

TASMANIAN OMBUDSMAN

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

Prismall and the Department of Economic Development and Tourism

Case Reference: 0903258

Provisions considered: *Freedom of Information Act 1991* s 31, s 33

REASONS FOR DECISION

1. Introduction

This review relates to a request made by Barry Prismall, Deputy Editor of The Examiner Newspaper, to the Department of Economic Development and Tourism under the *Freedom of Information Act 1991* for "The Gemba Consultancy Report on Tasmanian Government submission to field a team in the national AFL competition" (the report).

The Department has claimed that the information is exempt under s 31 (the exemption for information relating to trade secrets, competitive disadvantage of business undertakings) and s 33 (the exemption for information obtained in confidence) of the Act. I invited Gemba Group (Gemba), who prepared the consultancy report, to participate in the external review process. Gemba has also claimed that the report is exempt under s 31.

I note that Gemba usually spells its name "gemba", but I have capitalised the name in this decision, for greater clarity.

2. Background to the report

This review demonstrates the difficulty of carrying out a review without being given adequate background information by the agency. This problem might not have arisen if the Department had complied with s 22 of the Act when making its decisions on Mr Prismall's request. Alternatively, the Department might have provided me with this information in the submissions which it made to me in the review.

I have pieced together the following information from the contractual documents which gave rise to the report, and from the internet. All of the information would appear to be beyond dispute.

Since the Australian Football League (AFL) expanded to include teams from NSW, WA, SA and Queensland, there have been aspirations within Tasmania for a Tasmanian team to be included. In February 2008, the AFL announced its intention to expand the league to an 18-team competition within four years, from the present 16 teams, raising the possibility of a team for the Gold Coast and a team for Western Sydney. Former Premier Lennon announced on 16 April 2008 that Tasmania would present a bid for the AFL to include a Tasmanian team. David Bartlett continued with this policy after he became Premier, on 26 May 2008.

The Department sought expert assistance in preparing the bid. It issued a request for tender on 16 May 2008. The Specification in the tender documents stated under the heading "Scope":

"The successful tenderer will be required to prepare the bid that will be submitted to the AFL seeking the inclusion of a Tasmanian based team in the AFL by the Tasmanian government no later than 29 September 2008. The purpose of the bid is to obtain a licence for an AFL team to be based in Tasmania by 2012. This will mean that the AFL would either have to give one of the licences flagged for the Gold Coast and Western Sydney to Tasmania or grant an extra licence."

Schedule 1 to the Conditions of Contract forming part of the tender documents stated that :

"1. The Contractor is required to prepare the bid for a licence for an AFL team to be based in Tasmania in accordance with the Implementation Timetable detailed in this Schedule.

2. The bid must include the following key criteria"

Gemba was the successful tenderer, and the report which Mr Prismall seeks was the consequence. I am not told whether Gemba provided additional assistance to the Department in connection with the bid, beyond providing the report. This would seem likely from the following information in an email from a Departmental officer to one of my staff :

" ... (T)he development of the bid was collaborative process between the government and Gemba, in reality though, it was highly unlikely that what was submitted first up to the AFL would in fact be the final document/bid - and so it has proved." [sic]

Judging from details on the Tasmanian government's official bid site, www.tassiefootyteam.com.au, the bid was presented to Cabinet on 17 November 2008, and presented by the State government to the AFL on 16 February 2009. It has not been successful. Gemba's own website (www.gemba.com.au) carries an article from *The Age* newspaper which reports a meeting between Premier Bartlett and Andrew Demetriou of the AFL in Launceston on 1 April 2009, and which attributes support from Mr Demetriou for a Tasmanian team into the future -

"The document prepared by sports consultancy outfit Gemba was not a "stunt", Demetriou said, rather it was "first class, responsible and professional".

"It certainly makes people think, and it certainly puts the Tasmanian Government and Tasmania in the spotlight as a place where if, in the future, there's another football club, the next port of call would have to be Tasmania."

Other parts of the article show that this last sentence meant "another football club" after one on the Gold Coast and one in western Sydney.

