

JURISDICTION : SUPREME COURT OF WESTERN AUSTRALIA

CITATION : CHANNEL 31 COMMUNITY EDUCATIONAL
TELEVISION LTD -v- INGLIS [2001] WASCA 405

CORAM : HASLUCK J

HEARD : 6 DECEMBER 2001

DELIVERED : 14 DECEMBER 2001

FILE NO/S : SJA 1126 of 2001

BETWEEN : CHANNEL 31 COMMUNITY EDUCATIONAL
TELEVISION LTD
Appellant

AND

GORDON WALLISS INGLIS
Respondent

Catchwords:

Freedom of information - Right of access to the documents of an agency -
Meaning of agency - Whether a community television and broadcasting station
is an agency - Meaning of public body or office - Channel 31 held not to be a
body that is established for a public purpose under a written law

Legislation:

Broadcasting Services Act 1992 (Cth)
Freedom of Information Act 1992, s 3, s 10(1), s 85
Interpretation Act 1984 (WA), s 18

Result:

Appeal allowed

Category: A

Representation:

Counsel:

Appellant : Mr J C Curthoys
Respondent : In person

Solicitors:

Appellant : Richard O'Shannassy & Co
Respondent : In person

Case(s) referred to in judgment(s):

Commissioner of Police v District Court of NSW (1993) 31 NSWLR 606
Delegate of the Australian Postal Commission v Mackay District Cane Growers'
Executive (1979) 37 FLR 472
Ex parte Professional Engineers Association (1959) 107 CLR 208
IW v City of Perth (1996) 191 CLR 1
Pfizer Corporation v Ministry of Health (1963) 3 All ER 779
Queensland Law Society Incorporated v Albietz (1996) 2 QR 580
Re Brennan and the Law Society of the Australian Capital Territory (1984)
6 ALD 428
Re English and Queensland Law Society Incorporated (1995) Qd R 714
Renmark Hotel Inc v Federal Commissioner of Taxation (1949) 79 CLR 11
The Amalgamated Society of Engineers v The Adelaide Steamship Co Ltd
(1920) 28 CLR 129
Thompson & Anor v Federal Commissioner of Taxation (1959) 102 CLR 315
Western Australian Turf Club v Federal Commissioner of Taxation (1978)
19 ALR 167

Case(s) also cited:

Austereo Ltd v Trade Practices Commission (1993) 41 FCR 1

1 **HASLUCK J:** This is an appeal from a decision of the Freedom of
Information Commissioner pursuant to s 85 of the *Freedom of
Information Act 1992 (WA)*. The question is whether the appellant,
Channel 31, is subject to a duty to provide access to certain documents.
The answer to this question depends upon whether the appellant should be
characterised as a body or office that is established for a public purpose
under a written law within the meaning of the *Freedom of Information
Act*.

2 It appears from the reasons for decision of the Information
Commissioner that Channel 31 is owned by a private consortium. That
consortium includes the University of Western Australia, Edith Cowan
University, Curtin University of Technology, the West Australian Trotting
Association, and the State government, through Westlink.

3 Channel 31 operates a community educational television and
broadcasting station, pursuant to a community broadcasting licence issued
under the *Broadcasting Services Act 1992 (Cth)*. Such licences are only
issued for broadcasting services that are provided for community
purposes; that are not operated for profit or as part of a profit-making
enterprise; that provide programs that are able to be received by
commonly available equipment, and that are available free to the general
public.

4 The objects for which Channel 31 is established are set out in cl 2 of
its memorandum of association and include to advocate for, apply for and
to accept grants of licences to operate community education television and
broadcasting stations and to turn to account any licences pursuant to or in
accordance with or under and by virtue of the *Broadcasting Services Act*.

5 There was evidence before the Information Commissioner that
Channel 31 broadcasts its programs on behalf of local community groups,
as well as on behalf of educational institutions. The financial report for
the year ended 30 June 2000 states that Channel 31 is a not-for-profit
organisation. It derives its income from advertising and sponsorship
which is then reinvested in its programming activities.

6 On 26 April 2001 the complainant, Gordon Walliss Inglis, made an
application to Channel 31 for access under the *Freedom of Information
Act* to copies of minutes of various meetings of the board of management
and two videotapes. Access was refused by Channel 31's legal adviser on
the basis that Channel 31 was not subject to the *Freedom of Information
Act*. The complainant then applied to the Information Commissioner for
external review of the decision.

