

Decision D0072020 – Published in note form only

Re Lee and Department of Justice [2020] WAICmr 7

Date of Decision: 26 June 2020

Freedom of Information Act 1992 (WA): section 24; Schedule 1, clauses 3(1), 3(6) and 5(1)(e)

On 17 December 2018 Mr Jeff Lee (**the complainant**) made two separate applications to the Department of Justice (**the agency**) under the *Freedom of Information Act 1992 (the FOI Act)* for access to documents recording the accessing of the integrated court management system by officers, in relation to two named businesses.

On 28 January 2019, in the absence of decisions from the agency, the complainant sought internal reviews of the agency's deemed decisions to refuse him access to the requested documents. By letter dated 31 January 2019, the agency provided the complainant with an estimate of the charges to deal with each application. The agency offered to waive the charges if the complainant agreed to exclude staff names from the scope of the applications. On 6 February 2019 the complainant paid the required deposits but did not agree to exclude the names of officers from the scope of the applications.

On 20 April 2019, in the absence of any decisions from the agency, the complainant applied to the Information Commissioner (**Commissioner**) for external review of the agency's deemed decisions to refuse him access to the requested documents.

Following receipt of the requests for external review, the agency was required to produce its FOI file maintained in respect of the access applications to the Commissioner.

On 12 July 2019, the agency provided the complainant with decisions on access to the requested documents for each application and gave the complainant access to an edited copy of a document for each matter. The agency claimed that the deleted information under the heading 'userDisplayName' on each document was exempt under clause 5(1)(e) of Schedule 1 to the FOI Act (**clause 5(1)(e)**) and that the deleted information under the heading 'UserName' on each document was exempt under clause 3(1) of Schedule 1 to the FOI Act (**clause 3(1)**). The complainant did not accept the editing of the documents to which he had been given access.

On 9 October 2019, the Commissioner provided the parties with her preliminary view of the matters. As the documents in dispute in both matters contained information of the same type, the preliminary views were similar. It was the Commissioner's preliminary view that the information in the column on the documents headed 'UserName', that comprised the logon identities of officers, was not prescribed details, as described in regulation 9(1) of the *Freedom of Information Regulations 1993*, and that it was not, on balance, in the public interest to disclose that information, pursuant to clause 3(6). Accordingly, she accepted that the information was exempt under clause 3(1). Additionally, it was the Commissioner's preliminary view that the email address of an officer was exempt under clause 3(1).

On the information before her, the Commissioner did not accept that disclosure of the information in the column on the documents headed 'userDisplayName', comprising the

names of officers, could reasonably be expected to endanger the life or physical safety of any person, as described in clause 5(1)(e).

The parties were invited to accept the Commissioner's preliminary views or to provide additional submissions for her consideration. By letter dated 11 November 2019, the agency made further submissions relevant to the matters. The complainant did not respond to the preliminary views.

The agency claimed that officers who worked in the Fines Registry were not officers of the agency, but of a different agency, and therefore their personal information was not prescribed details as described in clause 3(3). Therefore the agency submitted that their personal information was exempt under clause 3(1). The agency provided more detailed information about the measures it has in place to protect the safety of officers working in the Fines Registry, together with information about particular incidents. Such incidents were not related to the complainant.

On 6 December 2019, given the similarity of the two matters, the Commissioner provided the parties with one supplementary preliminary view for both matters. It was the Commissioner's supplementary preliminary view that, in light of the agency's additional submissions, disclosure, in full, of the information in the column headed 'userDisplayName' could reasonably be expected to endanger the physical safety of a person as described in clause 5(1)(e). However, the Commissioner considered it was practicable for the agency to edit the information, pursuant to section 24, and give access to just the first names of the officers in that column. In its decisions the agency had informed the complainant that officers used only their first names in external correspondence, to protect their identities. The Commissioner considered that editing the information as described above, accorded with the agency's own practices for protecting the identity of officers.

The Commissioner considered that the officers working in the Fines Registry were officers of the agency; however, she considered that even if the officers were not officers of the agency but another agency, on balance, the public interest in the accountability of the agency in administering fines outweighed the public interest in protecting the privacy of the individuals undertaking their roles as officers of an agency, pursuant to clause 3(6).

The parties were invited to accept the Commissioner's supplementary preliminary view or to provide additional submissions for her consideration. By letter dated 23 December 2019, the agency provided further submissions. By email dated 15 January 2020 the complainant also advised the Commissioner that he did not accept her view that part of the information under the heading 'userDisplayName' was exempt under clause 5(1)(e). He did not make any new submissions to support his claims.

As there was no additional information in the submissions made by either party to dissuade the Commissioner from her supplementary preliminary view, pursuant to section 69(4) of the FOI Act the Commissioner sought the views of the individuals in relation to the personal information about them she considered was not exempt. Those individuals did not seek to be joined to the matter, or provide submissions that dissuaded the Commissioner from her supplementary preliminary view.

Accordingly, the Commissioner varied the agency's decision. The Commissioner found that the information comprising the last names of officers in the column 'userDisplayName' is

exempt under clause 5(1)(e), but that the first names of officers in that column were not exempt under clause 5(1)(e). The Commissioner also found that the neither the first or second names of officers in the column under the heading 'userDisplayName' are exempt under clause 3(1), but that the logon identities of officers under the heading 'UserName' are exempt under clause 3(1). The Commissioner found that it was practicable to give the complainant access to an edited copy of the documents, deleting the exempt information pursuant to section 24 of the FOI Act.