Lib No: 960654

JURISDICTION	**:**	SUPREME COURT OF WESTERN AUSTRALIA
CORAM	**:**	PARKER J
HEARD	**:**	4 SEPTEMBER 1996
DELIVERED	**:**	13 NOVEMBER 1996
FILE NO/S	**:**	APPEAL SJA 1059 of 1996
BETWEEN	**:**	MINISTER FOR PLANNING Appellant (Respondent) AND MICHAEL TAWEEL GEORGETTE TAWEEL Respondents (Complainants)

Catchwords:

Freedom of Information - Appeal from decision of Information Commissioner granting access to documents in the possession and under the control of a Minister - "relates to the affairs of another agency" - *Freedom of Information Act 1992* Schedule 2 Glossary cl 4(2)(b)

Representation:

Counsel:

Appellant (Respondent)	:	Mr W S Martin QC & Ms J C Pritchard
Respondent (Complainants)	:	In person

Solicitors:

Appellant (Respondent)	:	State Crown Solicitor
Respondent (Complainants)	:	In person

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

Ansett Transport Industries (Operations) Pty Ltd v Comptroller of Stamps [1983] 2 VR 305
Booth v Dillon (No 3) [1977] VR 143
Hatfield v Health Insurance Commission (1987) 77 ALR 103
O'Grady v The Northern Queensland Company Limited (1989-1990) 169 CLR 356
Quality Bakers Australia Limited v Bennett (1992) 47 IR (Qd) 448

Case(s) also cited:

Ausfield Pty Ltd v Leyland Motor Corporation of Australia Ltd (No 2) (1977) 14 ALR 457
Collector of Customs v Pozzolanic Enterprises Pty Ltd (1993) 43 FCR 280
Kobelke v Minister for Planning, unreported; WA Information Commissioner; D594; 27 April 1994
Minister for Resources v Dover Fisheries Pty Ltd (1993) 116 ALR 54
Re Wiseman and Department of Transport (1985) 4 AAR 83

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PARKER J:

This is an appeal from a decision of the Acting Information Commissioner made pursuant to the *Freedom of Information Act 1992* (the "*FOI Act*"). The respondents sought access under the *FOI Act* to documents of the appellant in his capacity as Minister for Planning. Access was refused. The respondents by complaint sought a review by the Acting Information Commissioner who decided that the respondents should have access to the documents. There were other incidental and consequential orders but they are not the point of this appeal.

The respondents are owners of land within the City of Canning ("the City") and had sought from the City a planning approval to develop a child care centre on their land. This was refused by the City. The respondents instituted an appeal from that refusal pursuant to Part V of the *Town Planning and Development Act 1928* (the "*TP & D Act*"). Pursuant to s39 of the *TP & D Act* an appeal may be made to the Minister or to the Town Planning Appeal Tribunal. An appeal to the Tribunal is a public process involving evidence, a public hearing and a decision with written reasons provided by the Tribunal; there is a right of further appeal to this Court from the decision of the Tribunal. By complete contrast, the appeal to the Minister is substantially informal. The procedure normally followed is for an appeal to be considered by (a member of) the Town Planning Appeal Committee and the Minister determines the appeal after receiving a report and recommendation from the Committee. There is no procedure for evidence or for a public hearing or for submissions. The Committee may gather information from whatever source it considers necessary or appropriate and the Minister in reaching a decision is informed by, but not bound to heed or apply, the report and recommendation of the Committee. It is not usual for the Minister to give reasons for decision and there is no right of appeal from the Minister.

In this case the respondents, on the advice of their planning consultants, instituted an appeal to the appellant as the Minister. This was done on 7 June 1995. By letter dated 16 September 1995 the appellant advised the respondents' consultants that the appeal had been dismissed.

On 8 October 1995 the respondents applied to the appellant for access under the *FOI Act* to all correspondence, reports and materials from all parties concerned in the appeal. What was sought was, in effect, the Minister's appeal file. The appellant refused the application. The respondents then sought by complaint a review of that decision of the appellant. The appeal to this Court is from the decision of the Acting Information Commissioner which allowed the respondents access to the appellant's appeal file except for some identified exempt documents.

