

Participants:

J
Complainant

- and -

Police Force of Western Australia
Respondent

DECISION AND REASONS FOR DECISION

FREEDOM OF INFORMATION – refusal of access and access in edited form - documents on a police investigation file – scope of the access application - whether certain documents within scope - section 32 - meaning of “*closest relative*” - clause 3(1) - personal information – limits on the exemption – clause 3(6) – whether disclosure, on balance, is in the public interest - section 24 - whether “practicable” to edit - whether additional documents.

Freedom of Information Act 1992 (WA): sections 23(2), 24, 32(2), 32(5), 102(3);
Schedule 1: clause 3(1), 3(2), 3(3), 3(4), 3(5), 3(6)

Guardianship and Administration Act 1990

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

Ministry for Planning v Collins (1996) 93 LGERA 69,

Re Winterton and Police Force of Western Australia [1997] WAICmr 15

DPP v Smith [1991] 1 VR 63 *Police Force of Western Australia v Kelly and Anor*
(1997) 17 WAR 9

DECISION

The decision of the agency to refuse access to documents under section 23(2) is set aside. I find that the documents listed in Part A of the Appendix to this decision and the information deleted from the documents in Part B of the Appendix are exempt under clause 3(1) of Schedule 1 to the *Freedom of Information Act 1992*.

JOHN LIGHTOWLERS
A/INFORMATION COMMISSIONER

29 February 2008

REASONS FOR DECISION

1. This complaint arises from a decision by the Police Force of Western Australia ('the agency') to refuse the complainant access to documents and information under the *Freedom of Information Act 1992* ('the FOI Act'). In this case, I have exercised my discretion to identify the complainant only by the initial 'J', and to identify members of his family by initials only, in order to protect the privacy of a number of third parties.

BACKGROUND

2. In February 2004, the complainant's late mother, 'M' passed away. I understand that, in 2006, the agency conducted certain investigations into the circumstances surrounding her death.
3. By letter dated 6 October 2006, the complainant applied to the agency, under the FOI Act, for access to:

"...all permissible information on the Police file relating to the death of my mother ... and all permissible information relating to the Police inquiries into that death."

4. On 30 November 2006, the agency refused the complainant access to all of the requested documents, in accordance with s.23(2) of the FOI Act, on the ground that all of the documents described in the complainant's access application were exempt under clause 5(1)(b) of Schedule 1 to the FOI Act.
5. On 9 January 2007, the agency confirmed its decision on internal review and, on 14 February 2007, the complainant applied to the former A/Information Commissioner ('the former A/Commissioner') for external review of the agency's decision.

REVIEW BY A/COMMISSIONER

6. On receipt of this complaint, the former A/Commissioner required the agency to produce, for her examination, the requested documents together with the FOI file maintained by the agency in respect of the complainant's access application.
7. On 26 April 2007, following discussions and correspondence between this office and the agency, the agency reconsidered its decision and withdrew its claim under s.23(2) of the FOI Act. The agency identified a number of documents as coming within the scope of the complainant's access application and listed them as folios 1-156 on a document schedule, which it gave to the complainant. The agency gave the complainant access to a number of the requested documents - either in full or in edited form - and refused access to other documents, claiming that all of the disputed matter was exempt under clause 3(1) of Schedule 1 to the FOI Act. However, the complainant advised the former A/Commissioner that he was not prepared to withdraw his complaint and sought full access to all of the requested documents.

8. On receipt of that advice, a number of third parties who had been consulted by the agency were notified that this complaint was before the former A/Commissioner; advised of their rights to be joined as parties to this complaint; and invited to provide the former A/Commissioner with information, including written submissions. Although none of the third parties applied to be joined as a party to this complaint, they advised that they did not consent to their personal information being disclosed to the complainant and submitted that the information about them contained in the documents was exempt under clauses 3(1), 5(1)(a), 5(1)(b), 5(1)(c) and 8(2) of Schedule 1 to the FOI Act.
9. On 9 January 2008, I provided the parties with a letter setting out my preliminary view of this complaint. My preliminary view was that the disputed documents and information were exempt under clause 3(1). It was also my preliminary view that the complainant was not the “closest relative” of his late mother, for the purposes of s.32 of the FOI Act.
10. On 5 February 2008, in response to that letter, the complainant provided me with further detailed submissions in relation to those and other matters.

