource information datasets in the following ways –

- ii. to attract research interest in particular subjects that are of scientific interest to FT and for which FT's information provides unique research opportunities;*
- iii. To offer access to and use of the information as an 'in-kind contribution' or 'input IP' to the project to supplement or offset the cash contribution that may otherwise be required to become a partner in the project. This allows FT to attract research funding for projects for which FT would otherwise not be competitive;*
- iv. To offer expert interpretation and analysis of the information as an element of Ft's active participation in the research, both as a form of 'in-kind contribution' and to enhance the reliability of the way that the information is used in the project.*
- v. To identify and assess commercial opportunities for forest products sales or new commercial investment.*
- vi. To support commercial negotiation with FT's customers for wood and other forest products from State forest.*
- vii. To support provision of consultancy services, including the development of proprietary forest growth models.*

Potential Disadvantage: ...

...FT would be unable to influence the specific focus, timing, or scope of research projects that used FT's datasets. This would diminish the direct benefits currently enjoyed from external research, and would increase the requirement for FT to directly fund research in its priority programs.

FT would have to contribute higher proportions of cash and other 'in-kind contributions' (eg staff, facilities, equipment) towards collaborative research programs in order to maintain equivalent management influence and ownership share in the IP outputs of the research. FT would also be less successful in applying for external research funding for its own projects.

FT would be in a weaker position to negotiate commercially advantageous terms and conditions for the supply of forest products from State forest to timber processing companies. This would result in having to accept lower stumpage prices, or through having to absorb increased operational costs, or through lower margins caused by inability to optimise supply between competing customers.

FT would be unable to use its investment in PI-Type mapping and inventory plot measurements to ensure that we are the "consultants of choice" for projects that relate to proposed developments on State forest or the modelling, analysis, and/or management of equivalent forest on other tenures.

Products and Services Sold: Forestry Tasmania continues to sell 1:25,000-scale "Forest PI-Type" maps as a standard map product for public sale.

In relation to the PI-type data manual and sample plot data manual, Dr Drielsma stated that the two manuals are not separately marketable from the datasets that each manual describes. He stated that each manual augments the data that it documents and increases the commercial value of the dataset when provided in conjunction with it. Submissions were made by Dr Drielsma that the manuals are trade secrets due to the following factors –

- Neither manual has been published in their entirety outside FT.
- Both manuals are available in digital format but only within FT.
- When the manuals are provided to external bodies, their transfer is covered by confidentiality agreements.
- The manuals are commercially valuable to FT.
- The information within the manuals represents years of experience and technical refinement of systems and procedures by FT.
- The PI-type data manual documents a dataset and procedures that are unique to FT.

Dr Drielsma documented the following recent examples illustrating where FT has previously been able to benefit from providing the information requested –

- Cooperative Research Centre for Forestry 2005-12 – FT is a major partner, both participating in the research as well as providing cash and FT resource datasets. FT can directly influence the project, own research IP outputs and have access to outcome reports and training.
- FWPRDC Project: “Climate change and Australia’s plantation estate: risks and management to mitigate impacts” 2006-08 – FT was a collaborator and provided permanent inventory plot data. FT was able to directly influence the scope of the project and have access to the outcome reports.
- ARC Linkage Grant LP0454287: “Cellular automata model of forest stands to predict size-class distribution and survival” 2005-08 – FT is a collaborator based on provision of cash and the supply of permanent inventory plot data.
- ARC Linkage Grant Proposal: “Monitoring and modelling forest dynamics using a long-term data set from permanent plots” 2008-? – FT will be a collaborator based on provision of cash and permanent inventory plot data. FT will be able to benefit from being able to directly influence the project.
- Negotiation of Gunns Supply Agreements, 2007 – Negotiation of 10 year and 20 year agreements for supply of State forest products using accurate resource information derived from PI-type mapping and inventory data. Benefits to FT include increases in stumpage prices and sustainable supply quantities.
- Negotiation of Ta Ann Veneer Supply Contract, 2006 – Negotiation of 15-year contract for supply of wood using accurate resource information derived from PI-type mapping and inventory data. Benefits to FT were profitable stumpage prices and sustainable supply quantities.