By s10(1) of the *FOI Act* a person has a right to be given access to the documents of an agency. By cl 1 of the Glossary to the *FOI Act* "agency" is defined to include a Minister. Clause 4(1) of the Glossary further provides:

> "**4.** (1) Subject to subclause (2), a reference to a document of an agency is a reference to a document in the possession or under the control of the agency including a document to which the agency is entitled to access and a document that is in the possession or under the control of an officer of the agency in his or her capacity as such an officer.
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> (2) Where the agency is a Minister a reference to a document of an agency is a reference to a document that -
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> (a) is in the possession or under the control of the Minister in the Minister's official capacity; and
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> (b) relates to the affairs of another agency (not being another Minister),
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> and includes a document to which the Minister is entitled to access and a document in the possession or under the control of a member of the staff of the Minister as such a member, but does

not include a document of an agency for which the Minister is responsible.

(3) A document in the possession or under the control of an agency on behalf of or as an agent for -

(a) the Commonwealth, another State or a Territory; or

(b) an agency or instrumentality of the Commonwealth, another State or a Territory,

is not a document of the agency."

It is clear in this case that the appellant's appeal file comprised documents in the possession and under the control of the appellant as a Minister, and in the Minister's official capacity, within the meaning of cl 4(2)(a) of the Glossary. The issue that remains is, therefore, whether each document in the appellant's appeal file (apart from exempt documents) is a document that "relates to the affairs of another agency" within the meaning of cl 4(2)(b).

In this case it is contended that the City was the other agency. The City is an agency for the purposes of the *FOI Act*; see the definitions of "agency" and "public body or office" in the Glossary. Hence the remaining issue may be formulated as whether documents of the appellant in his capacity as Minister for Planning, being documents concerning an appeal to the appellant under the *TP & D Act* and concerning the consideration of that appeal for the appellant by the Town Planning Appeal Committee and the decision of the appellant in that appeal, together with incidental correspondence, are documents which relate to the affairs of the City within the meaning of cl 4(2)(b) of the *FOI Act*.

In her careful and extensive written reasons for decision the Acting Information Commissioner held that the documents in the appellant's appeal file were documents which related to the affairs of the City. In construing the

phrase "relates to the affairs of" the Acting Information Commissioner reasoned that the documents must be "documents that can be properly characterised, in a general sense, as documents relating to the business (in the broad sense of that word) of another agency in the performance of its functions." The Acting Information Commissioner further reasoned that the decision of the appellant in the exercise of his appellate function "has an effect on the local authority as the decision being reviewed by the Minister is the decision initially made by the local authority...." and "When the decision of the Minister is substituted for that of the Local Authority, the local authority is then required to put the decision of the Minister into effect in the performance of its planning function." Accordingly, the Acting Information Commissioner found herself "satisfied that the planning process can properly be said to be an 'affair' of the City" and the documents of the respondent dealing with "an appeal against a planning decision of the City can be said to be documents which 'relate to the affairs of ' that local authority." Thus it was held that (exempt documents aside) the appellant's appeal file comprised documents within the meaning of cl 4(2)(b) of the Glossary.

The appellant's appeal raises as a question of law whether the Acting Information Commissioner misconstrued cl 4(2)(b) of the Glossary in reaching that decision.

Despite some contrary appearances, when cl 4 is analysed it is not the general scheme of the *FOI Act* that documents in the possession or control of a Minister of the Crown are subject to the right of access given by s10. Subject to one exception, cl 4(2) of the Glossary, no documents of a Minister or in the possession or control of a Minister (in whatever capacity) or the Minister's staff, are subject to the right of access. The exception is where a document is held by the Minister in his or her official capacity and relates to the affairs of another agency. Even that exception is further and significantly restricted

because, from it, there are excluded documents of all agencies for which the Minister is responsible and documents relating to the affairs of any other Minister. Further, by subcl 4(3) documents held for other governments in Australia or their agencies or instrumentalities are excluded. Insofar as documents held by a Minister which relate to the affairs of another agency must be held in the Minister's official capacity before being subject to the access provisions of the *FOI Act*, the phrase "official capacity" clearly excludes the personal capacity of the Minister and his or her capacity as a member of the Parliament or of a Parliamentary Committee (see Schedule 2 to the *FOI Act*). Without wishing to rewrite the relevant provisions, when they are analysed it may fairly be observed that the policy revealed by the provisions of the *FOI Act* with respect to documents in the possession or control of a Minister is clearly one which excludes such documents from the right of access provided in the *FOI Act*, save for the one exceptional case (itself subject to exclusions) of a document held in the Minister's official capacity which relates to the affairs of another agency, not being another Minister or an agency for which the Minister is responsible.