PRELIMINARY ISSUES

11. Before considering the exemptions claimed for the disputed matter, I must determine two preliminary issues. The first concerns whether or not certain of the disputed folios come within the scope of the complainant’s access application. The second is the question of which of M’s surviving children (her husband having predeceased her and there being more than one surviving child of the deceased) should be regarded as her “closest relative” for the purposes of s.32 of the FOI Act.

Scope of the access application

12. The agency claims that folios 53, 72-73, 74-79 and 81 are outside the scope of the complainant’s access application and, therefore, ought not be considered as part of this review. However, I note that part of folios 11 and 12 contain a copy of the information in folio 81; folios 55-56 contain a copy of folio 81 (with the addition of some administrative information); folio 79 is a duplicate copy of folio 74; folio 120 is a duplicate of folio 75; folios 122-124 are duplicates of folios 76-77 and folio 121 is a duplicate of folio 78. Consequently, I understand the agency to claim that part of folios 11 and 12 and folios 53, 55-56, 72-73, 74-79, 81 and 120-124 are outside the scope of the complainant’s application.
13. I have examined folios 11-12, 53, 55-56, 72-73, 74-79, 81 and 120-124. Having regard to the wording of the complainant’s application, as set out in paragraph 3 above, I consider that the information in those folios and part folios is within the scope of the complainant’s application because it broadly relates to the police inquiries into the death of M.
14. I consider that all of those folios contain personal information about the complainant and/or third parties. Accordingly, I have considered below whether

folios 53, 55-56, 72-73, 74-79, 81 and 120-124 are exempt, and whether the relevant parts of folios 11-12 are exempt, under clause 3(1).

Section 32 of the FOI Act

15. The agency says that section 32 is pertinent to its dealings with folios 3, 4-6, 68-69 and 82-84. Section 32 of the FOI Act, insofar as it is relevant, provides:

“32. Documents containing personal information

(1) *This section applies to a document that contains personal information about an individual (the “third party”) other than the applicant.*

(2) *The agency is not to give access to a document to which this section applies unless the agency has taken such steps as are reasonably practicable to obtain the views of -*

(a) *the third party; or*

(b) *if the third party is dead, his or her closest relative,*

as to whether the document contains matter that is exempt matter under clause 3 of Schedule 1.

(3) ...

(4) ...

(5) *Where the views of a person are obtained under subsection (2)(b) that person is to be regarded as being the third party for the purposes of [the provisions relating to internal and external review].”*

16. Where an agency receives an access application for documents containing personal information - as that term is defined in the FOI Act - about a deceased person, the agency is prohibited from giving access to such documents without first taking reasonable steps to obtain the views of the ‘closest relative’ of the deceased third party as to whether the documents contain information that is exempt under clause 3 of Schedule 1 to the FOI Act, as required by s.32(2)(b).
17. Where the agency consults with the closest relative of the deceased third party, s.32(5) provides that he or she is to be regarded as being the deceased third party and he or she has the right to seek internal review and, if necessary, external review by the Information Commissioner, of the agency’s decision on access.
18. In the present case, the agency refused the complainant access to folios 3, 4-6, 68-69 and 82-84 under clause 3, on the ground that those folios consist entirely of personal information about M. The agency informed the complainant that access to documents of that kind is only available to the “nearest next of kin” of a deceased third party and, in its view, the complainant was not the nearest next

of kin of his late mother. The agency informed the complainant that “[T]he framework of ‘next of kin’ was assessed in conjunction with the [Guardianship] and Administration Act 1990.” However, I consider that advice to be incorrect because s.32(2)(b) of the FOI Act uses the term ‘closest relative’ and not ‘next of kin’ or ‘nearest next of kin’.

