

**Decision D0072017 – Published in note form only**

***Re ‘Q’ and Western Australia Police [2017] WAICmr 7***

**Date of Decision: 4 April 2017**

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

In July 2016, a representative on behalf of ‘Q’ (**the complainant**) applied to Western Australia Police (**the agency**) under the *Freedom of Information Act 1992 (WA)* (**the FOI Act**) for access to audio and video tape surveillance recordings (**the disputed documents**). The complainant described the disputed documents as key evidence presented by the prosecution at the complainant’s trial at the end of which he was convicted and sentenced to a term of imprisonment.

The agency refused the complainant access to the disputed documents on the ground that they were exempt under clause 3(1) of Schedule 1 to the FOI Act, because they included personal information, as defined in the FOI Act, about other individuals. The complainant applied for internal review of that decision. On internal review, the agency confirmed its original decision.

On 12 February 2017, the complainant applied to the Information Commissioner (**the Commissioner**) for external review of the agency’s decision. Following receipt of the complaint, the Commissioner obtained the disputed documents from the agency together with the agency’s FOI file maintained in respect of the complainant’s access application.

On 24 February 2017, one of the Commissioner’s officers provided the complainant with the Commissioner’s preliminary view. It was the Commissioner’s preliminary view that the disputed documents were exempt under clause 3(1). The complainant was invited to withdraw his complaint or to provide the Commissioner with further submissions. The complainant did not withdraw his complaint and made further submissions.

The Commissioner considered the further submissions made by the complainant. The Commissioner was satisfied that the disputed documents would, if disclosed, reveal personal information, as defined in the FOI Act, about individuals other than the complainant. Therefore, the Commissioner considered that the disputed documents were on their face exempt under clause 3(1).

The Commissioner then considered the application of the limit on the exemption in clause 3(6), which provides that matter is not exempt under subclause (1) if its disclosure would, on balance, be in the public interest.

The Commissioner recognised a public interest in the accountability of the Government, its agencies and officers for the performance of their functions relating to police investigations and court processes. However, there was nothing to indicate that the Government, its agencies and officers had not fully complied with their obligations in relation to those processes.

The complainant’s representative submitted that the complainant is innocent and that the disputed documents hold vital clues to the complainant’s innocence.

The Commissioner recognised a public interest in prisoners who have identified new material they consider relevant to their convictions being given reasonable assistance to prove their innocence and to pursue legal avenues to regain their freedom. However, in this case, no information of that kind in the disputed documents was identified that would assist in proving the complainant's innocence; how that particular information would provide a reasonable basis for pursuing a legal remedy; or precisely what that legal remedy might be.

Disclosure under the FOI Act is considered potentially to be 'disclosure to the world at large' because no restrictions or conditions can be attached to the disclosure of the documents or their further dissemination by a successful access applicant, other than those that apply under the general law.

In favour of non-disclosure, the Commissioner has consistently recognised that there is a very strong public interest in the maintenance of personal privacy and that the protection of an individual's privacy is a public interest that is recognised in the FOI Act by clause 3. That public interest may only be displaced by some other stronger and more persuasive public interest that requires the disclosure of personal information about one person to another person. It is not the intention of the FOI Act to open the private lives of its citizens to public scrutiny in circumstances where there is no demonstrable public benefit in doing so. The FOI Act is intended to make government, its agencies and officers more accountable, not unnecessarily to intrude upon the privacy of individuals.

In balancing the competing public interests, the Commissioner was not persuaded that the public interest favouring disclosure of the disputed documents to the complainant was sufficient to outweigh the public interest in the protection of personal privacy of other individuals to whom the information relates.

The Commissioner considered whether the agency was obliged, under section 24 of the FOI Act, to give the complainant access to edited copies of the disputed documents. The Commissioner was of the view that personal information about the complainant was inextricably entwined with personal information about other individuals. It was therefore not practicable for the agency to give edited access to the disputed documents.

The Commissioner confirmed the agency's decision to refuse access to the disputed documents on the ground that they are exempt under clause 3 of Schedule 1 to the FOI Act.