Thus, the policy and context of the *FOI Act* in its application to documents in the possession or under the control of a Minister does not provide any support for the view that the legislature intended an expansive or generous provision for access. In turn this offers no support whatever for any view that the legislature intended a wide understanding of "relates to" or "affairs" in cl 4(2)(b). In this respect the view I have formed appears to be in marked distinction from that applied by the Acting Information Commissioner who was led into error in this respect by general statements of policy, eg in the long title and the Second Reading Speech. The specific terms of the Act applicable to documents in the possession or under the control of Ministers treat these documents quite differently from the documents of other agencies

and deny the existence of a legislative policy of an expansive or generous provision for access.

One intriguing aspect of cl 4(2) of the Glossary is the exclusion of documents of an agency for which the Minister is responsible, but the inclusion of documents which relate to the affairs of another agency ie an agency for which the Minister is not responsible that agency not being a Minister, from the concept of a "document of an agency". The reason for this has not been satisfactorily explained.

While counsel could not offer a satisfactory policy reason for this strange provision, it was somewhat tentatively suggests that it may have been thought more convenient for access applications for documents of an agency in the possession of the Minister responsible for that agency to be dealt with by the agency rather than the Minister. In other words, it was only where a document of an agency had reached a Minister who was not responsible for the agency that there was a need to bother a Minister with the access procedures of the *FOI Act.* There appears to be some difficulty with that reasoning. As a matter of ordinary government administration, while a Minister may be said to have control of a document of the Minister which is in the possession of a department or other agency for which the Minister is responsible, the reverse is not usually the case. A document of a department or other agency which is in the possession of the Minister responsible for the agency is no longer in the possession or under the control of the department or other agency. The department or other agency may ask the Minister to return the document but if that is not done the Minister cannot be compelled to return the document, whereas the Minister can compel a department or other agency under the Minister's control to deliver up documents to the Minister. (The position will be different for a few types of documents for which specific statutory provision is made for their possession or control). Further, this difficulty may be

somewhat aggravated by the provisions of cl 4 which appears to distinguish between the possession or control of documents by a Minister and the possession or control of documents by an agency under the control of the Minister.

Thus it is possible that the operation of cl 4 may prove to be that a document of an agency will be beyond the reach of the access provisions of the *FOI Act* while it remains in the possession of the Minister responsible for the agency.

The absence of a clear policy for the terms of cl 4(2)(b), when it is in effect the only circumstance in which ministerial documents are subject to the access provisions of the *FOI Act*, adds considerably to the difficulties of this case. Given the provisions which otherwise reflect a general policy of no access, why it has been provided that only documents which have been allowed out of the possession or control of an agency and into the possession or control of a Minister who is not responsible for the agency, should be the only type of document in the possession or control of any Minister to be available for access remains to be discerned.

Whatever be the elusive policy behind cl 4(2)(b), it is necessary to attempt to understand its effect and determine the scope of its operation.

It is necessarily contemplated by cl 4(2)(b) that the question it poses may be answered in respect of any document. This indicates that it contemplates that a document may be categorised. Take, for example, a report to the Treasurer as to the observance of statutory audit obligations by agencies in a context where statutory audit obligations are within the ministerial responsibility of the Treasurer, yet some of the agencies considered may be subject to the ministerial responsibility of other Ministers. Is the document to be categorised according to its primary purpose and subject matter, its substance - the observance of statutory audit obligations - or is it to be

categorised as relating to the affairs of each one of the separate agencies which happen to be included in the report? Or should it be categorised as both? In that last event, according to its primary purpose and subject matter it would not be subject to access under the *FOI Act*, but by virtue of its incidental or secondary subject matter it would be subject to access for no reason other than that one or more of the agencies included in the report happened to be subject to the responsibility of another Minister. I have not been able to discern any satisfactory underlying legislative policy for such an arbitrary, if not entirely accidental, result. To exaggerate that difficulty and the absence of a satisfactory underlying policy, the example can be modified so that the report dealt only with agencies which were themselves within the ministerial responsibility of the Treasurer except for one which was included by oversight, or even by design to highlight a contrast for the Minister. I am unable to discern any rationale why the inclusion of the one agency outside the area of the Treasurer's responsibility should be seen by the legislature to justify the document being subject to the access provisions of the *FOI Act*, whereas according to its primary purpose and subject it relates to the affairs of the Treasurer and touches only in this one respect on an agency outside the Treasurer's ministerial responsibility.

