

Decision D0092018 – Published in note form only

***Re McNally and Town of Victoria Park* [2018] WAICmr 9**

Date of Decision: 7 September 2018

Freedom of Information Act 1992 (WA): Sections 20 and 24; Schedule 1, clauses 3(1) and 3(6)

On 15 August 2017, Kathleen McNally (**the complainant**) applied to the Town of Victoria Park (**the agency**) under the *Freedom of Information Act 1992 (WA)* (**the FOI Act**) for access to a copy of the Visitor Logs (**the disputed document**) maintained at the agency for a specified period.

The agency decided to refuse access to the disputed document under clause 3(1) of Schedule 1 to the FOI Act (**clause 3(1)**) and to refuse to deal with part of the complainant's access application under section 20 of the FOI Act.

In November 2017, the complainant applied to the Office of the Information Commissioner for external review of the agency's decision. Following receipt of the complaint, the agency provided a sample of the disputed document to the former Acting Information Commissioner (**former A/Commissioner**), together with the agency's FOI file maintained in respect of the complainant's access application.

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 exemption, relevant to this matter, namely clause 3(6) of Schedule 1 to the FOI Act (**clause 3(6)**). Clause 3(6) states that matter is not exempt matter under clause 3(1) if its disclosure would, on balance, be in the public interest.

The disputed document consists of a number of columns with different headings and information in each of those columns. The information in the columns includes the name of the visitor, the name of the person being visited and the signature of the visitor.

On 20 June 2018, after considering the disputed document and the parties' submissions, the former A/Commissioner provided the parties with her preliminary view of the matter. It was her preliminary view that the disputed document would, if disclosed, reveal personal information about individuals other than the complainant. She further considered that the public interest in favour of disclosure of the personal information in the disputed document was not sufficient to outweigh the public interest in protecting the privacy of the individuals. Therefore, the former A/Commissioner considered that the disputed document was exempt under clause 3(1).

The complainant was invited to accept the preliminary view or to provide the former A/Commissioner with further submissions in relation to her complaint.

As the former A/Commissioner was of the view that the disputed document was exempt under clause 3(1), it was not necessary for her to consider the decision of the agency to refuse to deal with part of the access application under section 20 of the FOI Act.

The complainant did not accept the former A/Commissioner's preliminary view and made further submissions. The complainant submitted that any exempt information could be deleted in accordance with section 24 of the FOI Act and access to an edited copy of the

disputed document could be provided to the complainant. The complainant did not make any submissions concerning the public interest under clause 3(6). The complainant also submitted that the former A/Commissioner was required to consider the decision of the agency under section 20 of the FOI Act, notwithstanding the former A/Commissioner's view that the disputed document was exempt under clause 3(1).

The Acting Information Commissioner (**A/Commissioner**) considered that it was not 'practicable' for the agency to edit the disputed document pursuant to section 24 of the FOI Act, to delete the personal information about other individuals. Specifically, the A/Commissioner considered that deleting all of the personal information from the disputed document would render the document meaningless or unintelligible see: *Police Force of Western Australia v Winterton* (1997) WASC 504 at page 16.

Given her view that the disputed document is exempt under clause 3(1), it was not necessary for the former A/Commissioner to deal with the agency's decision under section 20 of the FOI Act.

Having considered the complainant's further submissions and reviewed all of the material before her, the A/Commissioner was not dissuaded from the preliminary view. The A/Commissioner confirmed the agency's decision to refuse access to the disputed document under clause 3(1) of Schedule 1 to the FOI Act.