3. Contents of the report

The title page for the document contains the following information below the Tasmanian logo:

Department of Economic
Development & Tourism

Tasmanian AFL Club Business Case
October 2008

Confidential & Proprietary

Gemba Group

After that, there is a contents page which has highlighting around the first three pages, which are referred to as "Background and Project Approach". The next page, page 2, is entitled "Background", and gives a very brief history of the bid, and lists 8 criteria upon which the bid is required to focus. Later content of the report indicates that the bid criteria came from the AFL.

Page 3 of the report then sets out the "Business Case Project Approach", which would appear to set out the approach which Gemba took to develop the report. The page refers to the final deliverable as "Final bid document in a form that is ready to submit to the AFL".

I infer that the balance of the report is what Gemba provided to the Department as Gemba's proposed final bid document.

As detailed further below, Gemba asserts in correspondence with me that it has over the years developed a particular methodology for identifying "critical success factors for successful Sporting Organisations", which it calls its "Sports Organisation Assessment Framework".

The report is structured around apparent components to this Framework. On p 5, under the heading "Key elements of the business case will be used to construct compelling AFL bid that addresses each of the AFL's 8 key criteria", and the subheading "Gemba Sports Organisation Assessment Framework", various "Drivers" and "Enablers" are set out, which are then elaborated upon

in the rest of the document. Whenever one of these new items is introduced for discussion, there is a subtitle page which contains the same subheading and a diagram which harkens back to the place of the item in the scheme established on p 5. The last 10 pages pull all of the items together in a final statement of how the bid aligns with the AFL's criteria. The use of the Framework thus underlies the way in which the bid was formulated and presented.

The report contains a mix of information. Speaking generally, it builds a case from a mixture of statistics, analysis and reasoning. It is evident that the preparation of the bid required in-depth knowledge of the AFL and the football industry. The statistics used are said in footnotes to come from the Australian Bureau of Statistics, AFL sources, and Gemba's own research.

4. The relevant sections of the Act

As mentioned, the sections of the Act which have been relied upon in claiming exemption for the report are ss 31 and 33.

Sections 31(1) and 31(2) read -

(1) Information is exempt information if its disclosure under this Act would disclose information acquired by an agency or a Minister from a business, commercial or financial undertaking, and –

(a) the information relates to trade secrets; or

(b) the disclosure of the information under this Act would be likely to expose the undertaking to competitive disadvantage.

(2) In deciding for the purpose of subsection (1)(b) whether disclosure of information would expose an undertaking unreasonably to competitive disadvantage an agency or Minister may take account of any consideration the agency or Minister considers relevant including whether the information –

(a) is generally available to competitors of the undertaking; or

(b) would be exempt information if it were generated by an agency or a Minister; or

(c) could be disclosed without causing substantial harm to the competitive position of the undertaking –

and shall also, in particular, take into account whether there are any considerations in the public interest in favour of disclosure that outweigh considerations of any competitive disadvantage to the undertaking.

Section 33 reads -

(1) Information is exempt information if its disclosure under this Act would divulge information communicated in confidence by or on behalf of a person or a government to an agency or a Minister, and –

(a) the information would be exempt information if it were generated by an agency or a Minister; or

(b) the disclosure of the information would be contrary to the public interest because the disclosure would be reasonably likely to impair the ability of an agency or a Minister to obtain similar information in the future.

(2) Information referred to in subsection (1) is not exempt information if it is in the public interest that the information should be given under this Act.

(3) Subsection (1) does not include information that –

(a) was acquired by an agency or a Minister from a business, commercial or financial undertaking; and

(b) relates to trade secrets or other matters of a business, commercial or financial nature; and

(c) was provided to an agency or Minister pursuant to a requirement of any law.

No other exemption in the Act is relevant to the review.

5. Positions of the Department and Gemba

The Department has steadfastly claimed that the report is exempt under ss 31(1)(b) and 33. In the original decision on the request, it stated that the information in the report is commercial-in-confidence, explaining only -

"The majority of modelling [sic] is based on financial data from AFL clubs, stadiums and sponsors and this information is provided on the basis of confidentiality."

The letter then quoted from ss 31 and 33, without further reasoning.

On internal review, a not dissimilar approach was taken, with the reliance on s 33 being refined to reliance on s 33(1)(b). The supporting reasoning given was very brief:

" ... the author has now confirmed that in their opinion the entire structure of the report is built around confidential industry benchmarking and if the information was removed, the report could not be comprehended by an outside party and wrong conclusions may be drawn."