From what I can discern of the clause, it seems most likely that it was assumed that a process of categorisation which identified the essential nature of the document was to be undertaken, according to which the issue posed by cl 4(2)(b) would be answered. A variety of considerations might need to be considered to determine the essential nature of the document such as its primary purpose, its author, its intended addressee, its subject matter and, where more than one subject is covered, whether one or more was the primary subject and others merely incidental. Where it is a document required or envisaged by a statute, the statutory scheme might well be relevant to, or

determinative of, the question. In such a process some documents might well be properly seen as having more than one essential nature in which event it would seem to be necessary to apply cl 4(2)(b) to each of the essential natures identified. While that would lead to some arbitrary results, the incidence of these would be far more limited than if a document were to be categorised for the purposes of cl 4(2)(b) according to every subject or agency to which it might have some connection or relevance.

The words "relates to", somewhat notoriously, depend heavily on their subject, and their immediate context and object to determine their scope and reach. Like many phrases to similar effect, "relates to" is capable of meanings which range from a narrow, particular, direct and immediate relationship, to one which can be extremely broad and indiscriminate in reach and scope such as would include any adjectival or indirect relationship to any subject having any relevance to an agency. As already indicated the specific provisions of the *FOI Act* relevant to documents in the possession or control of Ministers, do not indicate a policy of generous access, to say the least, which tells against a view that any wide meaning and operation is intended in cl 4(2)(b) of the Glossary.

The words of Davies J in ***Hatfield v Health Insurance Commission*** (1987) 77 ALR 103 at 106-107 are informative in this context:

> "Expressions such as 'relating to', 'in relation to', 'in connection with' and ' in respect of ' are commonly found in legislation but invariably raise problems of statutory interpretation. They are terms which fluctuate in operation from statute to statute. As was said by Blackburn, Gallop and Neaves JJ in *Butler v Johnston* (1984) 55 ALR 265 at 268: 'It is clear that the words "in respect of" can convey a meaning of wide import, but their exact width will depend upon the context in which they appear. Reference to individual cases on different statutes is of little assistance in determining their particular meaning. The court has to construe the meaning of the words with reference to the purposes or object underlying the legislation in which they appear....'.

> The terms may have a very wide operation but they do not usually carry the widest possible ambit for they are subject to the context in which they are used, to the words with which they are associated and to the object or purpose of the statutory provisions in which they appear. In *Ausfield Pty Ltd v Leyland Motor Corp of Australia Ltd (No 2)* (1977) 14 ALR 457 it was said at 460 by Bowen CJ with whom Northrop J agreed that the words 'in relation to' in s 51(2)(a) of the *Trade Practices Act 1974* require a direct relationship and by Deane J at 462 that the words require a relationship which is direct and immediate."

The ***Hatfield*** case was a decision under the *Administrative Decisions (Judicial Review) Act* of the Commonwealth and involved a decision to refuse payments of benefits under the *Health Insurance Act* pending the completion of investigations into past claims which had been referred to the DPP. It was held, in ordering that a statement of reasons be given for the decision, that the exempting phrases "decisions relating to the administration of criminal justice" and "decisions in connection with the investigation or prosecution of persons" should be read as referring to decisions that were part of the administration of justice and part of the investigation of persons for offences and did not encompass decisions which were not made in the course of the administration of justice or the investigation of persons for offences but were simply connected therewith in an indirect manner.

In ***O'Grady v The Northern Queensland Company Limited*** (1989-1990) 169 CLR 356 the High Court had to consider provision of the *Mining Act 1968 (Q)* which conferred on a Warden's Court exclusive jurisdiction in all actions "arising in relation to mining or to any mining tenement". At 374 Toohey and Gaudron JJ, said:

> "Although 'in relation to' is an expression of broad import, in context with 'arising' it presupposes a direct connection between a presently existing action, suit or proceeding and mining or a mining tenement, not merely an incidental connection."