19. Following the receipt of this complaint, the former A/Commissioner invited the complainant and his siblings to provide her with submissions, setting out their views as to which of them should be regarded as the closest relative of their late mother for the purposes of s.32 of the FOI Act.

The submissions

20. The complainant’s siblings jointly submit that the complainant - who is the youngest surviving child - is not the closest relative of their late mother and that he did not have the closest personal relationship with M. They submit that the eldest surviving child, ‘K’, is the closest relative of their late mother.
21. The complainant’s siblings submit that the term ‘nearest relative’ is a defined term in legislation in the United Kingdom and in Victoria and in the *Guardianship and Administration Act 1990 (WA)* (‘the GA Act’), which in each case defines ‘nearest relative’ - in the absence of a spouse - as the children of the deceased and, if more than one, then the oldest surviving child. They submit that this accords with the traditional treatment of situations where the oldest surviving child is typically viewed as the head of the family in the absence of both parents.
22. The complainant’s siblings also note that there is a Bill to amend the FOI Act presently before the Parliament of Western Australia which will replace the term ‘closest relative’ with the term ‘nearest relative’ and that the Explanatory Memorandum for that Bill states that the proposed amendment is for consistency with the GA Act. The complainant’s siblings say that there is no suggestion of any intention to alter the previous meaning or effect of the term ‘closest relative’ but, rather, that the legislators consider the terms ‘closest relative’ and ‘nearest relative’ are essentially interchangeable and that the proposed amendment is for cosmetic purposes only.
23. The complainant submits that he is his late mother’s closest relative. He advises that he and K are nominated joint executors of their late mother’s 1995 Will and were both appointed as donees of her Enduring Power of Attorney, in March 1999.
24. The complainant submits that the fact that his late mother appointed him as both a joint executor and donee was indicative of the measure of trust she had reposed in him. He submits that his late mother was on poor terms with some of her other children and that he was a close confidant of his late mother and had represented her interests in many matters in the years before her death.
25. The complainant produced several documents to this office in support of his claims that his late mother relied upon him for moral support, assistance and

advice during the last years of her life. In the complainant's view, it was significant that he lived close by his late mother because "*where a good relationship already exists then that physical proximity is more likely than not to lend itself to other intimacy, support and care.*"

26. In a facsimile letter of 27 July 2007, the complainant, through his legal adviser, submitted that, since the FOI Act does not define the term 'closest relative', it should be given its plain and ordinary meaning and that if the intention was that it meant the elder or eldest this would have been stated. As that term was not defined, the meaning contained in the GA Act of 'nearest relative' is not consistent with the term 'closest relative'. The complainant submits that since the word 'closest' cannot mean that the 'elder' or 'eldest' is 'closest', it must mean the person whose relationship is closest to the relevant person; in this case, the child of M who had the closest personal relationship with her.
27. I also understand the complainant to submit, in the alternative, that the term 'closest relative' means the relative nearest in physical proximity.

Consideration

28. The term 'closest relative' is not defined in the FOI Act. In this instance, it appears that the agency, in making its determination that the complainant is not the closest relative of M, has relied upon the definition of 'nearest relative' in s.3 of the GA Act, which relevantly provides:
29. "**nearest relative** in relation to a person means the first in order of priority of the following persons, who has attained the age of 18 years and is reasonably available at the relevant time -
- (a) ...
 - (b) a child;
 - ...
 - (j) the elder or eldest of 2 or more relatives described in a paragraph of this definition shall be preferred to the other or any other of those relatives regardless of sex, and no distinction shall be made between relatives of the same age."
30. There are differences between the legislative schemes of the FOI Act and the GA Act. The definition of 'nearest relative' in the GA Act makes no reference to a deceased person but is defined for the purpose of ensuring, among other things, that where an application for guardianship has been made, that the Public Advocate duly notifies the nearest relative of a living person.
31. The difficulties arising from using definitions in one piece of legislation to interpret or understand the meaning of a section or phrase in another piece of legislation were noted in *Ministry for Planning v Collins* (1996) 93 LGERA 69, where Templeman J said, at page 81: "*I do not think it permissible to use one piece of legislation to construe another.*"

