

Decision D0052021 – Published in note form only

***Re Hollands and City of Belmont* [2021] WAICmr 5**

Date of Decision: 28 June 2021

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

On 14 September 2020, Lisa Hollands (**the complainant**) applied to the City of Belmont (**the agency**) under the *Freedom of Information Act 1992 (WA)* (**the FOI Act**) for access to a copy of certain CCTV footage of the agency’s foyer area following a council meeting on a particular date.

By notice of decision dated 14 October 2020, the agency identified one document within the scope of the complainant’s application (**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 29 November 2020 the complainant applied to the Information Commissioner (**the Commissioner**) for external review of the agency’s decision. On 26 May 2021, 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. 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 personal information about the complainant, the Commissioner considered that its disclosure would do more than ‘merely’ reveal personal information about the complainant because her 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.

In considering whether the limit in clause 3(3) applied, the Commissioner was of the view that the disputed document contained personal information of an officer of the agency that consisted of prescribed details within the meaning of Regulation 9(1) of the *Freedom of Information Regulations 1993*. However, the Commissioner found that the personal information of the officer was inextricably intertwined with personal information about other individuals and, as such, the limit in clause 3(3) did not apply to that information.

The complainant provided a number of documents, which she asserted were consent forms from third parties who she claimed may appear in the disputed document. The Commissioner considered that there was insufficient material before her to establish that all individuals visible in the disputed document consented to the disclosure of their personal information.

As such, the Commissioner did not consider that the limit in clause 3(5) operated so that the disputed document is not exempt under clause 3(1).

Finally, the Commissioner considered whether disclosure of the disputed document would, on balance, be in the public interest such that the limit on the exemption in clause 3(6) applied. The Commissioner recognised that there is a public interest in ensuring the accountability of the agency for any actions taken in relation to a dispute between private individuals that arise at the agency's offices. In this case, the complainant had already made a complaint to an oversight body which had made inquiries into the agency's actions. As a result, the Commissioner considered that the public interest in the agency being accountable for its actions had been satisfied. Further, the Commissioner did not consider that disclosure of the disputed document would further that public interest in any event.

As no restrictions or conditions can be placed upon the release of documents under the FOI Act, it is well established that disclosure of information under the FOI Act is disclosure to the world at large: see *Public Transport Authority* [2018] WASC 47 at [71]. Accordingly, when considering whether or not to disclose documents under the FOI Act, the effects of disclosure are generally considered as though disclosure were to the world, rather than only to the particular access applicant.

The complainant contended that the disputed document would support a complaint she proposed to make to another body. However, having regard to that body's statutory powers to require the production of documents, the Commissioner was satisfied that there were other avenues available to the complainant to pursue her concerns without the need to disclose personal information about third parties to the complainant, and potentially to the world at large, under the FOI Act.

Weighing against 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 interests that require 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.

The Commissioner considered whether it was practicable for the agency to give the complainant access to an edited copy of the disputed document, pursuant to section 24 of the FOI Act. The Commissioner observed that when an agency relies on capturing CCTV footage for security and safety purposes, it may be appropriate for that agency to obtain software capable of editing the footage in order to satisfy requests made under the FOI Act. However, in this matter, because the extensive editing that would be required to delete all of the exempt personal information would render the disputed document unintelligible, the Commissioner concluded that it was not practicable for the agency to give the complainant access to an edited copy of the disputed document.

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.