When first seeking a copy of the report from the Department, I invited it to make submissions. More elaborate reasoning was then provided. In relation to s 31(1)(b), the pertinent points made were -

- that Gemba's competitors could use the information in the report to their competitive advantage, and to Gemba's detriment;
- that the report contained information of a commercial, financial and strategic nature, and in relation to the AFL, which Gemba had obtained from clubs, stadiums and sponsors on the strict understanding that it was commercially sensitive, and that the Department had been mindful of the consequences for Gemba as a commercial entity if the trust placed in it by its sources was breached;
- that in the Department's submission, there were no overriding public interest considerations in favour of release.

In relation to s 33, the Department submitted -

- that the information in the report had been communicated in confidence to Gemba by the clubs, stadiums and sponsors from which it had been sourced, and that this was in turn communicated to the Department in confidence by Gemba.
- that it would be contrary to the public interest for the information to be released, by reason of "the implications of the impairment of the department's ability to deal with this business [I assume Gemba] brought about by their sensitive information becoming public through their dealings with the department". Further -

"Were this information to be released it would almost certainly adversely impact on the state's capacity to enter the AFL at least in the short to medium term and enjoy the resultant substantial economic and recreational benefits."

- that the release of the information would compromise the Department in its core role of acting as the industry arm of government, with flow-on effects of reducing "both external (to the state) and internal investor confidence in Tasmania", with significant adverse effects upon the Tasmanian economy. It was said -

"The department's role in attracting investment to Tasmania, facilitating investment projects, and working with business to develop Tasmanian industry sectors requires, as an essential ingredient, investors and businesses to be able to share confidential information with the department without fear of that confidence being breached."

The Department added -

Gemba has indicated that the release of the information in question was likely to impair the ability of the agency to acquire similar information in the future, the implications of which for the agency and the state, due to the relatively high public profile surrounding Tasmania's AFL bid nation-wide, would be contrary to the public interest."

I wrote to the Department on 5 August 2009 expressing the preliminary view that ss 33 (1) (a) or (b) of the Act did not apply to the Business Case. I stated –

"In relation to ss 33 (1) (a) had the report been generated by the Department it would not prima facie have been exempt information by virtue of s 27 (1) of the Act. That is because Gemba prepared the report for presentation to the AFL and not for use in the course of, or for the purpose of, the deliberative processes included in the functions of the Department.

Ss 33 (1) (b) of the Act could not apply to the whole of the report. It might apply to the information Gemba obtained from the AFL clubs, in which event the information could be deleted before the report was disclosed."

I invited the Department to provide me with evidence that s 33 of the Act applied to exempt the Business Case. It responded by letter dated 15 August 2009, stating –

"The department has no further evidence in support of our claims regarding the application of section 33 of the Act and awaits your consideration of additional evidence to be provided by Gemba in support of section 31 of the Act."

This latter statement refers to the fact that I had invited Gemba to make submissions to me on the application of s 31. Mr Rob Mills, a Director of Gemba, subsequently wrote to me by a letter dated 12 August 2009, amongst other things responding to certain questions which I had advanced :

Mr Mills' letter included the following –

"How it would be possible for gemba's competitors to use the information to its competitive advantage?"

We strongly assert that both the process used to develop the business case and much of the data / insights within the business case are proprietary to gemba. If this information were available to our competitors, our key competitive advantages would be dramatically eroded.

In respect to the process for developing the report, gemba has evolved over the past four years a 'Sports Organisation Assessment Framework' that identifies critical success factors for successful Sports Organisations. This is a key tool for the gemba business and this is never publically released in its entirety.

In respect to data / insights there are two key areas of sensitivity, consumer and market insights. The report contains consumer insights from the gemba Sports & Entertainment Report (gSER), a proprietary research program, and this is commercialised by gemba to subscribers. Furthermore the report gives visibility to some of the methodologies and questions used in the gSER. If this information were to be available to our competitors they would be able to replicate elements of gSER.

The report is also heavily populated with market insights pertaining to AFL industry benchmarks. gemba has accumulated this information over the past 7 years and this aggregation of market data is a critical competitive factor in the business. If competitors were to access this information, they could quickly build a capability in consulting to other AFL related entities, which is a core part of the gemba business exemplified by our work with eight AFL clubs over the last 6 years.

