

Decision D0042020 – Published in note form only

***Re ‘W’ and Department of Local Government, Sport and Cultural Industries [2020]*
WAICmr 4**

Date of Decision: 1 May 2020

Freedom of Information Act 1992 (WA): Schedule 1, clause 3

On 20 September 2019, ‘W’ (**the complainant**) applied to the Department of Local Government, Sport and Cultural Industries (**the agency**) under the *Freedom of Information Act 1992 (WA)* (**the FOI Act**) for access to certain documents relating to a complaint he made to the agency against a named local government councillor alleging that the councillor breached the *Local Government (Rules of Conduct) Regulations 2007*. In the particular circumstances of this matter, the Information Commissioner (**the Commissioner**) decided not to identify the complainant by name.

By notice of decision dated 25 October 2019, the agency advised the complainant that it had identified one document within the scope of his access application, namely a letter from a third party to the Local Government Standards Panel (**the Panel**) relating to his complaint (**the disputed document**). The agency refused the complainant access to the disputed document on the ground that it is exempt under clause 3(1) of Schedule 1 to the FOI Act (**clause 3(1)**). The complainant applied for internal review of the agency’s decision and that decision was confirmed on internal review.

On 22 November 2019, the complainant applied to the Commissioner for external review of the agency’s decision. A third party was joined as a party to the external review under section 69(2) of the FOI Act, at their request. On 12 February 2020, after considering the material then before her, the Commissioner provided the parties with her preliminary view, which was that the disputed document is exempt under clause 3(1).

The complainant provided further submissions to the Commissioner in response to her preliminary view, including a claim that the limit on the exemption in clause 3(5) applied to the disputed document, based on the consent provided by two individuals to the disclosure of their personal information to the complainant. After considering all of the information before her, including the complainant’s further submissions, 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 set out in clauses 3(2)-3(6).

In this case, although the disputed document contained some personal information about the complainant, the Commissioner considered that its disclosure would do more than ‘merely’ reveal personal information about the complainant because his personal information was so inextricably interwoven with personal information about other individuals. Accordingly, the Commissioner considered that the limit in clause 3(2) did not apply.

The Commissioner also observed that, in the Supreme Court decision of *I -v- Department of Agriculture and Food* [No 2] [2016] WASC 272, Justice Corboy held that the limit on the exemption in clause 3(3) only applies to personal information that consists of the prescribed

details of a person who is, or has been, an officer of the agency to which an access application is made. In this case, the personal information about officers contained in the disputed document was about officers of another agency. Accordingly, the Commissioner found that the limit in clause 3(3) could not apply to that information. In any event, the Commissioner was of the view that the personal information about the officers went beyond things done by those officers in the course of performing or purporting to perform their functions or duties as an officer. As a result, the Commissioner considered that information is not of the kind set out in regulation 9(1) of the *Freedom of Information Regulations 1993* and is not prescribed details in any event.

In considering the complainant's submissions that two individuals had consented to the disclosure of their personal information to the complainant, the Commissioner was not persuaded, based on her examination of the contents of the disputed document and the consent provided, that the limit on the exemption in clause 3(5) operated such that the disputed document was no longer exempt under clause 3(1). The Commissioner noted that her obligation under section 74 of the FOI Act, which prohibits her from disclosing exempt matter, limited the information she could provide to the complainant that explained the reasons for her view in this regard. That obligation also precluded the Commissioner from confirming or denying whether the disputed document contains personal information about the individuals whose consent the complainant had provided, although the Commissioner noted that the disputed document contained personal information about more than one individual, in addition to the complainant.

Finally, the Commissioner considered whether disclosure of the disputed document would, on balance, be in the public interest such that the limit on exemption in clause 3(6) applied. The Commissioner recognised that there are public interests in ensuring the accountability of agencies for the manner in which it deals with complaints made to it; in the accountability of local government councillors for their actions and decisions; in the transparency of the decision-making processes of bodies such as the Panel which, in this case, has authority to make binding decisions to resolve allegations of minor misconduct submitted by a local government; and in the disclosure wherever possible of documents that inform the public of the basis for decision-making and of the material considered relevant to the decision-making process because such disclosure enhances accountability. However, in this case, the Commissioner considered that the above public interests were satisfied by the information provided to the complainant in the Panel's finding and reasons for finding in respect of his complaint, and that those public interests did not require the disclosure of the disputed document.

Favouring non-disclosure of the disputed document, the Commissioner recognised that there is a strong public interest in maintaining personal privacy, which may only be displaced by some other, strong or compelling public interest or interest that requires the disclosure of personal information about one person to another person.

In balancing the competing public interests, the Commissioner was not persuaded that the public interests favouring disclosure of the disputed document were sufficient to outweigh the strong public interest in the protection of 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 document.

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