32. It follows, therefore, that the meaning given to a word or phrase in one enactment should not be taken as definitive of the same or a similar word or phrase in another enactment, although it may be helpful as a guide to possible approaches to interpretation. In my view, in the absence of a definition of the term 'closest relative' in the FOI Act, the definition of the term 'nearest relative' in the GA Act is one relevant - although not definitive - consideration in interpreting the meaning of the former for the purposes of s.32 of the FOI Act.
33. In my opinion, the words 'nearest' and 'closest' have similar dictionary definitions in the relevant sense. The Concise Oxford Dictionary (8th edition) refers to the terms 'near' and 'close' interchangeably, including "*closely related*" in the meaning of the term 'near'. In addition, the terms 'nearest relative' in the GA Act and 'closest relative' in the FOI Act are used in the context of a person connected by blood or marriage 'standing in the shoes of' a relevant individual for the purposes of those statutes.
34. I also acknowledge that the Bill before Parliament to amend the FOI Act includes an amendment to insert a definition of the term 'closest relative' in the FOI Act, which is based upon the definition of 'nearest relative' in the GA Act. Whilst that Bill is not law in Western Australia until it is enacted it can, in my opinion, also be used as relevant guide for the purpose of determining who may be the 'closest relative' of a deceased person for the purposes of the FOI Act, although, once again, it is not to be taken as determinative of the issue.
35. I have noted that M appointed the complainant and K, jointly, as the nominated executors of her Will and also as joint donees of her Enduring Power of Attorney. Clearly, M considered both should have an equal role to play in relation to the administration of her estate and her affairs.
36. I am not persuaded by the complainant that the word 'closest' cannot mean that the elder or eldest relative is the 'closest relative'. It seems to me that where there is a group of relatives, such as children or siblings or aunts and uncles, one way to distinguish which of those persons in that particular group should be designated the 'closest relative' is to select the individual who was born first in time.
37. Nor am I persuaded that the term 'closest relative' in s.32 of the FOI Act should be construed according to the proximity of a relative's location to the deceased person or to the quality of the personal relationship between that person and a particular relative. To rely on such interpretations would be too vague and subjective to be of real assistance in achieving the objects of the FOI Act.
38. Having considered the submissions on this point, I take the view that age or seniority of birth is the better distinguishing factor in construing the meaning of the term 'closest relative' when confronted by the competing claims of children of a deceased person. Accordingly, I determine that M's eldest child, K, should be regarded as the 'closest relative' of M for the purposes of s.32 of the FOI Act. That also means that K is to be regarded as being the 'third party' for the purposes of s.32 of the FOI Act.

THE DISPUTED MATTER

39. The documents in dispute in this matter are listed and described in the document schedule given to the complainant by the agency, as set out in the Appendix to this decision.
40. Part A of the Appendix describes folios 3, 4-6, 37, 41, 42-43, 53, 55-56, 68-79, 70-71, 72-73, 74-79, 81, 82-83, 84, 95, 96-119, 120, 121, 122-124, 125-126, 127 and 130-134 to which access was denied in full.
41. Part B describes folios 1, 2, 7, 8, 9, 10, 11-12, 14-26, 27-28, 29, 30, 31-33, 34, 35, 36, 36, 38, 39, 40, 44-45, 46-47, 48-51, 52, 54, 57-59, 60-62, 65, 66, 67, 128-129, 135-136 and 137-146. The agency gave the complainant access to those folios in edited form. The disputed matter in those folios is the information that was deleted from them.
42. I have considered whether the Part A documents and the information deleted from the Part B documents are exempt under clause 3(1). The third parties claim that the disputed matter referred to in paragraphs 40 and 41 is also exempt under clauses 5(1)(a), 5(1)(b), 5(1)(c) and 8(2) of Schedule 1 to the FOI Act.

