

Decision D0032022 – Published in note form only

Re ‘C’ and Edith Cowan University [2022] WAICmr 3

Date of Decision: 30 March 2022

Freedom of Information Act 1992 (WA): sections 32, 69(2) and 70; Schedule 1, clauses 3

On 28 January 2021, ‘C’ (**the complainant**) applied to Edith Cowan University (**the agency**) under the *Freedom of Information Act 1992 (WA)* (**the FOI Act**) for access to documents relating to allegations of misconduct made against him. Given the sensitive and personal nature of this matter, the Information Commissioner (**the Commissioner**) decided not to identify the complainant.

By notice of decision dated 23 March 2021, the agency identified 79 documents within the scope of the complainant’s access application. Full access was given to 39 documents and edited access to 40 documents. On 23 April 2021, the complainant applied for internal review of the agency’s decision.

On 7 May 2021, the agency varied its decision. The agency claimed that the documents it gave edited access to were variously exempt under clause 3(1) of Schedule 1 to the FOI Act (**clause 3(1)**) and/or clauses 6(1) and 8(1) of Schedule 1 to the FOI Act.

On 5 July 2021, the complainant applied to the Commissioner for external review of the agency’s decision to give edited access to the documents (**the disputed documents**). The agency provided the Commissioner with its FOI file maintained in respect of the access application, together with a copy of the disputed documents.

On 14 January 2022, the Commissioner provided the parties with her preliminary view that the matter which had been edited from the disputed documents (**the disputed matter**) was exempt under clause 3(1).

The complainant did not accept the Commissioner’s preliminary view and made further submissions. After considering all of the material before her, the Commissioner was not dissuaded from her preliminary view.

Clause 3(1) provides that matter is exempt matter if its disclosure would reveal ‘personal information’ about an individual (whether living or dead). Personal information is exempt under clause 3(1) subject to the application of the limits on the exemption.

The relevant limit on the exemption in this matter was clause 3(6) of Schedule 1 to the FOI Act (**clause 3(6)**). Under section 102(3) of the FOI Act, the onus was on the complainant to establish that it would, on balance, be in the public interest for the agency to disclose personal information about other people to him.

The complainant submitted that he made this access application to obtain documents to assist him to make a complaint to the agency about the way it managed the allegations of misconduct made against him. He submitted that his complaint to the agency alleged, amongst other things, corruption and misconduct of officers of the agency. The complainant claimed that the agency denied him natural justice because he was not given access to all of

the information about the allegations made against him. He submitted that the public interest in natural justice, accountability of officers and exposing corruption weighed in favour of disclosing personal information of third parties to him.

In considering the public interests for and against disclosure, the Commissioner recognised that there is a public interest in the accountability of the Government and its agencies, including public universities, for the performance of their functions. The Commissioner considered that these public interests were satisfied by the documents released through the access application.

The Commissioner considered that the documents released to the complainant showed that he had been informed of the substance of the allegations made against him and that the agency had concluded on the balance of probabilities that the allegations were not made out. In those circumstances, the Commissioner did not consider that the public interest in natural justice or procedural fairness required that access should be given to matter that is otherwise exempt: see also *Re Weygers and Department of Education and Training* [2007] WAICmr 16 at [49].

The Commissioner recognised 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. Also weighing against disclosure, the Commissioner considered that in cases such as this, where individuals have provided information to an agency in confidence, there is a real risk that disclosure of that information would dissuade individuals from volunteering information in similar situations in the future.

After weighing the competing public interests, the Commissioner was not persuaded that the public interests favouring disclosure of the disputed matter were sufficient to outweigh the public interest in the protection of the personal privacy of other individuals. As a result, the Commissioner considered that the limit on the exemption in clause 3(6) did not apply to the disputed matter.

During the external review, the complainant's agent (**agent**) applied to be joined to the matter pursuant to section 69(2) of the FOI Act. Section 69(2) provides that 'any third party is entitled to be joined... on giving written notice to the Commissioner'. Under section 32 of the FOI Act a person is a third party if personal information about them is contained in a document. As none of the agent's personal information was contained in the disputed matter, the Commissioner determined that the agent would not be joined under section 69(2) of the FOI Act.

The complainant also identified issues with some of the disputed documents and alleged they were 'knowingly and deliberately falsified'. The Commissioner sought further information from the agency regarding the identified errors in the disputed documents and complete copies of those documents. The Commissioner considered the additional information and documents provided by the agency and was satisfied that the complainant's allegation that documents were falsified was not made out and that the issues identified in the documents were administrative errors.

The Commissioner confirmed the agency's decision and found that the disputed matter is exempt under clause 3(1) of Schedule 1 to the FOI Act.