

Decision D0072021 – Published in note form only

***Re Aldridge and City of Canning* [2021] WAICmr 7**

Date of Decision: 28 July 2021

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

On 9 September 2020, Richard Aldridge (**the complainant**) applied to the City of Canning (**the agency**) under the *Freedom of Information Act 1992 (WA)* (**the FOI Act**) for access to an email sent by a named councillor of the agency to the chief executive officer of the agency, dated 17 June 2020, and further communications arising from that email.

By notice of decision dated 8 October 2020, the agency identified two documents within scope of the complainant’s access application. The agency gave the complainant access to one document and refused access to the second document (**the disputed document**). The agency refused the complainant access to the disputed document on the ground that it was exempt under clauses 5(1)(b), 5(1)(e) and 8(1) of Schedule 1 to the FOI Act.

On 15 October 2020, the complainant applied to the Information Commissioner (**the Commissioner**) for external review of the agency’s decision. On 21 June 2021, after considering the material then before her, the Commissioner provided the parties with her preliminary view.

Section 76(1)(b) provides that the Commissioner may decide any matter in relation to the access application that could have been decided by the agency. As a result, although the agency had claimed that the disputed document was exempt under clauses 5(1)(b), 5(1)(e) and 8(1) of Schedule 1 to the FOI Act, the Commissioner was of the view that the relevant consideration was whether, on the information before her, the disputed information was exempt under clause 3(1) of Schedule 1 to the FOI Act (**clause 3(1)**). It was the Commissioner’s preliminary view that the disputed document was 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). The Commissioner noted that the definition of personal information contained in the Glossary to the FOI Act, relevantly includes:

... information or an opinion, whether true or not, and whether recorded in a material form or not, about an individual, whether living or dead -

(a) whose identity is apparent or can reasonably be ascertained from the information or opinion; ...

The Commissioner found that the disputed document contained not only information such as the names of individuals, but also views and opinions expressed by individuals. The

Commissioner therefore considered that the disputed document comprised information that is prima facie exempt under clause 3(1).

The complainant's further submissions referred to information he had about the officer of the agency which he considered relevant to the disputed document. The Commissioner confirmed her agreement with Anderson J in *Police Force of Western Australia v Kelly and Anor* (1996) 17 WAR 9, at page 14, that the right of access to documents of an agency under the FOI Act, should not depend on 'how much the applicant already knows or claims to know of the matter.'

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). Therefore, the Commissioner relevantly considered whether the limits on the exemption set out in clauses 3(3) and 3(6) applied. Clause 3(3) provides that 'matter is not exempt ... merely because its disclosure would reveal... prescribed details'. Prescribed details are relevantly defined in regulation 9(e) of the *Freedom of Information Regulations 1993* and include the name of an officer of an agency and 'anything done by the person in the course of performing ... the person's functions...'

The Commissioner was of the view that the disputed document contained a small amount of personal information that constituted prescribed details. However, the Commissioner was of the view that most of the personal information in the disputed document was not relevant to the position or functions and duties of officers of the agency, and was therefore not prescribed details. Consequently, the Commissioner was of the view that the limit in clause 3(3) did not apply to the disputed document.

The Commissioner considered the limit on the exemption in clause 3(6). Clause 3(6) provides that matter will not be exempt under clause 3(1) if its disclosure would, on balance, be in the public interest. The Commissioner considered whether the disclosure of the disputed information would be of some benefit to the public generally, and if so, whether that public benefit was sufficient to outweigh the public interest in the maintenance of another person's privacy. In balancing the competing public interests, the Commissioner was of the view that the complainant had not shown that, on balance, the disclosure of the disputed information would serve a public interest which outweighed the need to protect an individual's privacy. As a result, the Commissioner considered that the limit in clause 3(6) did not apply to the disputed document.

The Commissioner considered whether the agency was obliged by section 24 of the FOI Act to give edited access to the disputed document. The Commissioner cited with approval the statement of Scott J in *Police Force of Western Australia v Winterton* (Unreported, Supreme Court of WA, Library No 970646, 27 November 1997) at 16 that section 24 of the FOI Act 'should not be used to provide access to documents which have been so substantially edited as to make them either misleading or unintelligible.' The Commissioner was of the view that in this matter the agency was not required to provide edited access to the disputed document as the extensive editing required to delete all of the exempt personal information would render the disputed document unintelligible.

The Commissioner varied the agency's decision and found that the disputed document is exempt under clause 3(1).