7 The Information Commissioner recognised that if Channel 31 is not an "agency" within the meaning of the Act, then the *Freedom of Information Act* does not apply and the complainant has no right of access to the documents in question.

8 The Information Commissioner eventually determined that Channel 31 is an agency for the purposes of the *Freedom of Information Act*. Her reasons for decision dated 23 July 2001 are included in the appeal book and form part of the materials before me on this appeal. I note in passing that, by s 85 of the *Freedom of Information Act*, an appeal lies to the Supreme Court on any question of law arising out of any decision of the Commissioner on a complaint relating to an access application.

9 Channel 31 has filed and served a notice of appeal. It seeks an order that the decision of the Information Commissioner, which has the effect of granting the respondent access to the documents referred to in a notice dated 6 June 2001, be set aside, and the following orders be substituted in lieu of the decision of the Information Commissioner; that is to say, that the respondent be denied access to the documents and the respondent pay the appellant's costs of the appeal.

10 The grounds of appeal are shortly expressed in these terms: the Information Commissioner erred in law in finding that the appellant was a body or office that is established for a public purpose under a written law within the meaning of the *Freedom of Information Act*.

11 In order to understand the issue raised by the grounds of appeal it becomes necessary to look at the scheme of the *Freedom of Information Act*.

12 Section 3 sets out the objects of the Act. They are to enable the public to participate more effectively in governing the State and to make the persons and bodies that are responsible for State and local government more accountable to the public.

13 By s 3(2) the objects of the Act are to be achieved by creating a general right of access to State and local government documents; providing means to ensure that personal information held by State and local governments is accurate, complete, up-to-date and not misleading; and requiring that certain documents concerning State and local government operations be made available to the public.

14 The *Freedom of Information Act* then goes on to establish a right of access to documents. Thus, by s 10(1) "a person has a right to be given

access to the documents of an agency (other than an exempt agency) subject to and in accordance with this Act".

15 It is not necessary for present purposes to look closely at the procedure concerning access, save to notice that it commences with an application to obtain access directed to the relevant agency.

16 The glossary at the end of the Act defines the meaning of words used in the Act. The term "agency" means (a) a Minister; or (b) a public body or office, and "the agency" means the agency to which an access application has been made or to which such an application has been transferred.

17 The glossary goes on to provide that:

"'public body or office' means -

- (a) a department of the Public Service;
- (b) an organization specified in column 2 of Schedule 2 to the *Public Sector Management Act 1994*;
- (c) the Police Force of Western Australia;
- (d) a local government or a regional local government;
- (e) a body or office that is established for a public purpose under a written law;
- (f) a body or office that is established by the Governor or a Minister;
- (g) any other body or office that is declared by the regulations to be a public body or office being -
 - (i) a body or office established under a written law;
or
 - (ii) a corporation or association over which control can be exercised by the State, a Minister, a body referred to in paragraph (a), (b), (e), (f) or (g)(i), or the holder of an office referred to in paragraph (f) or (g)(i);

or

(h) a contractor or subcontractor."

18 This provision suggests that the term "public body or office" applies to a list of bodies commonly regarded as arms of government. At a first glance, it might be thought that the presence at the end of the list of "a contractor or subcontractor" is inconsistent with such a view. However, upon a closer reading of the glossary one finds that a "contractor" means a contractor as defined in the *Court Security and Custodial Services Act 1999* or the *Prisons Act 1981*. In other words, the contractors envisaged by the list are those associated with governmental services connected to the prison system. One must also take account of the fact that a reference to a Minister in the definition of "agency" is clearly a reference to a representative of a government.

19 Thus, a consideration of the provisions of the *Freedom of Information Act* to this point suggests that the Act can be characterised as remedial legislation, the aim of which is to provide access to governmental documents which would not otherwise be exposed to public view, but under strictly controlled conditions and subject to various significant exceptions. The objects of the Act indicate that the Act is essentially concerned with the effective and efficient government of the State having regard to well-settled democratic traditions. The list of agencies specifically characterised or named as agencies subject to the Act does not outwardly suggest that the Act is intended to apply to bodies not directly controlled by government or not carrying out certain governmental or regulatory functions.