Who are the competitors, and in which market do those competitors and gemba compete?

gemba competes predominately in Australia. However gemba has offices in HK and a substantial amount of our revenue (25% in FY09) is derived from international projects. Our stated mission is to become the World's Best Sports and Entertainment Consultancy.

Our competitors are many and varied in nature. For projects such as this one we typically compete with Management Consultancies (BoozAllen, McKinsey, BCG, KPMG) and large Accountancy Practices with consulting capabilities (Deloitte, Ernst & Young). We compete with these entities in all markets in which we operate. I understand that we successfully won this project from companies in this competitive set.

We also compete against other industry experts such as DSEG (Dynamic Sports and Entertainment Group), LEK and individual contractors. This type of company will vary significantly between markets.

In what way would the commercial value of the information be diminished or destroyed if it were released?

Like any form of intellectual property, any unauthorised release can result in direct copies or competitors 'evolving the thinking' of existing gemba intellectual capital. gemba has invested significant amounts of time and resources into developing proprietary frameworks, proprietary research programs and aggregating market information to provide a sustainable competitive advantage.

If our competitors were to have access to this sort of information we believe our capacity to maintain market leadership in Sports consulting would be undermined. Our clients consistently tell us that we are 'years in front' of our competitors and this is due to our investment in intellectual capital and proprietary tools.

If elements of gSER were released publically we believe our propensity to sell the data to subscribers would be eroded.

Is it asserted that any of this information is a trade secret of gamba's, within the terms of s 31 (1) (a) of the Act. If so, on what factual and legal grounds is this assertion made?

We assert that the following are trade secrets of gamba

- . The gamba Sports Organisation Assessment framework and the document structure that it delivers;*
- . The gamba Sports and Entertainment Report data of which is contained in the Tasmanian AFL Business Case;*
- . The aggregation and ranking of AFL data. No other consultancy to our knowledge has this level of information*
- . The gamba Brand Framework."*

6. Additional facts

It is important to state that Mr Prismall has specifically stated that he does not wish to see any content from the report which represents "commercial in confidence information from various clubs and sponsors etc.". In a letter to the Department dated 11 February 2009 he stated that he was primarily interested in "the financial justification for the ... bid" and that he was "happy to seek release of the report without such secret financial information included".

I specifically asked the Department to inform me about whether the Department had undertaken obligations of confidentiality to Gemba in its contractual dealings with the company. The officer of the Department to whom this request was made informed my officer that -

" ... have sought advice from the Director responsible for this matter and am advised that confidentiality involved just the standard conditions of confidentiality in clauses 5 and 23.2 of the Conditions of Tender and clause 12 of the conditions of contract."

I have seen these confidentiality provisions, and they do not contain any promise by the Department to keep confidential any of the information in the bid document which Gemba contracted to produce. The provisions are about confidentiality of the request for tender and contract provisions. Somewhat inconsistent with Gemba's wish to protect the content of the report is the fact that by clause 10 the contract it was agreed that title and property, including intellectual property, in the bid document to be produced vested in the Crown on its creation.

7. Analysis

7.1 S 33(1)(b)

I deal first with s 33(1)(b) of the Act.

I accept that when the report was passed by Gemba to the Department, it was communicated in confidence. This is obvious from the subject matter of the contract. The contract was for the preparation of a bid which needed to remain confidential until presented by the State to the AFL; otherwise its potential would have been compromised.

However, I do not accept that disclosure of the report would impair the ability of the Department to obtain a similar report in the future from another consultant. Gemba itself says that there are numerous consultants with which it competes in this field, and it is improbable that the release of the report would deter consultants generally from assisting the Department in a similar venture.

The expressed concern, in relation to confidentiality, is with the information obtained by Gemba from AFL clubs, stadiums and sponsors, but this could only present a difficulty where the report gives specific detail of an inherently confidential nature with respect to a particular entity. Mostly, it does not. It largely contains generalised information, or information of a character which might be expected to be in the public domain. The only information in the report which to my untutored eye would appear to be capable of being regarded as inherently confidential and attributed to a particular entity is that which is to be found on pp 29, 43, 60, 69, 71, and 74. There is also certain obvious sponsorship information on p 32. It is this specific information which Gemba may have undertaken to its sources to keep confidential, and this is the type of information which the Department might find it harder to obtain if it were released.

