

**OFFICE OF THE INFORMATION
COMMISSIONER (W.A.)**

**File Ref: F2018208
Decision Ref: D0032020**

Participants:

‘V’
Complainant

- and -

Curtin University
Agency

DECISION AND REASONS FOR DECISION

FREEDOM OF INFORMATION – refusal of access – audio records of interviews – clause 3 – personal information – clause 3(2) – personal information about applicant – clause 3(3) – prescribed details – clause 3(4) – prescribed details; services performed under contract – clause 3(6) – whether disclosure would, on balance, be in the public interest

Freedom of Information Act 1992 (WA): sections 21, 24, 26 and 102(3); Schedule 1, clauses 3(1), 3(2), 3(3), 3(4), 3(5), 3(6), 7(1) and 8(2)

Freedom of Information Regulations 1993 (WA): regulations 9(1) and 9(2)

Applicant VEAL of 2002 v Minister for Immigration and Multicultural and Indigenous Affairs (2005) 225 CLR 88

DPP v Smith [1991] 1 VR 63

Police Force of Western Australia v Kelly (1996) 17 WAR 9

Police Force of Western Australia v Winterton (Unreported, Supreme Court of WA, Library No 970646, 27 November 1997)

Public Transport Authority [2018] WASC 47

Re ‘A’ and West Coast Institute of Training [2013] WAICmr 14

Re E and Royal Perth Hospital [2011] WAICmr 19

Re ‘J’ and Western Australian Land Information Authority (Landgate) [2015] WAICmr 10

Re Malik and Office of the Public Sector Standards Commissioner [2010] WAICmr 25

Re Weygers and Department of Education and Training [2007] WAICmr 16

DECISION

The agency's decision is varied. I find that the disputed documents are exempt under clause 3(1) of Schedule 1 to the *Freedom of Information Act 1992* (WA).

Catherine Fletcher
INFORMATION COMMISSIONER

18 March 2020

REASONS FOR DECISION

1. This matter arises from a decision made by Curtin University (**the agency**) to refuse 'V' (**the complainant**) access to documents under the *Freedom of Information Act 1992* (WA) (**the FOI Act**). To protect the complainant's privacy, I have decided not to identify the complainant by name in the particular circumstances of this matter.

BACKGROUND

2. On 15 January 2018, the complainant applied to the agency under the FOI Act for access to documents relating to particular complaints lodged with the agency about him when he was employed by the agency. At that stage, there were 15 parts to the complainant's access application. The requested documents included certain documents that related to the investigation report prepared by an external investigator and nine audio records of interviews referred to in the investigation report (**audio records of interview**).
3. By notice of decision dated 16 March 2018, the agency identified 378 documents within the scope of the complainant's access application. The agency gave the complainant access in full to 28 documents; access to edited copies of 294 documents and refused access in full to 56 documents, including the audio records of interview.
4. On 3 April 2018, the complainant applied for internal review of the agency's decision. By internal review decision dated 19 April 2018, the agency varied its decision in part and released additional information to the complainant. The agency confirmed the remaining aspects of its decision including its decision to refuse access to the audio records of interviews on the ground they were exempt under clauses 3(1) and 8(2) of Schedule 1 to the FOI Act.
5. On 6 June 2018, the complainant applied to my office for external review of the agency's decision to refuse him access in full or in part to documents under clauses 3(1), 8(2) and 7(1) of Schedule 1 to the FOI Act, including the decision to refuse him access to the audio records of interview. In addition, the complainant claimed that further documents existed within the scope of his access application and that the agency had, in effect, refused him access to those documents under section 26 of the FOI Act (**section 26**), on the basis that those documents cannot be found or do not exist.

REVIEW BY THE INFORMATION COMMISSIONER

6. The agency provided my office with copies of the documents then in dispute together with its FOI file maintained in respect of the access application.
7. As a result of inquiries by my office, the agency identified additional documents that it released to the complainant. The complainant also reduced the scope of the issues remaining in dispute. Further efforts to resolve the matter by conciliation between the parties were unsuccessful.
8. On 19 December 2019, after considering the material then before me, I provided the parties with my preliminary view of the matter (**preliminary view letter**). It was my

preliminary view that the information and documents then remaining in dispute – including the audio records of interview – were exempt under clause 3(1) of Schedule 1 to the FOI Act (**clause 3(1)**); and that the agency’s decision to, in effect, refuse the complainant access to further documents under section 26, on the basis that those documents either cannot be found or do not exist, was justified.

