

Much ado about deadly dull documents

June 6, 2006 — 10.00am

This was published 14 years ago

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By **Matthew Moore** Freedom of Information Editor

FOR \$20 Sydney Water will sell anyone a drainage diagram, but the

NSW Government has spent thousands of dollars fighting to keep secret a letter to Sydney Water that simply requests a copy of one of its drain maps.

And that is not the only harmless document the Attorney-General's Department is trying to keep confidential. It is also so anxious to stop the release of two routine, land-title search request forms, and a standard planning certificate from Strathfield Council, that it has employed one of the country's leading experts in administrative law, Professor Margaret Allars, to help fight its case.

Even with her assistance, the department failed last month to convince the appeal panel of the Administrative Decisions Tribunal that the documents should not be released. Now it is considering whether to tip in more taxpayers' money by taking the case to the NSW Court of Appeal, the highest court in the state.

The four innocuous documents have been fought over since a feisty apple

grower from Orange, Robert Cianfrano, made a freedom-of-information request to the Attorney-General's Department last year seeking documents relating to the 1999 decision by the State Government to sell the Flemington Markets site.

He was looking for evidence to support his belief that the Government sold the market site at a price far lower than its real value.

The department gave him 56 documents but withheld another 88, including the drain letter and the three other bits of routine correspondence, all of which it ruled were exempt from the Freedom of Information Act.

Nick Greiner's government passed the act to "extend as far as possible the rights of the public to obtain access to information held by the Government" except for documents that must be withheld to allow for "the proper administration of the Government".

And the Government's reason for claiming a letter requesting a drainage diagram must not be released for fear of undermining the proper administration of NSW? It and the three other documents had "legal professional privilege" because they were part of communications between the Crown Solicitors Office, acting in the sale of the market, and a third party.

It had a technical win when the appeal panel said it was wrong in law for the tribunal to reject the Government's exemption claim on the grounds the material was administrative records. But the panel still dismissed the appeal, as the documents were not covered by privilege and should have been released.

So why is the Government so anxious to stop the release of these boring administrative records that it is considering going to the Court of Appeal? What damage could possibly flow from their release?

Neither the Attorney-General, Bob Debus, nor the head of his department, Laurie Glanfield, would attempt to answer that question. Mr Debus said the case "raised complex questions about the nature and application of legal professional privilege in FOI matters", but he would not say why it was important, nor what adverse consequences he fears.

So far the department has spent \$4400 on solicitors' fees and is waiting for a bill from Professor Allars. Mr Cianfrano estimates that will be about \$10,000. And he should know, because the Government has already spent more than \$200,000 in legal costs trying to stop him getting access to just such documents.