CLAUSE 3 - PERSONAL INFORMATION

43. The agency claims that the documents and information which it identified as coming within the scope of the complainant's application are exempt under clause 3(1) of Schedule 1 to the FOI Act. As noted, I have also considered whether folios 53, 72-73, 74-79 and 81 are exempt in full under clause 3(1).

Clause 3 provides as follows:

"3. Personal information

Exemption

- (1) *Matter is exempt matter if its disclosure would reveal personal information about an individual (whether living or dead).*

Limits on exemption

- (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.”*

Definition of ‘personal information’

44. The term ‘personal information’ is defined in the Glossary to the FOI Act as meaning:

“...information 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.”*

45. The exemption in clause 3(1) applies to any information or opinion about a person from which the identity of that person is either apparent or can reasonably be ascertained.

Does the disputed matter contain ‘personal information’?

46. Having examined the disputed matter, I consider that it consists of information from which a number of individuals - including the complainant - could be identified. That information includes, amongst other things, names, contact details and information of a private nature about individuals. In my view, that kind of information is clearly ‘*personal information*’ as defined in the FOI Act, which is *prima facie* exempt under clause 3(1).

47. The next question is whether any of the limits on the exemption applies. Since the complainant has not provided evidence to the agency or to my office that any of the third parties referred to in the disputed matter has consented to the disclosure of personal information about themselves to the complainant, I consider that the limit in clause 3(5) does not apply in this case.

Clause 3(2)

48. Clause 3(2) provides that information is not exempt under clause 3(1) merely because its disclosure would reveal personal information about the applicant (in this case, the complainant). In my view, the use of the term 'merely' in clause 3(2), according to its ordinary dictionary meaning, means 'solely' or 'no more than' personal information about the applicant.
49. I have examined the disputed matter. In my opinion, the disclosure of folios 70-71, 77, 96, 99-119, 123, 125-126, 131-134 and 137-146 would reveal personal information, as defined in the FOI Act, about the complainant. However, I also consider that all of that information is interwoven with personal information about third parties in such a way that it would not be possible for the agency to give the complainant access to the information about him without also disclosing personal information about third parties. In my view, the disclosure of that information would not therefore 'merely' reveal personal information about the complainant and, therefore, the limit in clause 3(2) does not apply to that information.

Clauses 3(3) and 3(4)

50. The limit in clause 3(3) provides that matter is not exempt matter under clause 3(1) merely because its disclosure would reveal 'prescribed details' about a person who is or has been an officer of an agency. Clause 3(4) is similar in scope but relates to a person who performs or has performed services for an agency under a contract for services. The prescribed details are listed in regulations 9(1) and 9(2) of the *Freedom of Information Regulations 1993* and include officers' and contractors' names, titles and things done by them in the performance of their functions and duties as officers or contractors.
51. I note that many of the disputed folios contain references to third parties who are officers, or former officers, of the agency or officers of other government agencies. Where that information appears in the edited folios disclosed to the complainant, the agency has given access to it, with the exception of the handwritten signatures of officers.
52. In my view, the handwritten signatures of officers or former officers of the agency or officers of other government agencies are not prescribed details of the kind referred to clauses 3(3) and 3(4) for the reasons given in *Re Winterton and Police Force of Western Australia* [1997] WAICmr 15. I find that those handwritten signatures - wherever they appear - are exempt under clause 3(1) of Schedule 1 to the FOI Act.

Clause 3(6) - the public interest

53. As I am satisfied that a *prima facie* claim for exemption for the disputed matter exists under clause 3(1) and none of the other limits on exemption in clauses 3(2) to 3(5) applies, then, pursuant to s.102(3) of the FOI Act, the onus is on the complainant to establish that disclosure would, on balance, be in the public interest, pursuant to clause 3(6).