9. In light of my preliminary view, I invited the complainant to accept my preliminary view or to provide me with further submissions, by 31 January 2020. I also invited the agency to give the complainant access to a document that I considered came within the scope of the complainant’s access application, which the agency did on 6 January 2020.
10. By letter dated 31 January 2020, the complainant advised that he accepted my view that the agency’s decision under section 26 was justified. He also advised that the only documents that he wished to pursue access to and that remained in dispute are the nine audio records of interviews described as Appendices 40 to 48 in the investigation report dated 12 July 2017 prepared by the external investigator in relation to workplace allegations against him (**the Investigation Report**).
11. In light of the complainant’s advice, the only issue remaining in dispute that I am required to determine is whether the nine audio records of interview described above are exempt.

THE DISPUTED DOCUMENTS

12. The disputed documents are nine audio records of interviews described as Appendices 40 to 48 in the Investigation Report.
13. The agency claims that the disputed documents are exempt under clauses 3(1) and 8(2) of Schedule 1 to the FOI Act.

CLAUSE 3 – PERSONAL INFORMATION

14. Clause 3 of Schedule 1 to the FOI Act provides as follows.
 - (1) *Matter is exempt matter if its disclosure would reveal personal information about an individual (whether living or dead).*
 - (2) *Matter is not exempt matter under subclause (1) merely because its disclosure would reveal personal information about the applicant.*
 - (3) *Matter is not exempt matter under subclause (1) merely because its disclosure would reveal, in relation to a person who is or has been an officer of an agency, prescribed details relating to -*
 - (a) *the person;*
 - (b) *the person’s position or functions as an officer; or*
 - (c) *things done by the person in the course of performing functions as an officer.*

- (4) *Matter is not exempt matter under subclause (1) merely because its disclosure would reveal, in relation to a person who performs, or has performed, services for an agency under a contract for services, prescribed details relating to –*
 - (a) *the person;*
 - (b) *the contract; or*
 - (c) *things done by the person in performing services under the contract.*
- (5) *Matter is not exempt matter under subclause (1) if the applicant provides evidence establishing that the individual concerned consents to the disclosure of the matter to the applicant.*
- (6) *Matter is not exempt matter under subclause (1) if its disclosure would, on balance, be in the public interest.*

15. The term ‘personal information’ is defined in the Glossary to the FOI Act to mean:

[I]nformation or an opinion, whether true or not, and whether recorded in a material form or not, about an individual, whether living or dead –

- (a) *whose identity is apparent or can reasonably be ascertained from the information or opinion; or*
- (b) *who can be identified by reference to an identification number or other identifying particular such as a fingerprint, retina print or body sample.*

16. The definition of ‘personal information’ makes it clear that any information or opinion about an individual whose identity is apparent – or whose identity can reasonably be ascertained from the information or opinion – is, on its face, exempt information under clause 3(1).

17. The purpose of the exemption in clause 3(1) is intended to protect the privacy of individuals about whom personal information may be contained in documents held by State and local government agencies. I agree with my predecessors that the FOI Act is intended to make Government, its agencies and officers more accountable, not to call to account or unnecessarily intrude upon the privacy of private individuals, where there is no demonstrable benefit to the public interest in doing so.

The agency’s submissions

18. In its notices of decision dated 16 March 2018 and 19 April 2018, the agency submits, in summary, that:

- the public interest in protecting an individual’s privacy outweighs the public interest in the disclosure of personal information about an individual to another individual;

- there is a strong public interest in individuals being able to exercise their right to make a complaint in private, where they feel aggrieved within their workplace;
- each of the interviewees made their statements in confidence and on a voluntary basis and the statements have been treated as confidential by the agency. It is very likely that people will not be prepared to participate in such interviews in the future if those documents are released under the FOI Act;
- the disputed information is not prescribed details, as defined in the FOI Act, therefore there is a public interest in not disclosing that information;
- there is a public interest in individuals such as the complainant being given access to the substance of allegations made against them;
- there is a public interest in agencies being accountable for their management of an investigation into grievances, which public interest has been addressed by the provision to the complainant of a large number of documents, including the Investigation Report;
- disclosure under the FOI Act is disclosure to the world at large; and
- in weighing the public interest factors for and against disclosure, the factors favouring non-disclosure outweigh those favouring disclosure.