At 367 Dawson J, while agreeing with Toohey and Gaudron JJ, went on to say:

> "The words 'in relation to', read out of context, are wide enough to cover every conceivable connexion. But those words should not be read out of context, which in this case is provided by the *Mining Act 1968 (Q)*. What is required is a relevant relationship, having regard to the scope of the Act. Where jurisdiction is dependent upon a relation with some matter or thing, something more than a coincidental or mere connexion - something in the nature of a relevant relationship - is necessary: see *Reg v Ross-James; Ex parte Green*" (1984) 156 CLR 185 at pp 196-197, 210.

In ***Ansett Transport Industries (Operations) Pty Ltd v Comptroller of Stamps*** [1983] 2 VR 305 McGarvie J had to consider the phrase "A mortgage relating to property in Victoria" in the context of the *Stamps Act 1958* (*Vic*). At 307-308 he said:

> "I start from the proposition that the expression 'relating to' is wide enough to cover any of the matters and things relied on here by the Comptroller. It can be demonstrated that in one way or another most things are related to most other things. See D Hume, *A Treatise of Human Nature*, Book 1, 1739 Part 1, subsections 4 and 5. That however is only the first step in the process of construction: -
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> > 'To construe the words of a statute does not mean to find the dictionary meaning of the words out of context. To construe the words of a statute means to find the legal meaning or effect of the words in the context in which they are found and in the context of the law.': E A Driedger, *The Meaning and Effect of the Bill of Rights*: *A Draughtsman's Viewpoint* (1977) 9 Ottawa Law Review 303, at page 308.
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> In my opinion Parliament did not intend the words 'relating to' in section 17(4) to have their widest possible meaning and it is necessary to ascertain what limited meaning they have in their context: cf *State Government Insurance Office v Rees* (1979), 144 CLR 549, at pp. 553-4 and 560-1.
>
> ...
>
> There is a sense in which the word 'relates', commonly used, for example when a witness is asked to what a document, a

> conversation or a statement related or relates. In answer to the question the witness would be expected to say what its substance, its subject was - what it was about. The witness would not on that broad question be expected to deal with what, philosophically, the document, conversation or statement could be said to relate. Nor would the witness be expected to deal with the incidental as distinct from the substantial effect of the document, conversation or statement. If, for example, a lease in a common form obliged the tenant to pay the rates, the question to a witness as to what the lease related would not, without further probing, be expected to evoke the answer that it related to the payment of rates by the tenant, although that answer would, in a more detailed sense, strictly be a correct one."

To these cases many others could be added including ***Booth v Dillon (No 3)*** [1977] VR 143 at 144 and ***Quality Bakers Australia Limited v Bennett*** (1992) 47 IR (Qd) 448 per Moynihan J at 453.

These decisions are referred to, not because they provide a ready made answer to the present question of statutory construction but because they illustrate the difficulty in interpreting words of this type in a statute and provide some guidance as to the method which perforce must be followed in an attempt to understand what was intended by the legislature.

In the context of cl 4(2)(b) the phrase "relates to" is to be read in conjunction with the "affairs" of an agency (the City). Affairs is itself a concept which can be understood widely or narrowly. It refers to the concerns or business of the City and little thought is necessary to reveal that it is possible, if encouraged by an appropriate context, to understand that concept expansively so that it is capable of embracing any matter in which the City is in any way involved or concerned. Something of that nature seems to have been the understanding adopted and applied by the Acting Information Commissioner as indicated by her words "the business (in the broad sense of that word)" of the City. In my respectful view, however, there is nothing in the context of cl 4(2) of the Glossary or the other relevant provisions of the *FOI*

Act to encourage such a broad and expansive understanding of the concept of the affairs of an agency. Once again the Acting Information Commissioner appears to have been persuaded to the erroneous view that the *FOI Act* is intended to open up all public records to access and has been led as a consequence to read "affairs" broadly.

As already indicated, the general policy of the *FOI Act* relating to documents in the possession or under the control of a Minister does not enable the view to be taken that, in construing cl 4(2)(b) and in particular "relate to" and "affairs", a particularly wide and embracing meaning was intended to facilitate access where possible. On the other hand, while the general policy may be seen to be against access, cl 4(2)(b) may properly be viewed as an exception to that policy. Given the way it is expressed, there is no particular justification in its context for reading the exception in a particularly narrow or limited sense. The best that can be done, it seems to me, is to apply an everyday, common sense approach to the ordinary understanding of the words used, avoiding any strained limitation or expansion of the ordinary meaning.

