

**Decision D0052023 – Published in note form only**

***Re ‘Y’ and City of Stirling [2023] WAICmr 5***

**Date of Decision: 30 May 2023**

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

On 2 February 2022, ‘A’ (**the access applicant**) applied to the City of Stirling (**the agency**) under the *Freedom of Information Act 1992 (WA)* (**the FOI Act**) for access to documents relating to applications, approvals and consultations undertaken by the agency in relation to a specific property (**the disputed documents**).

To protect the identity of the individuals in this matter, the Information Commissioner (**the Commissioner**) decided not to identify the complainants or the access applicant.

The agency sought the views of ‘Y’ (**the complainants**), pursuant to section 32 of the FOI Act. The complainants objected to disclosure of the disputed documents and claimed that the disputed documents are exempt from disclosure.

On 29 March 2022, the agency provided the complainants with its notice of decision, advising that it had decided to give the access applicant access to some of the disputed documents by inspection only and to give the access applicant access to edited copies of the remaining documents with all personal information removed.

The complainants sought internal review of the agency’s decision. On 19 May 2022, the agency varied its decision, deciding to give access to additional information by way of inspection only.

On 17 June 2022, the complainants applied to the Commissioner for external review of the agency’s decision. 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 Commissioner’s office made further inquiries with the agency to assist with her deliberations in this matter. The access applicant was joined as a party to the matter, pursuant to section 69(3) of the FOI Act, and provided submissions to this office.

Section 76(1)(b) of the FOI Act provides that the Commissioner may decide any matter in relation to an access application that could have been decided by an agency. On 13 April 2023, after considering the material then before her, the Commissioner provided the parties with her preliminary view of the matter. It was the Commissioner’s preliminary view that the disputed documents were exempt in their entirety under clause 3(1) of Schedule 1 to the FOI Act (**clause 3(1)**).

The agency and the complainants accepted the Commissioner’s preliminary view. The access applicant did not accept the Commissioner’s preliminary view and made further submissions. After considering all of the material before her, including the access applicant’s further submissions, the Commissioner was not dissuaded from her preliminary view.

The Commissioner’s reasons for decision in this matter were substantially the same as those in *Re ‘P’ and City of Stirling [2022] WAICmr 13*.

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.

The Commissioner was of the view that disclosure of the disputed documents would reveal personal information, as defined in the FOI Act, because they contain information about individuals, including the complainants, whose identities can reasonably be ascertained from the information. Further, having regard to the nature of the access application in this case – which was a request for documents relating to a particular property – the Commissioner considered that it was not possible for any of the disputed documents to be edited in a way so as not to disclose personal information about the owners of the property: see *Re Ninan and Department of Commerce* [2012] WAICmr 31 at [82].

As a result, the Commissioner considered that the disputed documents were *prima facie* exempt in their entirety under clause 3(1).

The relevant limit on the exemption in this matter was clause 3(6) of Schedule 1 to the FOI Act. Clause 3(6) provides that matter is not exempt under clause 3(1) if its disclosure would, on balance, be in the public interest.

The Commissioner was of the view that the access applicant’s interest in the disclosure of the disputed documents is a personal or private interest. The Commissioner observed that the public interest is not primarily concerned with the personal interests of the particular access applicant. Rather, the question is whether disclosure of the disputed documents would be of some benefit to the public generally, and whether that public benefit is sufficient to outweigh any public interest in the maintenance of the privacy of other individuals.

In favour of disclosure, the Commissioner recognised that there are public interests in people being informed of the actions taken, and decisions made, by the agency in relation to issues in dispute and in the accountability of agencies for their actions and decisions in these situations. The Commissioner was satisfied, having examined the material provided by the agency, that these public interests had been satisfied in this case by the information that the agency has already disclosed.

Weighing against disclosure, the Commissioner recognised a strong public interest in maintaining personal privacy and noted that this public interest 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 of the view that the public interests favouring disclosure of the disputed documents were not sufficient to outweigh the strong public interest in the protection of personal privacy of other individuals, including the complainants.

Accordingly, the Commissioner set aside the agency’s decision and, in substitution, found that the disputed documents are exempt in their entirety under clause 3(1) of Schedule 1 to the FOI Act.