The complainant's submissions

19. In the complainant's applications for internal and external review, he submits, in summary, that:
 - as all of the information contained in the disputed documents relate to complaints made against him, he is entitled to access all of the information in those documents;
 - as the disputed matter consists of personal information about the complainant, it should be disclosed to him;
 - the agency's 'Workplace Bullying and Staff Misconduct Investigation Standards' *'required the Investigator to ensure appropriate levels of disclosure were made to [the complainant] at all steps of the investigation process'*; and
 - the records of interview were not provided or treated in confidence and are therefore not confidential.
20. In his further submissions dated 31 January 2020 (**further submissions**), in response to my preliminary view letter, the complainant advised that he does not accept that the disputed documents are exempt under clause 3(1) and provided further submissions as to why those documents are not exempt on that basis.

21. The complainant advises that he only seeks access to the personal information about him contained in the disputed documents. He claims that his personal information includes the questions that the investigator asked the interviewees about him during the interviews. I note that the nine records of interviews relate to interviews with individuals other than the complainant and that the complainant was not one of the interviewees.
22. In his further submissions, the complainant submits, in summary, as follows:
- The agency's release of the Investigation Report to him amounts to disclosure to the world at large and is no longer confidential. As a result, information in that report that was 'allegedly provided voluntarily by the two complainants and the seven alleged witnesses, together with their associated names, is no longer confidential'. In addition, his personal information in the report, including his personal information in the nine audio records of interview, is no longer confidential and can be released to the world at large. This includes the 'comments, observations, opinions and views' expressed by the interviewees about him.
 - The limit on the exemption in clause 3(2) applies and he does not accept my view that the personal information about him contained in the audio records of interview is inextricably interwoven with personal information about other individuals.
 - He does not accept my view that it is not practicable for the agency to give him access to edited copies of the disputed documents with the exempt matter deleted. He states that the investigator '*had no difficulty in extracting and reporting verbatim considerable volumes of personal information about [the complainant] from all the records of audio interviews...[i]t should therefore be very straight forward for Curtin University to extract all the requested personal information about [him] from the [audio records of interview].*
 - Because of section 21 of the FOI Act, he expects that all personal information about him which is held by the agency and contained in the audio records of interview would be disclosed to him.
 - In order to satisfy the public interest in 'individuals like [the complainant] being properly informed', all of the personal information about him contained in the disputed documents should be disclosed.
 - It is evident from the documents disclosed to him that senior officers of the agency who made decisions about terminating his employment did not consider his response to the Investigation Report. Therefore, the public interest in the accountability of agencies for personnel management issues has not been satisfied by the information given to him by the agency.
 - The public interest in agencies adhering to statutory requirements in personnel management issues has not been satisfied by the information given to him because the agency did not review his case as required by the applicable enterprise agreement.

23. The complainant also states:

In particular, each record of the audio interviews will contain very precise, extractable and intelligible questions about me that the investigator, during interview, put to each of the complainants and to each of the alleged witnesses (“the Investigator’s Questions and Comments”). I request that as part of their disclosure of personal information about me which is contained in the [audio records of interview], Curtin University releases the Investigator’s Questions and Comments.

and

In summary, there is a considerable weight of argument that the public interest considerations have not been satisfied, both in terms of access to personal information about [the complainant] and the conduct of Curtin University in not adhering to its statutory requirements.

It is in the public interest that Curtin University be brought to account.