The complainant's submissions

54. In his letter to the former A/Commissioner seeking external review of the agency's decision, the complainant advised that he was involved in a bitter family dispute that was the subject of litigation and, as a result of that dispute, baseless allegations had been made against him to the police which were detrimental to his well-being and to the conduct of the litigation in which he was involved. The complainant submits that there is a public interest in providing him with full access to the disputed matter so that he is fully informed of the nature and substance of the allegations made against him and is given an opportunity to respond to them. The complainant submits that this is an overriding public interest, being a fundamental principle of natural justice.
55. In a facsimile letter of 27 July 2007 to this office, the complainant said that he considered that the third parties referred to in the disputed documents included his siblings whose details are known to him. The complainant notes that the clear intention of clause 3(1) is to protect the privacy of third parties so that their personal details - such as name, addresses and telephone numbers - are not released. The complainant submits that - since he knows all of those details in relation to his siblings - their suppression serves no purpose "*and does not fall within the clear intention of the exemptions in the Act.*"
56. In that letter, the complainant also submits that folio 135 - which was disclosed to him in edited form - may suggest inappropriate behaviour by an officer of the agency and, if there has been a misuse of power, then the public interest is not served by suppressing that information.

The agency's submissions

57. In its letter to the complainant of 26 April 2007, the agency said that the disputed matter contains personal information about third parties and that none of those persons had consented to the disclosure of that information.
58. The agency submits that there is a public interest in applicants exercising their rights of access under the FOI Act but also a public interest in protecting the privacy of individuals. In weighing up those competing public interests, the agency considers that the latter outweighs the former on the basis that "*... the Act is not intended to open the private and professional lives of its citizens to public scrutiny in circumstances where there is no demonstrable benefit to the public interest by doing so.*"

59. The agency also submits that, in its view, it would be impracticable to edit the folios to which access in full had been denied.

Consideration

60. The public interest is not defined in the FOI Act but, in my opinion, is best described in *DPP v Smith* [1991] 1 VR 63, at p.75, where the Supreme Court of Victoria 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 ... On the other hand, in the daily affairs of the community, events occur which attract public attention. Such events of interest to the public may or may not be ones which are for the benefit of the public; it follows that such form of interest per se is not a facet of the public interest”.

61. The application of the public interest test in clause 3(6) involves identifying the public interest factors for and against disclosure, weighing them against each other and deciding where the balance lies.
62. Favouring disclosure of the disputed matter, I recognise that there is a public interest in people being able to exercise their rights of access under the FOI Act.
63. I also recognise that there is a public interest in people being able to access personal information about them which is held by a government agency. That particular public interest is recognised in s.21 of the FOI Act, which I have taken into account for the purposes of my determination. However, I note that, with the exception of the information referred to in paragraph 49, the information contained in the disputed matter is not information about the complainant but information about other people. Where the agency has been able to disclose information about the complainant to him without also disclosing personal information about other people, it has done so.
64. In addition, I accept that there is a public interest in individuals - such as the complainant - being informed of the nature of any allegations made against them and being given an opportunity to respond to those allegations before any decisions adverse to their interests are made. That is a key requirement of procedural fairness. However, in this case, in the event that any such allegations were made, they were not pursued and no action adverse to the complainant's interests has been taken by the agency - or is contemplated to be taken - against the complainant. Consequently, the complainant has not been called upon to respond to any allegations. In addition, the complainant has been informed, through partial disclosures, of the substance of the issues before the agency but without disclosure of personal information. In those circumstances, it does not appear to me that the complainant has been disadvantaged or, therefore, that the

public interest identified above weighs significantly in favour of disclosure in this instance.

