

**Decision D0082024 – Published in note form only**

***Re ‘G’ and City of Wanneroo [2024] WAICmr 8***

**Date of Decision: 25 June 2024**

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

On 1 August 2023, ‘G’ (**the complainant**) applied to the City of Wanneroo (**the agency**) under the *Freedom of Information Act 1992 (WA)* (**the FOI Act**) for access to an investigation report prepared by an external investigator relating to allegations made against an officer of the agency by the complainant and other individuals (**the Report**). To protect the privacy of the individuals in this matter, the Information Commissioner (**the Commissioner**) decided not to identify the complainant by name.

By notice of decision dated 29 August 2023, the agency gave the complainant access to an edited copy of the Report, claiming that the matter that had been deleted (**the disputed information**) was exempt under clause 3(1) of Schedule 1 to the FOI Act (**clause 3(1)**).

The complainant applied to the agency for internal review of its decision. By internal review decision dated 18 September 2023, the agency varied its initial decision claiming that the disputed information was exempt under clause 3(1) and clause 8(2) of Schedule 1 to the FOI Act (**clause 8(2)**).

On 21 October 2023, the complainant applied to the Commissioner for external review of the agency’s decision. During the course of the external review, the complainant provided the Commissioner with evidence that a number of third parties consented to the disclosure of their personal information in the Report to the complainant and claimed that the limit on the exemption in clause 3(5) applied to that information.

On 21 March 2024, one of the Commissioner’s officers provided the parties with their assessment. It was the officer’s assessment that the Commissioner was likely to be of the view, based on the information then before this office, that the disputed information was exempt under clause 3(1). The complainant did not accept the officer’s assessment and made further submissions.

The complainant claimed that they had been able to ascertain, from the electronic version of the edited copy of the Report given to them by the agency, that the agency initially proposed to delete far less information than was ultimately deleted. The complainant alleged that this suggested that the agency had attempted to ‘maliciously hinder’ their access application.

The Commissioner observed that, in this matter, the complainant had applied to access a document that, by its nature, contains a substantial amount of personal information, including personal information about individuals that is, in many instances, intertwined with personal information about other individuals. Having regard to the issues that decision-makers are required to carefully consider when assessing documents of this kind – including to what extent is information in the document ‘personal information’ as defined in the FOI Act, and to what extent is personal information about the applicant (if any) intertwined with personal information about other individuals such that one cannot be disclosed without the other – the Commissioner considered that it is not surprising that minds differ, or that an officer may

change their mind, as to what extent information in a document of the disputed kind is exempt. Accordingly, the Commissioner did not accept the complainant's allegation.

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).

Based on her examination of the disputed information, the Commissioner was satisfied that the disputed information contains personal information about individuals which is, on its face, exempt under clause 3(1).

Clause 3(5) provides that matter is not exempt under clause 3(1) if the applicant provides evidence establishing that the individual concerned consents to the disclosure of the matter to the applicant. The Commissioner observed that, although certain individuals consented to the disclosure of their personal information to the complainant, that personal information was inextricably intertwined with personal information about other individuals who had not provided consent. As such, the Commissioner considered that the limit on the exemption in clause 3(5) did not apply.

Clause 3(6) provides that matter is not exempt under clause 3(1) if its disclosure would, on balance, be in the public interest. Under section 102(3), the onus is on the complainant, as the access applicant, to establish that disclosure would, on balance, be in the public interest.

Determining whether or not disclosure would, on balance, be in the public interest involves identifying the public interests for and against disclosure, weighing them against each other and deciding where the balance lies.

The Commissioner considered that the complainant's interest in the disclosure of the disputed information 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 information 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.

It is well established that disclosure of information under the FOI Act is disclosure to the world at large as no restrictions or conditions can be placed upon the release of documents under the FOI Act: 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 at large, rather than only to the particular access applicant.

In favour of disclosure, the Commissioner recognised that there is a public interest in people being able to access personal information about them that is held by a government agency, as recognised in section 21 of the FOI Act. The Commissioner also recognised a public interest in the accountability of agencies for the manner in which they deal with workplace complaints. The Commissioner considered that this public interest was satisfied by the information the agency had given to the complainant, including the edited copy of the Report provided, and that disclosure of the disputed information would not assist in making the agency more accountable in this matter.

Weighing against disclosure, the Commissioner recognised that the public interest in maintaining personal privacy is a strong one and may only be displaced by some other, strong or compelling public interest or interests that require the disclosure of personal information about persons 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 the personal privacy of other individuals. As a result, the Commissioner considered that the limit on the exemption in clause 3(6) did not apply.

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