Consideration

24. The disputed documents contain information about a number of individuals whose identities are apparent or can reasonably be ascertained from the information, including from their voices. In my view, if disclosed, that information would reveal personal information, as defined in the FOI Act, about a number of individuals including the complainant, the investigator and the interviewees. Accordingly, I consider that the disputed documents are, on their face, exempt under clause 3(1).
25. Although the disputed documents are on their face exempt from disclosure, clause 3(1) is subject to certain limits on exemption as set out in clauses 3(2)-3(6).
26. I understand from the information provided to my office that, in addition to the documents disclosed to the complainant by the agency in response to his access application the subject of this external review, on 26 July 2017, the agency gave the complainant a copy of the Investigation Report without the 49 appendices, which included the nine audio records of interview described as appendices 41 to 48. The Investigation Report given to the complainant was otherwise unedited and disclosed, among other things, the names of the people who were interviewed by the investigator and information provided by the named interviewees during interview. The information disclosed on pages 8 and 9 of the Investigation Report referred to nine records of audio interviews examined by the investigator, including the name of the interviewee and referred to each record of audio interview as Appendix 40 to 48 respectively.
27. Accordingly, in the circumstances, it is evident that the complainant is aware of the identities of the interviewees and that information provided by the interviewees during their interviews has been disclosed to him. However, the right of access under the FOI Act to a document does not depend on how much of the information in the document is already known by an access applicant. In the decision of the Supreme Court of

Western Australia in *Police Force of Western Australia v Kelly* (1996) 17 WAR 9, Anderson J made the following comments that I consider are relevant to this case:

In considering the question of whether exemption is lost once the matter has found its way into the hands of the applicant or into public hands, I think it must be remembered that what is under consideration is the right of access to the particular documents of an agency. One would not expect the character of the documents as exempt documents to depend on whether, by some means, the subject matter of the documents, or some of it, had already got out...it would mean that an applicant could overcome a claim of exemption by showing or claiming that he already knew something of the matter from other sources. I do not think it could have been intended that exemption should depend on how much the applicant already knows or claims to know of the matter. Also the Act plainly contemplates that, as regards exempt material, the agency may give access to some documents or parts of documents but refuse access to others dealing with the same subject

28. I agree with those comments, although the question of what the complainant may know may be relevant to the operation of clause 3(6) which relates to the public interest: see *Re Weygers and Department of Education and Training* [2007] WAICmr 16 (**Re Weygers**) at [22]-[23].
29. I observe that, generally speaking, in some documents – including those involving workplace complaints or grievances, as is the case here – it is not possible to separate an access applicant’s personal information from other people’s personal information. For example, in witness statements or records of interviews that contain the comments, opinions or thoughts of another person about an incident or situation that involved the access applicant. If it is not possible to separate personal information, access may be refused to all of the personal information – the access applicant’s and other peoples’ – on the basis that it is all exempt under clause 3(1): see for example, *Re E and Royal Perth Hospital* [2011] WAICmr 19 where the Information Commissioner (**the Commissioner**) found the records of interviews with the access applicant’s co-workers – that were attached to an investigation report prepared by an external consultant into a workplace grievance claim lodged by the access applicant in that case – exempt in full under clause 3(1). See also *Re ‘J’ and Western Australian Land Information Authority (Landgate)* [2015] WAICmr 10 and *Re ‘A’ and West Coast Institute of Training* [2013] WAICmr 14.

Clause 3(2)

30. Clause 3(2) provides that matter is not exempt under clause 3(1) merely because its disclosure would reveal personal information about the applicant (in this case, the complainant).
31. In my view, the word ‘merely’ in clause 3(2) has its ordinary meaning of ‘solely’ or ‘no more than’ personal information about the applicant.
32. The complainant claims that the limit on the exemption in clause 3(2) applies to the disputed documents. He advises that he does not accept my view that the personal

information about him in those documents is inextricably interwoven with personal information about other individuals.

