

Decision D0102024 – Published in note form only

Re ‘K’ and Legal Practice Board [2024] WAICmr 10

Date of Decision: 30 July 2024

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

On 15 January 2024, ‘K’ (**the complainant**) applied to the Legal Practice Board (**the agency**) under the *Freedom of Information Act 1992 (WA)* (**the FOI Act**) for access to all documents ‘relating to, and following’ a particular letter from the complainant to the agency ‘referring concerns about the conduct’ of a named legal practitioner (**the third party**). The Information Commissioner (**the Commissioner**) decided not to identify the complainant by name to protect the privacy of the third party.

The agency identified 114 documents within the scope of the complainant’s access application. By notice of decision dated 29 February 2024, the agency gave access in full to 71 documents and refused access in full to 43 documents on the grounds they were exempt under either or both clauses 3(1) and 6(1) of Schedule 1 to the FOI Act. The complainant sought internal review of the agency’s decision. By internal review decision dated 22 March 2024, the agency varied the initial decision by deciding to give full access to one document and to give edited access to two documents. The agency confirmed the initial decision to refuse access in full to 40 documents (**the disputed documents**).

On 27 March 2024, the complainant applied to the Commissioner for external review of the agency’s decision to refuse access to the disputed documents. The Commissioner obtained the disputed documents from the agency, together with the FOI file maintained by the agency in respect of the access application.

On 2 May 2024, one of the Commissioner’s officers provided the parties with their assessment of the matter (**assessment**). It was the officer’s assessment that the Commissioner was likely to be of the view, based on the information before her, that the disputed documents are exempt under clause 3(1) of Schedule 1 to the FOI Act (**clause 3(1)**). In light of the officer’s assessment, he noted that it was not necessary for the Commissioner to consider the agency’s clause 6(1) exemption claims.

The complainant did not accept the officer’s assessment and provided further submissions. After considering all of the material before her, including the disputed documents, the officer’s assessment and the complainant’s further submissions, the Commissioner agreed that the disputed documents were exempt under clause 3(1).

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) to 3(6).

The Commissioner was satisfied that disclosure of the disputed documents would reveal personal information about individuals and were therefore, on their face, exempt under clause 3(1).

The Commissioner considered the only relevant limit on the exemption that may apply to the disputed documents was clause 3(6). 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 was on the complainant, as the access applicant, to establish that disclosure of the disputed documents would, on balance, be in the public interest.

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

In favour of disclosure, the Commissioner recognised the public interest in the accountability of agencies for the manner in which they discharge their functions and obligations. The Commissioner also recognised public interests in the actions and decisions of agencies being as transparent as possible and in the public having confidence that agencies properly perform their functions including, in this case, the regulatory functions performed by the agency.

The Commissioner noted the existence of various accountability mechanisms including the designated complaints branch of the agency which deals with complaints about legal practitioners; the right of a person, who has made a complaint to the agency, to request internal review of the agency's decision to close their complaint; the ability to make complaints to the State Ombudsman about the decision-making and administrative practices of the agency; and the public availability of both the 'Roll' of legal practitioners and the 'Register of Disciplinary Action' which records the disciplinary action taken against legal practitioners. In light of the accountability mechanisms available, the Commissioner was not persuaded that the above public interests in favour of disclosure required the disclosure of the disputed documents to the complainant or, potentially, to the world at large.

Weighing against disclosure, the Commissioner recognised a strong public interest in maintaining personal privacy and noted that this public interest may only be displaced by some other strong or compelling public interest or interests that require the disclosure of personal information about one person to another person.

The Commissioner considered that, in cases such as this, where the agency has considered the concerns raised about the conduct of a practitioner; assessed what regulatory action is appropriate; and concluded that no further action is proposed, the public interest in protecting the privacy of the practitioner is strong.

In balancing the competing public interests, the Commissioner was of the view that the public interests favouring disclosure of the disputed documents were not sufficient to outweigh the strong public interest in the protection of the personal privacy of other individuals. Therefore, the Commissioner was not persuaded that disclosure of the disputed documents would, on balance, be in the public interest and found that the limit on the exemption in clause 3(6) did not apply.

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