65. In my view, the complainant's submission that allegations made against him were detrimental to him and his interests is a private - more so than a public - interest and I have given less weight to it.
66. With regard to the complainant's submission that it is pointless to suppress details which concern - he presumes - his siblings, the fact that the complainant knows or claims to know the personal information which may be recorded in the disputed matter does not mean that such matter is not exempt under clause 3(1).
67. In *Police Force of Western Australia v Kelly and Anor* (1997) 17 WAR 9, Anderson J of the Supreme Court of WA, in considering a similar submission - in relation to a claim for exemption under clause 5(1)(b) of the FOI Act - said, at p.14:
- “... 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....I think it would be a very inconvenient construction of the Act, as 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.”*
68. I agree with Anderson J's view.
69. In relation to the complainant's submission concerning folio 135, I note that he has been given access to that folio in edited form which includes details of the behaviour referred to, together with the name of the relevant officer. It is not clear to me how the disclosure of the deleted information - which is personal information about other third parties - would materially add to the complainant's knowledge or understanding of the issue with which he is concerned. Moreover, if the complainant has concerns about the behaviour of an officer of the agency, it is open to him to take up those concerns with the agency or with another appropriate body.
70. Favours non-disclosure of the disputed information, I consider the public interest in the protection of personal privacy to be a strong one, which will generally only be outweighed by a significantly stronger public interest that requires the disclosure of personal information about another person.
71. The public interest in the protection of personal privacy is recognised by, amongst other things, the inclusion of the exemption in clause 3 and the obligation on agencies to consult with individuals before disclosing any information about them under the FOI Act. I also note that none of the relevant

third parties consents to his or her personal information being disclosed to the complainant.

72. Also favouring non-disclosure, I accept that there is a public interest in maintaining the confidence of individuals to raise issues of concern with the agency and, to that end, in the ability of the agency to gather sufficient information to thoroughly investigate such issues.
73. In weighing the competing public interests for and against disclosure in this case, I consider that those favouring non-disclosure outweigh those favouring disclosure in this instance.

Editing

74. I have reviewed folios 3, 4-6, 37, 41, 42-43, 53, 55-56, 68-79, 70-71, 72-73, 74-79,81, 82-83, 84, 95, 96-119, 120, 121, 122-124, 125-126, 127 and 130-134 and considered whether it would be practicable to edit those documents to delete the information about third parties which is interwoven with personal information about the complainant and to give access to the remainder, including the 'prescribed details' about officers of agencies.
75. Section 24 of the FOI Act provides, among other things, that access should be given to edited copies of documents if it is "*practicable*" to do so. In *Winterton's* case, Scott J considered the application of s.24 of the FOI Act and said, at p.16:

"It seems to me that the reference in s.24(b) 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 documents still makes sense and can be read and comprehended in context, the documents should be disclosed. Where that is not possible, however, in my view, s24 should not be used to provide access to documents which have been so substantially edited as to make them either misleading or unintelligible."

76. I agree with that view. Having examined the relevant folios, I also agree with the agency that it would not be practicable to edit them because to do so would require such extensive deletions as to render their meaning unintelligible.

Conclusion

77. I find that folios 3, 4-6, 37, 41, 42-43, 53, 55-56, 68-79, 70-71, 72-73, 74-79,81, 82-83, 84, 95, 96-119, 120, 121, 122-124, 125-126, 127 and 130-134 are exempt in full under clause 3(1) of Schedule 1 to the FOI Act and that the information deleted from folios 1, 2, 7, 8, 9, 10, 11-12, 14-26, 27-28, 29, 30, 31-33, 34, 35, 36, 36, 38, 39, 40, 44-45, 46-47, 48-51, 52, 54, 57-59, 60-62, 65, 66, 67, 128-129, 135-136 and 137-146 is also exempt under clause 3(1).

78. The third parties claimed that the disputed matter is exempt under clauses 5(1)(a), 5(1)(b), 5(1)(c) and 8(2) of Schedule 1 to the FOI Act. However, since I have found that all of the disputed matter is exempt under clause 3(1), it is not necessary for me to consider whether any or all of that matter is also exempt under the other claimed exemptions.