33. The complainant claims that the investigator ‘had no difficulty in extracting and reporting verbatim considerable volumes of personal information about [him] from all the records of audio interviews’ and that it should therefore be straight forward to extract the requested personal information about him from the disputed documents.
34. However, the information disclosed to the complainant in the Investigation Report from the audio records of interview, including opinions or comments about him, is not merely personal information about the complainant; it also consists of personal information about other people. Similarly, the information about the complainant in the audio records of interviews, including opinions or comments about him, consists of personal information about the complainant as well as personal information about other people.
35. I also consider that the questions that the investigator asked the interviewees about the complainant discloses personal information about the interviewee as well as personal information about the complainant. Accordingly, I consider that those questions do not merely disclose personal information about the complainant.
36. Following receipt of the complainant’s further submissions, my Investigations Officer has listened to the nine audio records of interviews (approximately 9 hours in total) having regard to the complainant’s advice that he only seeks access to the personal information about him which he claims includes the questions about him that the investigator asked the interviewees during the interviews.
37. My officer has listened to those recordings to clarify whether (a) the personal information about the complainant can be separated from personal information about other people such that the limit on exemption in clause 3(2) would apply, meaning the information would not be exempt; and (b) it would be practicable to give the complainant an edited copy of the disputed documents with the exempt matter deleted.
38. Based on my officer’s advice, I am satisfied that the personal information about the complainant in the audio records of interviews is interwoven with personal information about other individuals – including the interviewees’ voice – in such a way that is not possible for the agency to give the complainant access to the information about him without also disclosing personal information about the other individuals. Consequently, although the complainant submits that he only seeks access to the personal information about him in the audio records of interview, it is not possible in this case to separate his personal information from the personal information of the interviewees.
39. As a result, I consider that the disclosure of the complainant’s personal information would do more than ‘merely’ reveal personal information about the complainant and that the limit in clause 3(2) therefore does not apply: see *Re Malik and Office of the Public Sector Standards Commissioner* [2010] WAICmr 25 at [33].

Clauses 3(3) and 3(4)

40. Clauses 3(3) and 3(4) provide that information is not exempt merely because its disclosure would reveal ‘prescribed details’ in relation to officers or former officers of an agency or persons who perform or have performed services for an agency under a contract for services.
41. Like the meaning of the word ‘merely’ in clause 3(2), in my view ‘merely’ in clauses 3(3) and 3(4) has its ordinary meaning of ‘solely’ or ‘no more than’ prescribed details about an officer or persons who have performed services for an agency.
42. I note that the FOI Act makes a distinction between:
- purely private information, such as a person’s home address or health details; and
 - information that relates solely to the person’s performance of functions, duties or services for the agency.
43. The second of the above categories of information is limited to the specific information listed as ‘prescribed details’ in regulations 9(1) and 9(2) of the *Freedom of Information Regulations* 1993. Regulations 9(1) and 9(2) provide as follows:
- (1) *In relation to a person who is or has been an officer of an agency, details of—*
- (a) *the person’s name;*
 - (b) *any qualifications held by the person relevant to the person’s position in the agency;*
 - (c) *the position held by the person in the agency;*
 - (d) *the functions and duties of the person, as described in any job description document for the position held by the person; or*
 - (e) *anything done by the person in the course of performing or purporting to perform the person’s functions or duties as an officer as described in any job description document for the position held by the person,*
- are prescribed details for the purposes of Schedule 1, clause 3(3) of the Act.*
- (2) *In relation to a person who performs or has performed services for an agency under a contract for services, details of—*
- (a) *the person’s name;*
 - (b) *any qualifications held by the person relevant to the person’s position or the services provided or to be provided pursuant to the contract;*
 - (c) *the title of the position set out in the contract;*
 - (d) *the nature of services to be provided and described in the contract;*
 - (e) *the functions and duties of the position or the details of the services to be provided under the contract, as described in the contract or otherwise conveyed to the person pursuant to the contract; or*
 - (f) *anything done by the person in the course of performing or purporting to perform the person’s functions or duties or services, as*

described in the contract or otherwise conveyed to the person pursuant to the contract,

are prescribed details for the purposes of Schedule 1, clause 3(4) of the Act.

44. In effect, Regulation 9 provides that some, but not all, work-related information about an officer or contractor will not be exempt under clause 3(1).
45. In this case, I consider that the personal information about officers of the agency contained in the disputed documents goes beyond the kind of work-related information set out in Regulation 9(1) of the Regulations. Therefore, I consider that this information does not constitute prescribed details such that the limit on exemption in clause 3(3) applies.
46. The audio records of interview do contain some information that I consider consists of prescribed details relating to the investigator, as set out in Regulation 9(2), including his name and things done by him in the course of undertaking his external investigation for the agency.
47. The beginning and end of each of the audio records of interviews contain a small amount of information that consists of comments and questions by the investigator about the conduct of the interview and the investigator's name. I consider that the disclosure of that small amount of information would do no more than reveal prescribed details relating to the investigator. Therefore, I am of the view that the limit on exemption in clause 3(4) applies to that information.
48. However, I consider that the remainder of the prescribed details relating to the investigator, which consists of his comments and questions asked of the interviewees, is inextricably intertwined with personal information about other individuals such that its disclosure would not 'merely' reveal prescribed details about the investigator. Therefore, I am of the view that the limit on exemption in clause 3(4) does not apply to that information.

