

Decision D0022012 - Published in note form only

***Re Mackenzie and Western Australia Police* [2012] WAICmr 2**

Date of Decision: 5 January 2012

***Freedom of Information Act 1992:* sections 6 and 23(2); Schedule 1, clauses 3(1) and 3(6)**

In 2003, the complainant was convicted on three counts including wilful murder, and a sentence of imprisonment of 25 years was imposed. The complainant's appeal against his conviction and sentence was dismissed by the Court of Criminal Appeal in 2004. In 2010, the complainant applied to the agency for access under the *Freedom of Information Act 1992* ('the FOI Act') to the fingerprints and palmprints collected during the agency's investigation into the allegations made against the complainant. For the purposes of the FOI Act those records are 'documents'.

The agency advised the complainant that he could access his own prints outside the FOI Act and therefore, pursuant to s.6 of the FOI Act, the access procedures under the FOI Act did not apply to that matter. The agency refused the complainant access to the remaining documents, without identifying any of them, under s.23(2) of the FOI Act, on the basis that it was apparent from the nature of the documents as described in the complainant's access application that they were exempt under clause 3(1). The agency confirmed its decision on internal review. Subsequently, the complainant applied to the Information Commissioner for external review of the agency's decision.

Following discussions between the Commissioner's office and the parties, the agency withdrew its claim under s.23(2) but maintained its claim that the documents were exempt under clause 3(1) and the complainant accepted that the only matter in dispute was the prints of third parties.

In November 2011, the Commissioner's Investigations Officer advised the parties in writing of her view of the matter, which was that the disputed documents were exempt under clause 3(1) as the agency claimed because their disclosure would reveal personal information about third parties. Clause 1 of the Glossary to the FOI Act makes it clear that 'personal information' is information about an identifiable person and specifically refers to identifying particulars such as fingerprints. The complainant was invited to make further submissions to the Commissioner as to why clause 3(1) did not apply in this case and in particular, to explain why disclosure of the disputed documents would, on balance, be in the public interest, pursuant to clause 3(6).

In response, the complainant did not address the specific issues and provided no further information to show that the limit on the exemption in clause 3(6) applied. The Commissioner reviewed the disputed documents and found that, if disclosed, they would reveal 'personal information' as defined in the FOI Act about third parties. In the circumstances of this complaint, the Commissioner did not consider that the strong public interest in privacy was outweighed by any other public interest that required the disclosure of personal information about third parties to the complainant. The Commissioner found that the disputed documents were exempt under clause 3(1) of Schedule 1 to the FOI Act and confirmed the agency's decision to refuse access to those documents.