Under the *TP & D Act* an appeal to the Minister is a distinct statutory proceeding from the consideration and decision of the City upon which that appeal was founded. By s39(2) of that Act the decision of the Minister on appeal has effect according to its own tenor. There is, nevertheless, a clear connection between the decision of the Minister and the City in that the decision of the Minister is made under the Town Planning Scheme of the City and deals with and affects the development of land within the City. Further, decision of the Minister may establish a policy or a precedent for the operation of the City's Scheme.

Turning to this particular case, there is a sense in which the essential nature of the documents in question may be described as being, in one way or another, for the purposes of enabling the appellant to consider and reach a

decision in an appeal which, by the *TP & D Act*, he was responsible for determining. Any information or submissions gathered directly by the appellant by the statutory Town Planning Advisory Committee were for that purpose, as was any report of the Committee to the appellant. On an extremely strict and narrow understanding, given the statutory scheme of the *TP & D Act*, the process of appeal might be distinguished from the administration by the City of its Town Planning Scheme. On such a basis, the process by which the Minister considered the appeal and reached his decision could arguably be seen as not an affair of the City because, directly or immediately viewed, it relates to the affairs of the Minister.

This was, in essence, the view urged on me for the appellant. But it appears to depend on two factors; a very strict and narrow reading of cl 4(2)(b) and a process of categorisation of the documents in question which requires in this case a choice to be made between the affairs of Minister on the one hand and the affairs of the City on the other. For the reasons already indicated there is no adequate justification for taking a particularly strict or narrow view of the words and effect of cl 4(2)(b) and, whereas, in some contexts and with some documents it will be appropriate to categorise them as either one thing or another, in this present context it seems to me that these appeal documents ordinarily and sensibly viewed can be seen to relate both to the affairs of the Minister, who must decide the appeal, and to the affairs of the City to whose planning scheme the appeal is applicable and under which it falls to be determined.

While it is never easy to be sure of the intention of the Parliament when words of this nature are used, especially where the policy objectives cannot be discerned or are contradictory or obscure, nevertheless, I am persuaded, on balance, to prefer the view that (exempt documents aside) the documents in the appellant's ministerial appeal file are documents which relate to the affairs of

the City in the sense intended by the Parliament in enacting cl 4(2)(b) of the Glossary to the *FOI Act*.

While the conclusion I have reached is the same as the decision of the Acting Information Commissioner, I am unable to agree in some material respects with aspects of her reasoning concerning the *FOI Act*. I have already adverted to the divergence between the apparent general objects of the *FOI Act* and the precise provisions dealing with ministerial documents. The Commissioner also drew on equivalent legislation of the Commonwealth and other States and Territories. Given the existence of differences in the legislative schemes this approach is not really instructive to the proper interpretation of the *FOI Act* in this State. The Acting Information Commissioner was also persuaded to the view that the *FOI Act* revealed a policy that documents which had a connection with the activities of government should be seen as subject to the access provisions. This purposive understanding is hardly borne out in the case of ministerial documents by the provisions of cl 4 of the Glossary, especially the exemption of the documents of other Ministers and of agencies for which the Minister is responsible. Indeed the opposite is indicated. The views formed by the Acting Information Commissioner in this respect appear to have been influenced by her reliance on the report of the Royal Commission into Activities of Government and Other Matters which she saw as stating well the rationale behind this legislation in this State. In my respectful view this was an impermissible and irrelevant reliance. It was impermissible because the report was later in time than the Bill for the *FOI Act* and it is not a report upon which interpretative reliance may be placed pursuant to s19 of the *Interpretation Act 1984*. It is irrelevant for that same reason and because the task is to construe what the legislature intended, not what some might think the legislature ought to have intended.

Nevertheless, even on a much more restricted reading of the material provisions, for the reasons given, it is my view that the documents in the ministerial appeal file in this case (apart from the exempt documents identified by the Acting Information Commissioner) are documents which relate to the affairs of another agency - the City of Canning - in the relevant sense, and are therefore documents of an agency within the meaning of s10(1) of the *FOI Act*. As a consequence the respondents have a right under the *FOI Act* to be given access to those documents.

I would dismiss the appeal and confirm the decision of the Acting Information Commissioner.