It will be seen from this reasoning that neither Gemba nor the Department has descended to the level of detail necessary in addressing Mr Prismall's request. The Act does not exempt documents but information. On my assessment, and given the limited submissions before me, s 33(1)(b) could only possibly apply to the pages of information which I have mentioned. These contain information which Mr Prismall says he does not want, in any event.

7.2 S 33(1)(a)

This application of this section to the report presented me with some early difficulty. It appeared to be possible that, if the report had been generated by officers in the Department, all or part of it might have been exempt under s 27 of the Act. That relevantly reads -

(1) Information is exempt information if –

(a) it consists of –

(i) an opinion, advice or a recommendation prepared by an officer or a Minister; or

(ii) a record of consultations or deliberations between officers and Ministers –

in the course of, or for the purpose of, the deliberative processes included in the functions of an agency or Minister or of the Government; and

(b) its disclosure would be contrary to the public interest.

The problem for me at that stage was working out whether the report was designed for the AFL, or for deliberative processes within the Department itself. I am now satisfied, by the researches detailed in Section 2 of these reasons and the analysis of the report set out in Section 3, that the document is deliberative. It represents the bid document provided by Gemba for acceptance by Government. The Department and Government generally had yet to decide whether to take the bid, as prepared, to the AFL, or to submit a revised or different document.

The report should thus be seen as advice from Gemba, of a kind that the Department's own officers might provide, given in the course of deliberative processes within the Department preparatory to the presentation to the AFL of the State's bid.

It is important to recognise that s 27 would not protect the whole document. A significant proportion of the report is purely factual information, and so excluded from exemption by s 27(2).

There is then the overriding question of whether or not the release of the remaining information would be contrary to the public interest: s 27(1)(b). I address this issue below.

7.3 s 31

As noted, Gemba has claimed both that the information in the report relates to trade secrets, and that the disclosure of the report would be likely to expose it to competitive disadvantage.

I deal first with the claim that the report relates to trade secrets.

My decision in Case 0708009 dated 28 July 2009 contained the following –

"As to the meaning of "trade secret" in such a context, the relevant authorities 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."

I am not persuaded that the report contains any trade secrets. If it did, Gemba would have made sure that it protected those secrets by the contractual arrangements that it made with the Crown. Gemba does not appear to have taken any measures to guard the information in the report, but instead contracted with the Crown on the basis that property in the report, including intellectual property, would be the Crown's.

It is also of significance, that the very reason for preparing the report was that most of the information in it would be provided to others, IE the AFL Board and thereby persons within the AFL industry, with no apparent protection as to how it might be used.

The next question is whether the disclosure of information in the report would be likely to expose Gemba unreasonably to competitive disadvantage. I note in posing the question in this way that the word "unreasonably" does not appear in s 31(1). However, it is necessarily imported into that subsection by the content of s 31(2). In this way, s 31(1) parallels s 30, which makes information exempt if its disclosure under the Act would involve the unreasonable disclosure of information relating to the personal affairs of a person.

The notion of unreasonableness in this context raises public interest considerations, as the closing words of s 31(2) itself make plain. However, in deciding whether or not any exposure of the undertaking to competitive disadvantage would be unreasonable, it is necessary to look at all of the surrounding circumstances, not just those considerations: *Victoria Police v*

Marke [2008] VSCA 218, *Re Chandra and Minister for Immigration and Ethnic Affairs* [1984] AATA 437.

In Case 0708009 I stated—

*Turning to the exemption in s 31(1)(b), this requires that the disclosure of that information would be likely to expose the undertaking to competitive disadvantage. This latter term must also be given its ordinary meaning, and I know of no authority which directly assists with this. No other jurisdiction in Australia uses the concept of "competitive disadvantage" in its freedom of information legislation. It is perhaps sufficient to note that the notion of competitive disadvantage presupposes that there is a market within which the undertaking competes with others for business, within which it might be disadvantaged in its competitive position by the release of the information. It must be recognised in this context that release under the FOI Act is regarded as release to the world at large : Paterson, Moira, *Freedom of Information and Privacy in Australia*, Butterworths, 2005, para. 5.33.*

I accept that Gemba competes as a consultant in the sports and entertainment industry, and that it has expertise in issues relating to the AFL. I also accept that there is a consultancy market relating to AFL issues, because of the size of the AFL industry. Gemba's letter of 12 August states that it consults to "AFL related entities, which is a core part of (its) business exemplified by (its) work with eight AFL clubs over the last 6 years". I am satisfied that if the information in the report were to be widely known, this would enable consultancy firms competing with Gemba in that market, and possibly the wider sports and entertainment consultancy market, to better compete with it. I therefore accept that if the report is released, this would be likely to expose Gemba to competitive disadvantage, to some degree.