20 I am, of course, conscious that one has to proceed cautiously in seeking to define what is a governmental function. In *Ex parte Professional Engineers' Association* (1959) 107 CLR 208 Windeyer J said, at page 275, that the functions which government in fact undertake vary with the time and history and the country concerned and the nature of its politics. He could not see any ground for saying that, in law, any one activity which government undertakes is really any more a true function of government than any other and no fixed criteria for the application of the assumed distinction have been formulated. He added, however, that such an observation was not to say that there was not a difference between the industrial and trading activities of government and its other activities.

21 In this vein, Willmer LJ said in *Pfizer Corporation v Ministry of Health* (1963) 3 All ER 779 that in mid-Victorian times the treatment of patients in hospitals would have been regarded as something quite foreign to the functions of government. In the years that have elapsed, however,

there has been a revolution in political thought, and a totally different conception prevails today as to what is and what is not within the functions of government.

22 When one returns to the provisions of the *Freedom of Information Act*, it is apparent that under the definition of "agency" the essential concepts are "a Minister" or "a public body or office". This invites a consideration of what is meant by a "public body". A convenient starting point is the decision of the High Court in *Renmark Hotel Inc v Federal Commissioner of Taxation* (1949) 79 CLR 11.

23 In that case, an association incorporated under the *Associations Incorporation Act* of South Australia conducted a hotel in the Renmark irrigation area pursuant to a liquor licence granted under the relevant licensing legislation. The appellant association was governed by regulations approved by the Treasurer which provided that its business should be controlled by a committee of management elected in accordance with the Electoral Law in the State by the electors on the roll for Renmark.

24 The High Court held that the appellant was not a public authority constituted under any State Act so as to be exempt from income tax under s 23(d) which provided that the revenue of a public authority constituted under any State Act was to be exempt from income tax.

25 The High Court approved the reasoning of Rich J in which he said at page 18:

"The characteristics of a public authority seem to be that it should carry on some undertaking of a public nature for the benefit of the community or of some section or geographical division of the community and that it should have some governmental authority to do so. In Section 23(d) it is made clear that it must be constituted under a state act. Coercive powers over the individual are given to many governmental authorities which could be called public authorities, but it is not an essential part of a conception of a public authority that it should have coercive powers, whether of an administrative or a legislative character. It may, however, be an essential characteristic of the conception that it should have exceptional powers or authority, for instance a tramway board or trust has the exceptional authority of taking its trams down a public street. A water authority may

lay its water mains, a lighting authority may do the like. Some exceptional powers of doing what an ordinary private individual may not do are generally found in any body which we would describe as a public authority."

26 He went on to say later at page 19:

"The mere fact that it carries on the business of a hotel keeper without private profit and distributes the net profits derived from the business to charitable and public purposes cannot place it in that category. A control exercised over it by the Treasurer arises only from the necessity of excluding private profit and superintending the application of the actual profits. It appears to be a measure of police or discipline. It has no statutory powers enabling it to do what a private individual could not do. The elements upon which the appellant relies for the claim to be a public authority are restrictive, not enabling. They consist of provisions of the law and of documents adopted under the law directed to confine its activities to public purposes."

27 This reasoning was subsequently approved by the High Court in *Western Australian Turf Club v Federal Commissioner of Taxation* (1978) 19 ALR 167. The Club had been involved in the public function of licensing horse races, being an activity requiring the exercise of powers not possessed by the ordinary citizen and which had been conferred by statute. This would have proved decisive in establishing that it was a public authority, but was eventually held to be outweighed by other factors showing it was principally a private association with a restricted membership.

28 I note also *Delegate of the Australian Postal Commission v Mackay District Cane Growers' Executive* (1979) 37 FLR 472 in which the members of the relevant group were held not to be "authorities of a state" because they did not in any way represent the Crown, were unincorporated bodies, their members were not appointed by an arm of government, they had no marketing powers or powers of compulsory acquisition and did not possess any powers of an exceptional nature not possessed by a private individual.

29 It is true that the key words in the cases just mentioned are a "public authority" rather than a "public body" established for a public purpose under a written law, and should therefore be viewed with caution, because

the concept of a "public authority" may denote that the body in question has authoritative governmental powers of some kind. However, there are other cases which suggest that one can only ascertain what the purpose of a particular body is by examining the range of powers pursuant to which it carries on its activities and thus defines itself. See *Re Brennan and the Law Society of the Australian Capital Territory* (1984) 6ALD 428 at 439.