Clause 3(5)

49. Clause 3(5) provides that matter is not exempt if the applicant provides evidence establishing that the individuals concerned consents to disclosure of their personal information to the applicant.
50. As there is no information before me to establish that any of the other individuals referred to in the disputed documents consent to the disclosure of his or her personal information to the complainant, the limit in clause 3(5) does not apply to the disputed documents.

Clause 3(6)

51. As I consider that none of the other limits on the exemption in clause 3 applies, it remains for me to decide whether the limit in clause 3(6) applies.

52. Clause 3(6) provides that matter will not be exempt under clause 3(1) if its disclosure would, on balance, be in the public interest. Under section 102(3) of the FOI Act, the complainant bears the onus of establishing that it would, on balance, be in the public interest for the agency to disclose to him personal information about other people.
53. The issue for me to determine in this matter is whether the disclosure of otherwise exempt personal information would, on balance, be in the public interest.
54. Determining whether or not disclosure would, on balance, be in the public interest involves identifying the relevant competing public interests – those favouring disclosure and those favouring non-disclosure – weighing them against each other and making a judgement as to where the balance lies in the circumstances of the particular case.
55. The term ‘public interest’ is not defined in the FOI Act. However, in my view, the term is best described in the decision by the Supreme Court of Victoria in *DPP v Smith* [1991] 1 VR 63 at page 65, where the Court said:

The public interest is a term embracing matters, among others, of standards of human conduct and of the functioning of government and government instrumentalities tacitly accepted and acknowledged to be for the good order of society and for the well-being of its members. The interest is therefore the interest of the public as distinct from the interest of an individual or individuals...

56. I understand that the complainant has a personal interest in the disclosure to him of the disputed documents. However, the public interest is not primarily concerned with the personal interests of the particular access applicant. Rather, the question is whether disclosure of the information would be of some benefit to the public generally.
57. Section 21 of the FOI Act provides that the fact that matter is personal information about the applicant must be considered as a factor in favour of disclosure for the purpose of making a decision as to whether it is in the public interest for the matter to be disclosed. Accordingly, I have taken section 21 into consideration for the purposes of weighing up factors in favour of disclosure. However, section 21 does not mean, as the complainant contends, that all personal information about him held by the agency and recorded in the disputed documents is not exempt and will be disclosed to him. As observed by the Commissioner in *Re ‘A’ and West Coast Institute of Training* [2013] WAICmr 14, the right of an applicant to access their own personal information under the FOI Act is not absolute.
58. In favour of disclosure of the audio records of interview, I consider that there is a public interest in individuals, like the complainant, who have had allegations made against them in the workplace, being informed of the allegations and being given an opportunity to respond, as well as being informed of what action has been taken in respect of the allegations and the outcome of that action.
59. I understand from the information the complainant has provided to my office that, on 1 March 2017, the complainant was given a copy of the two complaints made against him and was given 10 days to provide his response. He advises that he provided his response on 15 March 2017. On 26 July 2017, the agency gave the complainant a copy

of the Investigation Report dated 12 July 2017 without the 49 appendices which included the audio records of interview. The information in the Investigation Report disclosed to the complainant included the particulars of the complaints against him; the names of the complainants; the names of the people who were interviewed by the investigator and information provided by the named interviewees during interview. The Investigation Report provided to the complainant set out the action taken in respect of the allegations and the outcome of that action. The complainant has advised that he was given 14 days to provide his response to the Investigation Report, which he provided on 15 August 2017 by way of an 89-page submission. Consequently, I consider that the public interests identified in the preceding paragraph have been satisfied in this case.

