

**Decision D0042025 – Published in note form only**

***Re Travers and City of Armadale* [2025] WAICmr 4**

**Date of Decision: 30 April 2025**

***Freedom of Information Act 1992 (WA): Schedule 1, clause 6(1)***

In June 2021, Meghan Travers (**the complainant**) applied to the City of Armadale (**the agency**) under the *Freedom of Information Act 1992 (WA)* (**the FOI Act**) for access to documents regarding a report concerning the Roleystone Volunteer Bushfire Brigade that had been referred to in the agenda of a Council meeting of the agency on 22 June 2021.

The agency identified five documents within the scope of the access application and, by notice of decision dated 6 August 2021 (**initial decision**), refused the complainant access to those five documents (**the disputed documents**) on the grounds they were exempt under clauses 3(1) and 6(1) of Schedule 1 to the FOI Act. The agency also claimed that a letter of advice from the agency’s legal advisers, contained in the disputed documents, was privileged and therefore exempt under clause 7(1) of Schedule 1 to the FOI Act.

The complainant sought internal review of the agency’s decision, advising that she was ‘happy to have [the letter of advice] removed’. As the complainant claimed internal review was not completed within the statutory timeframe, on 20 September 2021, the complainant applied to the Information Commissioner (**the Commissioner**) for external review of the agency’s decision.

Following receipt of the complainant’s request for external review, the Commissioner obtained the disputed documents from the agency, together with the FOI file maintained by the agency in respect of the access application.

The agency informed the Commissioner that it wished to complete the internal review process. Subsequently, the agency gave the complainant an ‘internal review decision’ dated 22 October 2021 (**internal review decision**), which essentially confirmed the initial decision.

In an attempt to resolve this matter by conciliation, in November 2021, one of the Commissioner’s officers provided both the parties with their assessment of this matter. The officer’s assessment was that the disputed documents are not exempt under clause 6(1) and that some information in the disputed documents was exempt under either clause 3(1) or clause 7(1). Both parties were invited to reconsider their positions or to provide further submissions. Neither party accepted the assessment, and the agency provided further submissions in support of its claim that the disputed documents are exempt under clause 6(1).

Both parties provided additional information to the Commissioner’s office in January, June and August 2022. In response to further inquiries by the Commissioner’s office, the agency confirmed in March 2024 that it maintained its exemption claims and provided further written submissions. The agency additionally claimed that the notes from a councillor workshop in May 2021 in Document 4 (**the workshop notes**) were exempt under clause 7(1).

On 29 November 2024, after considering the material then before her, the Commissioner provided the parties with a letter setting out her preliminary view. It was the Commissioner’s

preliminary view that the disputed documents are not exempt in their entirety under either clause 3(1) or clause 6(1); a small amount of information in the disputed documents is exempt under clause 3(1); the workshop notes are not exempt under clause 7(1); some information in Document 3 is exempt under clause 7(1); and it is practicable for the agency to give access to an edited copy of the disputed documents with the exempt information deleted, pursuant to section 24 of the FOI Act.

The complainant accepted the Commissioner's preliminary view. Therefore, the information in the disputed documents that the Commissioner considered is exempt was no longer in dispute and the agency was entitled to delete that information on that basis.

The agency also accepted the Commissioner's preliminary view in relation to clause 3(1). Although the agency initially claimed in its further submissions that additional information in the disputed documents was exempt under clause 7(1), the agency withdrew those claims. The agency maintained that the disputed documents were exempt under clause 6(1) and provided further written submissions.

As a result, the only issue remaining in dispute for the Commissioner's determination was whether the disputed documents are exempt under clause 6(1).

Clause 6(1) provides that matter is exempt if its disclosure would reveal any opinion, advice or recommendation that has been obtained, prepared or recorded; or any consultation or deliberation that has taken place, in the course of, or for the purpose of, the deliberative processes of the Government, a Minister or an agency and, such disclosure would, on balance, be contrary to the public interest.

Unlike the other exemption clauses in Schedule 1 to the FOI Act that are limited by a public interest test, in the case of a claim for exemption under clause 6(1), an access applicant is not required to demonstrate that disclosure of the requested matter would be in the public interest. Instead, the onus of establishing that its disclosure would, on balance, be contrary to the public interest rests with the agency: see *Health Department of Western Australia v Australian Medical Association Ltd* [1999] WASCA 269 at [18].

The Commissioner observed that the public interest test in clause 6(1) is intended to cover those cases where public disclosure would be prejudicial to the proper operation of government or the proper workings of an agency such that the right of access under the FOI Act is subordinate: *Re BGC (Australia) Pty Ltd and Port Hedland Port Authority* [2011] WAICmr 38.

The Commissioner accepted that it may be contrary to the public interest to prematurely disclose documents while deliberations in an agency are continuing, if there is material which establishes that such disclosure would adversely affect the agency's decision-making process, or that disclosure would, for some other reason, be demonstrably contrary to the public interest: see for example, *Re West Australian Newspapers Pty Ltd and Western Power Corporation* [2005] WAICmr 10.

The agency acknowledged that the deliberative process the subject of the disputed documents were at an end. However, the agency claimed that disclosure of the documents would adversely affect, undermine or otherwise interfere with the agency's ongoing negotiations with the Department of Fire and Emergency Services regarding a lease agreement for an

existing fire station. As the agency did not provide any persuasive information to support those assertions, the Commissioner did not accept the agency's claims.

The Commissioner was not satisfied on the information before her that the disclosure of the disputed documents would adversely affect any ongoing deliberations of the agency or that any other public interest would be harmed or adversely affected by disclosure of the disputed documents such that it would, on balance, be contrary to the public interest to disclose them. Nor was the Commissioner persuaded that disclosure of the disputed documents would be prejudicial to the proper operation of government or the proper workings of an agency such that the right of access under the FOI Act is subordinate.

The Commissioner considered that the agency had not established that disclosure of the disputed documents would, on balance, be contrary to the public interest.

Accordingly, the Commissioner set aside the agency's decision. In substitution, the Commissioner found that the disputed documents are not exempt under clause 6(1) of Schedule 1 to the FOI Act.