30 On this view of the matter, if the powers available to a body by its domestic constitution are no greater than those available to an individual and have not been specially conferred by government, then, consistently with the reasoning in the *Renmark* (*supra*) case, this would be a basis for concluding that the body did not have a public purpose. Such a conclusion would be further reinforced if it were apparent that the government or electors played no part in the appointment of the governing committee. The *Renmark* (*supra*) case shows that this conclusion is not displaced by the fact that the body in question is not a profit making enterprise and confers benefits upon the public.

31 In another case, *Re English and Queensland Law Society Incorporated* (1995) Qd R 714, the Queensland Law Society, which had been brought into existence originally as a voluntary association, was held to be a body established for a public purpose by an enactment, and therefore an agency subject to the local *Freedom of Information Act*, but this was because the Society's status as a body corporate derived from legislation specific to that body. Further, and perhaps more importantly, it was apparent from the legislation that the Society was given certain disciplinary powers which were to be exercised for the public benefit. This brought it within the concept outlined by Rich J in *Renmark* (*supra*) of having "some exceptional powers of doing what an ordinary private individual may not do."

32 This view of the matter was subsequently approved on appeal in *Queensland Law Society Incorporated v Albietz* (1996) 2 QR 580 where the point is put neatly in the headnote as follows:

"That although the applicant engaged in significant private activities it was established by the 1952 Act for the dominant if not the sole reason of acting as an agency of government in carrying out the public purpose of regulation of the legal profession."

33 Such a case can be contrasted with the circumstances of the present case where Channel 31 seems to be essentially a private association operating independently of government and which has not been equipped by statute with exceptional powers, even though, arguably, its activities are for the public benefit. As indicated earlier, in this context, public benefit is not the sole test of what constitutes a "public purpose".

34 Against this background, let me now turn to the details of the present case. In her reasons for decision, the Information Commissioner recognised that for a body or organisation to be characterised as an "agency" it had to fall within one of the categories of "public body or office" specified by the definition of that term in the glossary. She accepted that in the circumstances of the present case the only relevant category was in subpar (e), that is to say, "a body or office that is established for a public purpose under a written law". I am of the same view and will proceed accordingly.

35 The Information Commissioner went on to make a finding, at par 16 of her reasons, that Channel 31 was a company limited by guarantee and registered under the *Corporations (Western Australia) Act 1990* (called "the Corporations Law" in her reasons for decision). She noted that s 119 of the *Corporations Law* states that a company comes into existence as a body corporate at the beginning of the day on which it is registered. She proceeded to hold that Channel 31 did not exist as a legal entity until it was registered under the *Corporations Law*. It could therefore be regarded as having been established under or pursuant to a written law, namely, the *Corporations Law*, on the day that it was registered as a company.

36 She then turned to the question of whether Channel 31 was established for a public purpose.

37 She referred to *Thompson & Anor v Federal Commissioner of Taxation* (1959) 102 CLR 315 in which the High Court indicated that an organisation can be said to have been set up for a public purpose if the organisation is intended to benefit the public as a whole, or a substantial section of the public, provided that the organisation has not been set up for a private purpose such as the private profit or advantage of an individual or class of individuals. She referred also to the *Queensland Law Society* case (*supra*).

38 She went on to hold at par 26 of her reasons, having regard to the memorandum and articles of Channel 31, that the stated objects for which Channel 31 is established are public educational purposes, not private

commercial purposes. The establishment and operation of a broad-based community educational television station, with active community participation in its operations could be viewed as for the benefit of the public of Western Australia generally, or for a substantial segment of the public. Further, benefits flowed to the relevant tertiary institutions associated with Channel 31, such institutions being also established for public purposes, and to the students of those institutions.

39 Having set the scene in this way, the Information Commissioner then held that Channel 31 was established for one or more public purposes. She was therefore prepared to hold that Channel 31 was an agency as defined in the *Freedom of Information Act*.

40 It is clear from this analysis of her reasons for decision that the Information Commissioner proceeded first to a determination that Channel 31 was a body brought into existence under a written law, and then to a determination that the body in question was established for a public purpose. I note also that in her reasons for decision the Information Commissioner did not give any particular weight to the objects of the *Freedom of Information Act*, although she did note that the intention of the Parliament that enacts a statute is to be found by an examination of the language of the relevant statute as a whole: *The Amalgamated Society of Engineers v The Adelaide Steamship Co Ltd* (1920) 28 CLR 129.

