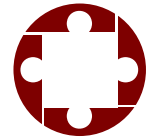


**OFFICE OF THE TASMANIAN OMBUDSMAN**  
**Freedom of Information Review under s.48 of the *Freedom of Information Act 1991***



**Ms X and the Legal Aid Commission of Tasmania**  
**Case 700-0609022 - Decision dated 4 December 2006**

**Summary**

An employee of an Agency applied under the *Freedom of Information Act 1991* for access to a consultant's report to assist with an employment related dispute. The Agency did not notify the applicant of a decision, giving rise to a deemed refusal under s 50 (1), and enlivening the power for the Ombudsman to review the decision, under s 48 (2) (a), that the applicant was not entitled to the report.

The Agency's failure to notify the applicant of a decision does not mean the Ombudsman can automatically recommend the release of the information. That is because s 7 gives a person a legally enforceable right to be provided with information in the possession of an agency unless the information is exempt information.

Section 33 (the information obtained in confidence exemption) is frequently relied upon to exempt information similar to that contained in the report. The first requirement of s 33 is that the information must have been communicated in confidence. Determining whether this requirement is satisfied involves examining the information and the circumstances surrounding the communication. The report was not marked confidential but certain information concerning interviews with staff was sensitive. I was satisfied that the staff had communicated information to the consultant in confidence.

The second requirement of s 33 is that disclosure would be contrary to the public interest because it would be reasonably likely to impair the ability of an agency to obtain similar information in the future. There is public interest, integral to the human resource management function, in any State government agency being able to obtain from staff the best information available to improve the processes for management and the assessment of personnel. The applicant wanted the report on natural justice and procedural fairness grounds. I decided that the public interest in the maintenance of confidence in discussions aimed at improving the operation of an agency prevailed in this case over the personal interest that the applicant had in the information. I was satisfied that disclosure of the information communicated by staff to the consultant in confidence would impair the ability of the Agency to obtain similar information in the future. However, the exemption did not extend to the recommendations contained in the report, and I recommended that these be released to the applicant.