

Decision D0012016 – Published in note form only

***Re Papalia and Western Australia Police* [2016] WAICmr 1**

Date of Decision: 29 January 2016

Freedom of Information Act 1992: section 24, Schedule 1, clauses 3(1) and 3(6)

On 12 December 2014 Mr Paul Papalia MLA (**the complainant**) applied to the Western Australia Police (**the agency**) under the *Freedom of Information Act 1992* (**the FOI Act**) for access to documents relating to an incident outside a business premises in Mandurah. Specifically, the complainant sought access to CCTV footage of the incident as captured by the CCTV cameras operated by the business premises. In the circumstances of this matter, the Information Commissioner considered that the complainant is acting in the interests of, and with the consent of, a constituent who was involved in the incident.

The agency refused the complainant access to the disputed documents on the ground that they were exempt under clause 3(1) of Schedule 1 to the FOI Act, because they included personal information, as defined in the FOI Act, about a number of other individuals. The complainant applied for internal review of that decision. On internal review, the agency confirmed its original decision.

On 27 February 2015, the complainant applied to the Commissioner for external review of the agency's decision. Following receipt of the complaint, the Commissioner obtained the disputed documents from the agency together with the agency's FOI file maintained in respect of the complainant's access application. The Commissioner reviewed the disputed documents and carefully considered the submissions made by the complainant and the agency.

The Commissioner was satisfied that the disputed documents would, if disclosed, reveal personal information, as defined in the FOI Act, about individuals other than the complainant. Therefore, the Commissioner considered that the disputed documents are on their face exempt under clause 3(1).

The Commissioner considered the application of the limit on the exemption in clause 3(6), which provides that matter is not exempt under subclause (1) if its disclosure would, on balance, be in the public interest.

The complainant submitted that it was in the public interest to disclose the disputed documents to ensure community confidence in the manner in which the agency conducted investigations into such alleged incidents. However, the Commissioner was satisfied the public interests identified by the complainant had largely been satisfied in this particular case. The agency had previously shown the footage to the complainant's constituent, her family and her lawyer; and, in meetings on 5 March 2014 and 18 March 2014, the investigative actions, including witness accounts and the medical report and reasons for arriving at the outcome of the investigation were explained to the complainant's constituent, various family members and the complainant's constituent's lawyer.

The Commissioner considered that the agency had provided sufficient information detailing the incident to enable the complainant to pursue any concerns he had with the agency investigation into the incident with other appropriate bodies.

In balancing the competing public interests, the Commissioner was of the view that the public interest in protecting the privacy of third parties outweighed the public interest in disclosure of personal information about third parties to the complainant.

On 4 December 2015, the Information Commissioner advised the complainant in a preliminary view letter that, in his view, the disputed documents were exempt under clause 3(1) as claimed by the agency. The complainant was invited to withdraw the complaint or, alternatively, to provide further submissions. The complainant made further submissions to the Commissioner. The Commissioner considered the complainant's further submissions.

However, the Commissioner did not consider that the complainant's submissions raised any new matters relevant to his consideration. Therefore, the Commissioner was not dissuaded from his preliminary view.

The Commissioner also considered that it was not practicable for the agency to edit the disputed documents pursuant to section 24 of the FOI Act, to delete that personal information. Specifically, the Commissioner considered that any personal information about the complainant was inextricably intertwined with personal information of other individuals.

Accordingly, the Commissioner confirmed the agency's decision and found that the disputed documents were exempt under clause 3(1) of Schedule 1 to the FOI Act.