

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



Case Reference: 700-0610001  
Tim Morris MHA/Forestry Tasmania

**FURTHER REASONS FOR DECISION**

**Introduction**

On 3 April 2007 I issued reasons for decision in this review conducted under 48 of the *Freedom of Information Act 1991* (the FOI Act). The review relates to a request by Tim Morris MHA to Forestry Tasmania (FT) for (in the terms of the request as later revised) "information pertaining to any agreement between Gunns Limited and Forestry Tasmania related to either an informal or formal wood supply agreement for the proposed pulp mill" which Gunns proposes to establish in northern Tasmania.

The only information identified by FT as responsive to the request was a Memorandum of Understanding which it had entered into with Gunns in April 2004 (the MOU). FT had refused Mr Morris access to this document, and the attachments to it. My decision was that some of the information in the document and attachments was exempt, and that the balance should be released.

These further reasons for decision deal with matters subsequently raised by the parties.

**Matters raised by Forestry Tasmania**

By letter dated 19 April 2007, Dr Hans Drielsma, Executive General Manager of Forestry Tasmania, said he believed my office had inadvertently failed during the external review process to consider whether a page from one of the attachments to the MOU constituted exempt information. I understand that this belief arose because the relevant page was missing from one of the two copies of the MOU and attachments that were returned to FT upon the conclusion of the review.

In light of this uncertainty, I have reexamined the relevant page. There are two passages in the document that in my view are exempt under s 32(a) of the FOI Act on the ground that they represent information of a business and commercial nature that would, if disclosed, be likely to expose FT to competitive disadvantage. I have deleted these on the attached copy of the page. The balance of the page should be released.

I cannot say more about the content of the exempt passages in these reasons without risking revealing the character of the information, and so defeating the purpose of the exemption.

## **Matters raised by Mr Morris MHA**

By letter dated 19 April 2007 Mr Morris has sought clarification about two issues. The first concerns whether FT has provided him with the information I decided should be released. Secondly, Mr Morris said he did not believe that FT had disclosed all of the information in its possession falling within the scope of the revised request.

### **Supply of information**

The Ombudsman has no power to release information under the FOI Act. S 48 (7) of the FOI Act provides that where a decision in respect of an request for review has been made by the Ombudsman, the Ombudsman shall inform the relevant agency or Minister of that decision and the agency or Minister shall take all such action as may be necessary to implement the decision.

Mr Morris provided my office with a copy of the information which FT supplied to him. On examination of this material, I am satisfied that FT complied with my decision. I say this subject to two qualifications. One relates to the retention of the missing page, which I have already discussed. The other relates to the fact that one of the attachments to the MOU which was provided to Mr Morris was not in the exact form in which it had been held, electronically, by FT. I discuss this issue in the next part of these reasons.

### **Sufficiency of search issues**

As to whether FT has disclosed all of the information in its possession falling within the scope of the request, Mr Morris provided me with no evidence to substantiate his statement of belief that the MOU and attachments were not the only documents held by FT which are covered by the request. In the absence of such evidence, or clear reason of my own (whether from the content of the documents or otherwise) to believe that other information exists, I have to accept the agency's word that full disclosure has been made.

FT has assured me that the MOU and attachments are the only documents responsive to the request which it holds, and I have no reason to believe otherwise.

Whilst considering this aspect of Mr Morris' letter, it came to my notice that my earlier decision contained an error, which I now rectify. This error arose from a misunderstanding in my office.

One of the attachments to the MOU was a discussion draft of proposed Heads of Agreement between FT and Gunns, dated 5 March 2004. My decision in relation to this contained the finding that "The material already ruled out and new Clauses 1, 3, 4, 5, 6, 7 and Appendix 1" of the document were exempt. The "ruling out" here referred to passages of the document ruled through in the discussion draft, by way of marking up the document during negotiations. Replacement passages in the document were underlined, to show the proposed insertions. So as to release the non-exempt portions of this document to Mr Morris in accordance with my decision, FT generated a clean

copy of the document, without tracked changes, and therefore without the rulings-out and underlinings. This is what Mr Morris sent to me for checking against the decision made.

The copy of the Heads of Agreement which contains tracked changes represents information responsive to the request, and should be released to Mr Morris in that form. However, using the numbering in the marked-up version, Clauses 1, 3, 4, 5, 6, 7 and Appendix 1 to the document are exempt, as is the passage ruled through in the discussion draft which follows Recital I and precedes Clause 1.

This latter passage is exempt under s 32(a) of the Act.

Dated: 20 April 2007

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**Simon Allston**  
**Ombudsman**