ADDITIONAL DOCUMENTS

79. In a letter to me dated 5 February 2008, the complainant raised the issue of whether additional documents exist that should have been identified by the agency, on the basis of the information contained in folios 135-136. The complainant identified various categories of document that he considered should exist. However, having re-examined folios 135-136 and the remainder of the folios in dispute in this matter, I am satisfied that several of those categories of document identified by the complainant are included in the documents to which access has been refused.

80. Following receipt of the above-mentioned letter, my office made further inquiries with the agency and asked it to conduct additional searches. As a result, the agency located one additional document (folio 136(a)) and gave the complainant access to it in edited form, deleting only personal information that I consider to be exempt under clause 3(1). In my view, having considered the further searches undertaken by the agency and having regard to the information contained in the folios identified in the searches, the agency has now taken all reasonable steps to find the documents requested by the complainant in his access application.

APPENDIX

THE DISPUTED DOCUMENTS

PART A ACCESS REFUSED

FOLIO	DATE	DESCRIPTION
3	18/02/04	Confidential Interim Report to the Coroner
4-6	18/02/04	Confidential Report to the Coroner
37	25/11/05	Letter to Commissioner of Police from a third party
41	22/11/05	Letter to a third party from Commissioner of Police
42-43	15/11/05	Letter to Commissioner of Police from a third party
53	21/03/06	Action No 5
55-56	31/10/06	Action No 7
68-69	13/02/06	Pathwest Report
70-71	23/02/06	Electronic Mail from a third party
72-73	19/02/06	Correspondence
74-79	Various	Correspondence
81	26/10/06	Electronic Mail from a third party
82-83	23/02/04	Chemistry Centre – Final Report
84	20/02/04	Continuation Post Mortem Report
95	26/10/06	Duplicate of folio 81
96-97	25/08/06	Electronic mail
98	20/07/06	Electronic mail
99-119	17/07/06	Electronic mail with attachment
120	14/03/06	Duplicate of folio 75
121	14/03/06	Duplicate of folio 78
122-124	05/03/06	Duplicate of folios 76-77
125-126	23/02/06	Duplicate of folios 70-71
127	24/01/06	Correspondence from a third party
130-134	10/11/05	Electronic Mail with attachment

PART B ACCESS GIVEN IN EDITED FORM

FOLIO	DATE	DESCRIPTION
1	16/02/03	Report of Death
2	16/02/04	Mortuary Admission Form
7	16/02/04	Identification of Deceased Person
8	16/02/04	Certificate of Life Extinct
9	16/02/04	Authority to Dispose of Clothing
10	16/01/04	Mortuary Admission Sheet
11-12	18-31/10/06	Running sheets - correspondence
14-26	27/12/05 to 30/08/06	Running sheets - correspondence
27-28	Undated	Action Register
29	Undated	Item List
30	Undated	Person List
31-33	Various	File System Full Record (32 & 33 are duplicates of 31)

34	12/12/05	Memorandum to Major Crime
35	08/12/05	Memorandum to Specialist Crime
36	02/12/05	Memorandum to Specialist Crime
38	11/05	Memorandum to Specialist Services
39	23/11/05	Memorandum to Manager, Records
40	22/11/05	Memorandum to Specialist Services
44-45	06/01/06	Action No 1
46-47	23/01/06	Action No 2
48-51	03/02/06	Action No 3 (Folios 50-51 are duplicates of 48-49)
52	24/02/06	Action No 4
54	31/10/06	Action No 6
57-59	Various	Request for Analysis
60-62	30/01/06	Facsimile with attachments
65	28/06/06	Electronic Mail
66	04/07/06	Chemistry Centre Results
67	13/02/06	Facsimile from Pathwest
128-129	11/02/04	Incident Report
135-136	17/11/05	Letter to Detective
136(a)	10/11/05	Email
137-146	30/06/05	Memorandum to State Coroner