60. I also consider that there is a public interest in the accountability of agencies for their actions and decisions. In this case, I consider that this public interest has been satisfied by the information the agency has provided to the complainant which includes a full, unedited copy of the Investigation Report, albeit without the appendices. The Investigation Report given to the complainant sets out the basis for the conclusions reached in respect of the allegations made against him and the material considered relevant to the investigation process. In any event, I do not consider that the public interest in the accountability of the agency, or in ‘holding the agency to account’ as the complainant submits, will be furthered by the disclosure of the audio records of interview.
61. The complainant contends that the agency did not consider his 89-page response to the Investigation Report before deciding to terminate his employment and did not adhere to statutory requirements by failing to convene a review of his case as required by the applicable enterprise agreement. It is outside my jurisdiction to decide those issues. However, even if those contentions were substantiated, I do not consider that those factors would weigh in favour of disclosure of the audio records of interview.
62. I also note that it is open to the complainant to raise his concerns with other authorities including the Parliamentary Commissioner for Administrative Investigations (**the Ombudsman**) and I understand that he has done so. I also observe that the Ombudsman has the power to require an agency to produce documents and information to him for the purpose of investigating a complaint about the administrative actions or omissions of a government agency. It therefore appears to me that the agency can be called to account for its actions without the personal information about third parties contained in the disputed documents being disclosed to the complainant under the FOI process.
63. I have considered whether procedural fairness requires that the complainant be given a copy of the audio records of interview such that this is a factor in favour of disclosure.
64. In *Re Weygers*, the complainant in that matter sought access to certain complaints made against him. While the substance of the allegations made had been given to him, the complainant submitted that he should be given copies of the originals of the complaints in full. In addressing this claim, the Commissioner made the following comments at [49]-[50]:

I do not consider that procedural fairness or the public interest otherwise necessarily requires the disclosure of the primary documents setting out the allegations made against the complainant, particularly where that is balanced, as here, against the public interest in the protection of personal privacy. In my view, it is not essential to procedural fairness that persons who have allegations made against them receive the actual written allegations, or other supporting documents, provided that the substance of those allegations is disclosed.

In Re Viatores cum Christo Inc and Department of Consumer and Employment Protection [2006] WAICmr 16 at 45, I said:

“The requirements of procedural fairness are flexible and vary according to the circumstances of each case: see Mason J in Kioa v West [1985] HCA 81; [1985] 159 CLR 550 at 585. Ordinarily the duty to act fairly requires that a person be given an opportunity to know the substance of the case made against that person: see McEniery and Medical Board of Queensland [1994] QICmr 2; [1994] 1 QAR 349 at 363.”

I agree with those views.

65. Relevantly, I also note that in *Applicant VEAL of 2002 v Minister for Immigration and Multicultural and Indigenous Affairs* (2005) 225 CLR 88, the High Court held that, while the Refugee Review Tribunal (**the Tribunal**) in that case should have advised the appellant of the substance of allegations contained in a letter given to the Tribunal – in circumstances where the Tribunal was reviewing a decision to refuse the appellant’s application for a protection visa – procedural fairness did not require the Tribunal to provide the appellant with a copy of the letter.
66. Consequently, I do not consider that procedural fairness requires that the complainant be given a copy of the audio records of interview in this case.
67. In favour of non-disclosure of the audio records of interview, I recognise that there is a strong public interest in maintaining personal privacy. That public interest is recognised by the inclusion in the FOI Act of the exemption in clause 3(1). My predecessors have consistently expressed the view that the public interest in maintaining personal privacy is a strong one and may only be displaced by some other strong or compelling public interest or interests that require the disclosure of personal information about one person to another person. I agree with that view.
68. I am also satisfied on the information before me that the interviewees in this case participated in the interviews on a voluntary basis and on the understanding that the interviews were being recorded and that the information provided during interview was given in confidence. I consider that, in workplace grievance matters – where information is given to investigators voluntarily and steps are taken to ensure that such information is given in confidence – there is a real risk that disclosure of that information would dissuade some staff members from volunteering information in similar situations in future. Similarly, staff may be less likely in the future to consent to their interview being recorded if the audio records of such interviews are disclosed under the FOI Act. Accordingly, I consider that these are factors weighing against disclosure.

