

Decision D0052006 - Published in note form only

***Re Mossenson and Others and Department of the Premier and Cabinet* [2006]
WAICmr 5**

Date of Decision: 20 February 2006

Freedom of Information Act 1992: Schedule 1: clauses 3(1), 3(3) and 3(6)

In 2004, the complainants applied to the Kimberley Development Commission ('the KDC') and the Minister for the Kimberley ('the Minister') for access under the *Freedom of Information Act 1992* ('the FOI Act') to documents relating to an indigenous art exhibition that the Minister had been invited to open. Both of those agencies identified and dealt with two documents which were, with one minor variation, identical. Both agencies refused the complainants access to one of those documents and gave access to the other in edited form. Those decisions were confirmed on internal review and, thereafter, in both cases, the complainants applied to the Information Commissioner for external review of those decisions. In the course of those complaints being dealt with, as a result of a change in Ministerial portfolio responsibilities, the Department of the Premier and Cabinet ('the agency') took possession of the documents sought from the Minister and became a party to this complaint.

Following the receipt of those complaints by the A/Information Commissioner, each agency gave the complainants access to edited copies of both of the two documents. The documents released by both agencies were edited in the same way and only personal information about third parties was deleted, pursuant to clause 3(1) of Schedule 1 to the FOI Act. The external review of the KDC's decision on access was finalised in *Re Mossenson and Others and Kimberley Development Commission* [2006] WAICmr 3, in which the A/Information Commissioner held that certain specified information in the two documents was exempt under clause 3(1) because it is personal information about a number of third parties.

In her reasons for that decision, the A/Commissioner considered in detail the limits on the exemption in clause 3(3) and the competing public interest factors that weighed for and against disclosure in the particular circumstances of the matter, pursuant to clause 3(6). For the same reasons, the A/Commissioner considered that the disputed information in this case is not subject to those limits on the exemption and that, on balance, the rights to privacy of the third parties should prevail. The A/Commissioner, for reasons which were given to the parties to the complaint and which were the same as those in the KDC matter, decided that the disputed information in this case is exempt under clause 3(1) of Schedule 1 to the FOI Act and confirmed the agency's decision.