41 At the hearing of the appeal before me, counsel for the appellant contended that the Information Commissioner had failed to give sufficient weight to the objects of the Act in seeking to understand the meaning of the term "public body or office", bearing in mind that the crucial category (e) in the definition of those words must be related to and consistent with the preceding concept of "public body or office". That concept, in turn, should be regarded as forming part of the generic concept of an "agency".

42 Counsel for the appellant went on to submit that the New Shorter Oxford English Dictionary defines "agency" as "the function or position of an agent". The term "agent" is defined as "a person who acts for another in business, politics, etcetera". Inherent in the notion of an agency is that someone acts on behalf of another. It therefore becomes important, having regard to the objects and scheme of the *Freedom of Information Act*, to have some understanding as to the nature of the principal which the "agency" is thought to represent. When regard is had to the objects of the Act, it is plain that the Act is directed towards governments and agents of government. Such a view is reinforced by the fact that the meaning of "agency" is defined to include "a Minister" in

addition to "a public body or office", for a Minister is quite clearly a representative or agent of government under the Westminster tradition.

43 Counsel for Channel 31 said further that the line or sequence of reasoning revealed in the Information Commissioner's reasons for decision was flawed. By looking first at the question of whether Channel 31 was brought into existence under a written law, and then considering that issue in isolation from the other requirements of subpar (e) of the "public body or office" definition, the Commissioner had misconceived the nature of the clause. The question is whether the body or office is established "for a public purpose under a written law". This requires that proper weight be given to the word "for" and suggests that it is not simply a question of whether there is a written law such as the *Corporations Law* which enables the body to function. The crucial question is whether the establishment of the body and the public purpose for which it exists is explicitly referable to and carried into effect by or pursuant to a written law.

44 The latter point, according to counsel for the appellant, could be conveniently illustrated by reference to the *Queensland Law Society* case (*supra*), mentioned earlier, being one of the cases referred to by the Information Commissioner in her reasons for decision. In that case it was said at par 74:

"The word 'purpose' directs attention to the objects or aims for which a body has been established, as evidenced by the relevant powers, functions or duties conferred on it by Parliament. The word 'public' imposes a requirement that a purpose be one for the benefit of members of the community generally (or a substantial segment of them, eg, those who have dealings with solicitors)."

45 It is apparent from this passage, counsel for the appellant argued, that the purpose is evidenced by the powers, functions or duties conferred on the body "by Parliament". In other words, in the *Queensland Law Society* case (*supra*), the body held to be a public body, and thus a body affected by the *Freedom of Information Act* legislation in Queensland, had regulatory powers which were being exercised for the public benefit. However, unlike the situation of Channel 31, the essential nature of the Queensland Law Society's operations were determined by the nature of the enabling legislation and not simply by the language of its memorandum and articles of association. The same could be said about a body such as the Western Australian Trotting Association which was

constituted as a non-profit association but was specifically empowered to perform certain regulatory functions concerning the trotting industry.

46 To my mind, these submissions are persuasive. I have already noted that the various forms of "public body or office" constituted by subs (a) to (d) and (f) to (h) of the definition can be generally described as bodies performing governmental functions. A right of access to documents held by such bodies is consistent with the objects of the Act, that is to say, to enable the public to participate more effectively in governing the State or making the persons and bodies that are responsible for State and local government more accountable to the public. I have noted also that the term "contractor" in (h) is defined elsewhere so as to restrict the term to a body associated with prison administration, this being an activity usually associated with government and for which, in any event, the government of the State is generally held accountable. Further, the fact that 9(g) provides a power to extend the definition by regulation makes it clear that not every "body or office established under a written law" is a public body or office.

47 If subs (e) is to be read consistently with the surrounding provisions, then this suggests that the body or office that is "established for a public purpose under a written law" should be regarded as one involved in governing the State. In my view, the object of the Act is not to provide a general right of access to incorporated bodies that have a public purpose. Providing access to the documents of such bodies does not enable the public to participate more effectively in governing the State or making the persons and bodies that are responsible for State and local government more accountable to the public. The Act is concerned with agencies that are involved in government.