3. THE REQUESTED INFORMATION

The requested information was viewed at the premises of FT. An explanation was provided by FT as to how the data is developed, where it is stored and what it contains. The PI-Decoder Library was viewed which is an inhouse software system that FT has developed (referred to in this review as the *PI-type data manual*). It is a manual in digital format which documents knowledge and procedures that are the basis for internal FT tasks. It contains 198 characters with each character representing a different characteristic, such as a eucalypt type. Concise PI-type data condenses the 198 characters to just 20 characters. FENRIS was also viewed which is a database unique to FT containing all the sample plot data. The manual used to interpret data in FENRIS is the Field Procedures for Native Forest Permanent Inventory Plots (referred to in this review as the *sample plot data manual*). This manual is also available in digital format and shows how the data is measured.

4. SUBMISSIONS BY THE ACCESS APPLICANT

The access applicant's submissions in support of his application for review include the following:

- The data is requested so as to scientifically evaluate it with integrated catchment management (ICM) principles to determine how current forestry practices may influence forest hydrological systems. ICM is an approach that involves considering all other land users when determining a sustainable forest management practice.
- The aim of his PhD research is to 'use the requested data to improve Tasmania's capacity to conduct and apply research that addresses the impacts of native forest management on forest water use'.
- Tasmania's Regional Forest Agreement Review found that Tasmania's present Forest Management System has no ICM framework to manage forest water use.
- Forest inventory data is required to 'develop a collection of water resource management tools' which will 'facilitate research which aims to overcome the main limitations raised in the previous Tasmanian forest hydrological studies.'
- 'Tasmania has obligations under the National Water Initiative (NWI) to develop a hydrological model with similar objectives ... to improve the forest industry's ability to reduce risk to the future integrity of the water access entitlements and fulfil the environmental objectives for river systems.'
- It is in the public interest for the material to be disclosed. 'Spatial information has become a fundamental enabler for coordinating and integrating the management of natural resources, as well as advancing forestry management. The forested catchment water resource is a cross-tenure issue that can not be managed without forest inventory data becoming publicly available. This is particularly the case in Tasmania considering FT has not implemented any ICM framework to manage the *public's forest estate*.'
- It is necessary that the requested data becomes publicly available for educational and research purposes.
- The information in dispute has been provided to other persons for other research purposes albeit under the terms of DLAs.

- The equivalent type of data is publicly available in Victoria without concern for competitive disadvantage.
- The expanded PI-type data has not been requested. Only the spatial description of forest vegetation and temporal changes in the vegetation structure has been requested.
- The objectives of FT under its governing legislation are to optimise the *economic returns from its wood production activities* and the *benefits to the public and the State of the non-wood values of forests* (s 7 Forestry Act 1920).

5. DETERMINATION

Section 32 of the FOI Act provides that –

Information is exempt information –

(a) if it is –

(i) a trade secret of an agency; or

(ii) in the case of an agency engaged in trade or commerce – information of a business, commercial or financial nature that would, if disclosed under this Act, be likely to expose the agency to competitive disadvantage

...

I turn firstly to the issue of whether the PI-type data manual and sample plot data manual can be considered to be a *trade secret*. The relevant authorities as to the meaning of *trade secret* are usefully collected in *Cannon v. Australian Quality Egg Farms Limited* (Queensland Information Commissioner, S94/1993). *Cannon* explains that the term should be given its ordinary meaning in Australian law, which parallels that given in the *American Restatement of the Law of Torts*, 1939, Vol 4, para 757, which is *any formula, pattern or device or compilation of information which gives an advantage over competitors who do not know or use it*. The ordinary meaning requires that the information be both secret, and used or useable in trade or business. Beyond that, factors which assist in determining whether a trade secret exists are –

- the extent to which the information is known outside the relevant business;
- the measures which have been taken to guard the secrecy of the information;
- the potential advantage to competitors of obtaining the information;
- whether the information is of a technical character, a factor which is not a requirement but which will make it more likely that a trade secret exists; and
- the ease or difficulty with which the information could be properly acquired or duplicated by others.

See also *Ansell Rubber Co Pty Ltd v Allied Rubber Industries Pty Ltd* [1967] VR 37 and *Searle Australia Pty Ltd v. Public Interest Advocacy Centre* (1992) 36 FCR 111.

The PI-type data manual and the sample plot data manual have not been published outside FT. Although extracts from both manuals have been provided to external parties, confidentiality agreements have governed their release. The manuals are used in FT's trade or business in that they enable FT staff to undertake their work when dealing with PI-type and sample plot data.

The manuals in their entirety are not known outside of FT as FT staff have developed them in-house. These factors assist in determining whether the manuals can be considered a trade secret.

