

Decision D0062021 – Published in note form only

***Re Hollands and City of Belmont* [2021] WAICmr 6**

Date of Decision: 28 June 2021

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

On 12 August 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 a complaint lodged by a resident regarding her conduct at a particular council meeting.

By notice of decision dated 10 September 2020, the agency identified one document within the scope of her access application (**the disputed document**). The agency gave the complainant access to an edited copy of the disputed document, claiming that the deleted information (**the disputed information**) was outside the scope of her access application. The complainant applied for internal review of the agency’s decision and that decision was confirmed on internal review.

On 19 October 2020 the complainant applied to the Information Commissioner (**the Commissioner**) for external review of the agency’s decision.

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 the agency. After considering the material then before her, on 26 May 2021 the Commissioner provided the parties with her preliminary view, which was that the disputed information is exempt under clause 3(1) of Schedule 1 to the FOI Act (**clause 3(1)**), rather than outside the scope of the complainant’s access application as claimed by the agency.

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, the Commissioner considered that the relevant limits were clauses 3(2) and 3(6).

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.

The Commissioner considered whether disclosure of the disputed information would, on balance, be in the public interest such that the limit on the exemption in clause 3(6) applied. In favour of disclosure, the Commissioner recognised that there are public interests in individuals, who have had allegations made against them, being informed of the nature of the allegations, being given the opportunity to respond to the allegations and being informed of

the action taken by an agency in respect of the allegations and the outcome of that action. The Commissioner also recognised that there is a public interest in a local government agency being accountable for the actions it takes in respect of allegations made to it. The Commissioner considered that these public interests had been satisfied in this case by the information that the agency had provided to the complainant, which included an edited copy of the disputed document and a letter from the agency informing her of the complaint against her.

In addition, 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 this further satisfied the public interest in the agency being accountable for its actions. The Commissioner did not consider that disclosure of the disputed information 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 information 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 a third party to the complainant, and potentially to the world at large, under the FOI Act.

Weighing against disclosure of the disputed information, 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 information 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 information.

Accordingly, the Commissioner varied the agency's decision and found that the disputed information is exempt under clause 3(1) of Schedule 1 to the FOI Act.