69. As no restrictions or conditions can be placed upon the release of documents under the FOI Act, it is well established that disclosure of information under the FOI Act is disclosure to the world at large: see *Public Transport Authority* [2018] WASC 47 at [71]. Accordingly, when considering whether or not to disclose documents under the FOI Act, the effects of disclosure are generally considered as though disclosure were to the world, rather than only to the particular access applicant.
70. In my view, it is not in the public interest for personal information about third parties to be placed in the public domain by way of the FOI Act, where there is no demonstrable benefit to the public in doing so.
71. In taking account of all of the information presently before me, I am not persuaded that the general right of access and the regime of openness and accountability inherent in the FOI Act requires the disclosure to the complainant of personal information about other people in this case. Having weighed the competing public interests, I do not consider that those favouring disclosure outweigh the public interests against disclosure. Accordingly, I consider that the limit on the exemption in clause 3(6) does not apply and I find that the disputed documents are exempt under clause 3(1) of Schedule 1 to the FOI Act.
72. In light of that finding, it is not necessary for me to consider the agency's claim that the disputed documents are exempt under clause 8(2) of Schedule 1 to the FOI Act and I have not done so.

Section 24 - Editing

73. As stated at [47], I consider that there is a small amount of personal information in the audio records of interviews about the investigator that consists of prescribed details that is not exempt under clause 3(1) by virtue of the limit on exemption in clause 3(4). Accordingly, I have considered whether the agency is obliged under section 24 of the FOI Act to give the complainant access to edited copies of the disputed documents deleting all of the exempt information and disclosing only the information that I consider is not exempt.
74. Section 24 provides as follows:

If-

- (a) *the access application requests access to a document containing exempt matter; and*
- (b) *it is practicable for the agency to give access to a copy of the document from which the exempt matter has been deleted; and*
- (c) *the agency considers (either from the terms of the application or after consultation with the applicant) that the applicant would wish to be given access to an edited copy,*

the agency has to give access to an edited copy even if the document is the subject of an exemption certificate.

75. The application of section 24, and particularly the qualification contained in paragraph (b), was discussed by Scott J in *Police Force of Western Australia v Winterton* (Unreported, Supreme Court of WA, Library No 970646, 27 November 1997) (*Winterton*) at page 16, as follows:

It seems to me that the reference to the word “practicable” is a reference not only to any physical impediment in relation to reproduction but also to the requirement that the editing of the document should be possible in such a way that the document does not lose either its meaning or its context. In that respect, where documents only require editing to the extent that the deletions are of a minor and inconsequential nature and the substance of the document still makes sense and can be read and comprehended in context, the documents should be disclosed. Where that is not possible, however, in my opinion, s.24 should not be used to provide access to documents which have been so substantially altered as to make them either misleading or unintelligible.

76. As stated at [37], following receipt of the complainant’s further submissions, my officer has listened to the nine audio records of interviews to clarify whether it would be practicable to give the complainant an edited copy of those documents with the exempt matter deleted, in accordance with *Winterton*.
77. Based on my officer’s advice, I am satisfied that, if the exempt personal information is deleted from the audio records of interview, there would only be a very small amount of information remaining. I consider that the editing required to delete all of the exempt personal information would result in the loss of both the meaning and the context of the documents. In my view, a document that contains, effectively, only the prescribed details referred to above would be a document that is unintelligible in context.
78. Accordingly, I do not consider that the agency is obliged under section 24 of the FOI Act to give the complainant access to edited copies of the disputed documents.
79. The complainant advised that he did not accept my preliminary view that it is not practicable for the agency to give him access to edited copies of the disputed documents with the exempt matter deleted, in accordance with section 24.
80. The complainant submits that the personal information about him can be extracted from the disputed documents and access given to that information. However, as I have already said, I consider that the personal information about the complainant in the audio records of interviews is so intertwined with the personal information about other individuals that is not possible for the agency to give the complainant access to the information about him without also disclosing personal information about other individuals. As a result, I consider that all of that personal information – both the complainant’s and that of other individuals – is exempt under clause 3(1).

CONCLUSION

81. For the reasons given in this decision, I find that the disputed documents are exempt under clause 3(1) of Schedule 1 to the FOI Act. Accordingly, the agency's decision is varied.