I now deal with the issue of whether such exposure would be unreasonable.

7.4 Public interest/"unreasonably"

In considering the public interest issues arising under s 27 as it applies through s 33(1)(a), and the issue of unreasonableness arising under s 31, I have taken into account the submissions from the Department and from Gemba, together with a number of different factors -

1. A fundamental object of the Act is to increase the accountability of Executive Government to the people of Tasmania: s 3(1)(a). Government clearly expended considerable public funds on the bid, and generated considerable public expectation around it. Judging from the contents of the report, a sizeable proportion of the Tasmanian community follows AFL competition, and would support Tasmania having its own AFL team. The public interest in the accountability of Government would be advanced by releasing the report so that the community can assess for itself whether the notion that Tasmania should put in a bid was sensible in the first place, and whether the bid

was properly advanced, had any prospect of success, and might realistically be revived in the future.

2. The report was not intended as a private document, to be used only within government. It was prepared with a view to the presentation of the greater part of its contents to an outside audience - *i.e.* the AFL Board - with no control over how its contents might be used in that sphere. When Gemba provided the report to the Tasmanian government, it essentially relinquished control over what was done with it. In tendering for the consultancy, knowing better than anyone else what it might include in the bid document, it knowingly embarked on a course that would lead to revelation, to an audience of unknown proportions, of whatever information it chose to include. It even assigned property in the information in the report to the Crown.
3. I have not been provided with any evidence by either the Department or Gemba that there are ongoing negotiations with the AFL which might be compromised by releasing the report. The AFL bid appears to have been a one-off event, now over.
4. There is a clear public interest in the State using competent consultants for specialist tasks which might benefit the State, and making sure that the consultants used are not hampered in the work that they provide by concern that information which should pertinently be included should be left out for fear that it may be released under FOI.
5. According to Gemba's submissions, the report contains information that is not generally available to its competitors: s 31(2)(a). It refers to its aggregation and ranking of AFL data in this context. I have been given no information as to how difficult or time-consuming it would be for another consultant to assemble the same data.
6. Neither the Department nor Gemba has attempted the task of disassembling the report into components which could be released without competitive disadvantage to Gemba and components which could not. This would clearly be possible. For instance, the deletion of every page which has the words "Gemba Sports Organisation Assessment Framework" on it would remove from the report the clear exposition of the framework. If one looks at the contents page alone, on p 4, it sets out a totally unremarkable approach to framing the bid, especially when this is linked back to the criteria which the AFL required the bid to meet.

My end conclusion is that the disclosure of the report would not be contrary to the public interest in terms of s 27(1)(b) of the Act, provided that certain information is deleted from it. In saying this, I am particularly mindful of point 3 in this list.

I also conclude, in terms of s 31(1), that although Gemba is likely to be exposed to competitive disadvantage by the disclosure of such an edited version of the report, such exposure would not in all the circumstances be unreasonable. In saying this, I have particular regard to points 1, 2 and 3 in the list. In terms of s 31(2), I find that there are considerations in the public interest in favour of disclosure which outweigh considerations of competitive disadvantage to Gemba. These are the considerations in point 1, viewed in light of the other points listed.

The editing that should occur is the deletion of all of the pages of the document which carry the words "Gemba Sports Organisation Assessment Framework", so as to provide protection to that device as it is used in structuring the report. With a view to protecting information which Gemba may have undertaken to keep confidential, pp pp 29, 32, 43, 60, 69, 71, and 74 should also be withheld. I determine that the balance of the report is not exempt information and should be released in accordance with the right given to Mr Prismall under s 7 of the Act.

I draw the attention of the Department to its obligation under s 48(7) of the Act to take all such action as may be necessary to implement this decision.

DATED: AUGUST 2009

.....
Simon Allston
Ombudsman