48 It follows from earlier discussion that, although caution must be exercised in characterising certain activities as governmental activities, it is nonetheless possible, having regard to the constitutional framework and traditions of government in this State, to give a meaning to the concepts reflected in s 3 of the *Freedom of Information Act*. The central idea reflected in the objects of the Act is that persons and bodies responsible for State and local government are to be made more accountable to the public. It is inconsistent with such a notion to hold that an incorporated body such as Channel 31, which does not exercise regulatory powers, or carry into effect governmental decisions, should be regarded as an "agency" within the meaning of the Act.

49 If the Information Commissioner's interpretation was correct, then every incorporated body, either under the *Corporations Act* or the *Associations Incorporation Act*, would be subject to the *Freedom of Information Act* so long as it has a public purpose or has a defined objective of conferring benefits upon the community. Various charitable organisations or voluntary bodies such as the Surf Life Saving Association which operate upon a non-profit basis would fall within the ambit of the *Freedom of Information Act* on that view of the matter.

50 The respondent, who appeared in person, sought to support the Information Commissioner's line of reasoning by drawing attention to certain provisions of the *Broadcasting Services Act 1992* concerning community broadcasting licences.

51 The effect of cl 9(2)(b) of Sch 2 to the *Broadcasting Services Act* is this, the respondent submitted: each community broadcasting licence is subject to a condition that "the licensee will continue to represent the community interest that it represented at the time when the licence was allocated". He went on to point out that licensees are subject to various restrictions such as the requirement that a licensee will not broadcast a tobacco advertisement in contravention of the *Tobacco Advertising Prohibition Act 1992*. The presence of provisions of this kind, he contended, when considered in conjunction with the regulatory requirements of the *Corporations Law*, underpinned the Information Commissioner's basic proposition that Channel 31 was a public body or office because it was established and operated pursuant to a specific legislative regime and performed a task that was beneficial to the community.

52 I am not persuaded that this is a sufficient answer to the opposing case. Channel 31 is subject to a degree of regulation in that it is obliged to comply with the requirements of its licence. However, unlike the Queensland Law Society or the WA Trotting Association, it does not itself exercise regulatory powers or perform a regulatory function. Like other bodies or individuals, it is simply obliged to observe the laws bearing upon the activities it undertakes. It is not obliged to perform certain functions on behalf of government or pursuant to the requirements of a legislative scheme providing for its establishment. Channel 31 can, if necessary, surrender or decide not to renew its community broadcasting licence, and thus relieve itself of the burden imposed by the conditions attaching to such a licence.

53 Section 18 of the *Interpretation Act 1984 (WA)* requires that in the interpretation of a provision of a written law, a construction that would promote the purpose or object underlying the written law (whether that purpose or object is expressly stated in the written law or not) shall be preferred to a construction that would not promote that purpose or object.

54 It is apparent from s 3, that the objects of the *Freedom of Information Act* are to be achieved by creating a general right of access to State and local government documents. The right of access is constituted by s 10 in respect of the documents of an agency. The definition of that term includes reference to provisions in the glossary bearing upon the meaning of "public body or office", which provisions are consistent with the objects of the Act and suggest that proper weight should be given to the objects in order to promote the purpose underlying the scheme of the Act: *Commissioner of Police v District Court of NSW* (1993) 31 NSWLR 606 at 627; *IW v City of Perth* (1996) 191 CLR 1.

55 When one looks at the situation of Channel 31, it is apparent that the body functions in accordance with various written laws, but it is questionable whether, within the meaning of subpar (e) of the definition of "public body or office", it is "a body or office that is established for a public purpose under a written law". Its activities are of benefit to the public but this is not the sole consideration. It is not under the control of government and does not exercise exceptional powers conferred upon it by the government. The provisions of the *Freedom of Information Act* do not suggest that institutions other than governmental agencies are required to provide access to their records, and indeed the contrary is suggested by the way in which the objects of the Act are confined to agencies involved in the process of government. Channel 31 has no special or regulatory powers conferred upon it by a particular statute or written law and I am therefore not satisfied that it can be characterised as a body "established for a public purpose under a written law".

56 In summary, then, I consider that the Information Commissioner made an error of law in classifying Channel 31 as an agency within the meaning of s 10 of the *Freedom of Information Act* concerning the right of access to documents. It follows that the appeal to this Court pursuant to s 85 of the *Freedom of Information Act* will be allowed. I will hear from the parties as to whether any further orders or directions are required.