A further consideration is whether the information gives FT an advantage over competitors who do not know or use it (as quoted above from the *Restatement of the Law of Torts*). FT has stated that it does not consider the two manuals to be separately marketable from the datasets that each manual describes. FT considers that the manuals augment the data thereby increasing the commercial value of the dataset when provided in conjunction with it. I am satisfied that the manuals and the datasets in combination give FT an advantage in two areas of competition. One area of advantage is in competition in the market for supply of wood products and the other is in competition for the provision of consultancy services.

In relation to competition in the market for supply of wood products, FT has stated that its negotiating position was 'significantly enhanced by its stronger ability to analyse and model alternative scenarios using accurate resource information about State forest' derived from the PI-type and sample plot data, in the negotiation of the Gunns Supply Agreements in 2007 and the Ta Ann Veneer Supply Contract in 2006. FT has outlined the benefits it obtained in those negotiations due directly to its access to the data. I have referred to this above when quoting from Dr Drielsma's letter dated 16 May 2008.

In relation to competition for the provision of consultancy services, FT is able to provide consultancy services to a range of businesses involved in developments on State forest, and the management of equivalent forest on other tenures. FT views the development and expansion of its commercial consultancy business as 'a strategic opportunity to maintain and enhance in-house expertise and technical services critical to the management of Tasmania's State Forest'. It is 'actively working towards this aim, and view [its] key resource datasets, and the systems within which they reside, as being important elements of this plan.' The consultancy services FT provides include technical advice based on FT's expertise, systems and datasets. FT has provided relevant examples of opportunities currently being developed on the basis of its datasets and systems in a letter dated 6 August 2008 –

1. *Forestry Tasmania is currently in discussions with the Irrigation Development Board to deliver consultancy services to assist the development and planning of proposed damsites (many on State forest) under the "SMART Farming Water Development" project. This would involve the use of forest type and inventory data to assess environmental and conservation values to be impacted by each dam project at each proposed supply level.*
2. *Forestry Tasmania has this week signed a Memorandum of Understanding with Digital Mapping Australia (Dimap) to undertake joint commercial forest/vegetation/carbon assessments based on Dimap's LiDAR scanning technology and Forestry Tasmania's forest mapping and modelling expertise and data.*
3. *Forestry Tasmania is currently enrolled in the Springboard Accelerator program, (funded by DED to develop/commercialise Tasmanian technical innovations and services). Under this program, Intellinc are assisting Forestry Tasmania to develop its commercial consultancy business.*

I determine that sufficient indicia exist for satisfying the requirements of a trade secret and find that the PI-type data, PI-type data manual, sample plot data and sample plot data manual, taken together, can be classified as trade secrets of FT and are therefore exempt under s 32 (a) (i) of the FOI Act.

As I have determined that the datasets in combination with the manuals constitute trade secrets, there is no need for me to consider whether an exemption can be claimed under s 32 (a) ii of the FOI Act.

In relation to the access applicant's submissions, I do not have the power under the FOI Act to override an established exemption based on the benefit to the public. The access applicant's submissions in support of his application may be valid and worthy but are not matters that can be taken into consideration when determining if FT has properly claimed an exemption. In relation to the submission that data is freely available in Victoria without concern for competitive disadvantage, it is not for me to make a judgment on whether or not FT should concern itself with the issue of competitive disadvantage; my task is to determine whether or not the exemption can be properly claimed by FT. Likewise in relation to the objectives of FT's governing legislation, my task is not to rule on whether more emphasis should be placed on the benefits to the public rather than the economic objective. I must instead determine whether or not FT have properly claimed an exemption under the FOI Act.

I express my concern at the fact that FT did not provide the access applicant with the culvert data in digital form. It is the case that he had no right under the FOI Act to receive the data in this form, but it is surprising that he should have been put to the inconvenience of only having a printed copy, and therefore of having to manually put the information into his own computer so that he could work with it.

Finally, I make the comment that it is incumbent on FT to observe the requirements of s 20 (4) of the FOI Act. FT failed to consult with the access applicant with a view to assist him in refining his request. No attempt was made to comply with that section.

6. CONCLUSION

For the reasons given, I find that the PI-type data, PI-type data manual, sample plot data and sample plot data manual are exempt from disclosure under the FOI Act to the access applicant.

SIMON ALLSTON
OMBUDSMAN

DATED: 11 AUGUST 2008.