

Decision D0112015 – Published in note form only

Re Lyon and Department of Agriculture and Food [2015] WAICmr 11

Date of Decision: 9 June 2015

Freedom of Information Act 1992: section 26; Schedule 1, clause 3

On 15 May 2013, Ms Tania Lyon (**the complainant**) applied to the Department of Agriculture and Food (**the agency**) under the *Freedom of Information Act 1992* (**the FOI Act**) for access to documents relating to her appointment, employment and conduct as a General Inspector under the *Animal Welfare Act 2002*.

The agency identified 32 documents as falling within the scope of the complainant's access application. It decided to grant the complainant access to edited copies of 12 documents claiming certain information contained in those documents is exempt under clause 3(1) of schedule 1 to the FOI Act. In addition, the agency refused the complainant access in full to 20 documents under the same clause.

The complainant applied for internal review of the agency's decision and on internal review the agency confirmed its initial decision.

On 26 September 2013 the complainant applied to the Information Commissioner (**the Commissioner**) for external review of the agency's decision. The complainant disagreed with the agency's decision in relation to whether matter is exempt under clause 3(1). The complainant also claimed that further documents should exist and be held by the agency.

Following receipt of the complaint, the Commissioner obtained the requested documents from the agency, together with the FOI file maintained by the agency in respect of the complainant's access application.

On 11 May 2015, after considering the information before him, the Commissioner provided the parties with a letter setting out his preliminary view of the complaint. It was the Commissioner's preliminary view that Documents 13-32 inclusive and the disputed matter in Documents 9, 10 and 11 are prima facie exempt under clause 3(1). In weighing the public interests pursuant to clause 3(6), the Commissioner found that, in this case, the public interest factors in favour of disclosure of the remaining documents and deleted matter were not sufficient to outweigh the strong public interest in the protection of personal privacy.

The Commissioner's preliminary view was that the agency had taken all reasonable steps to find further documents and they either cannot be found or do not exist. Accordingly the agency was justified in effectively refusing access to further documents pursuant to section 26 of the FOI Act.

The agency accepted the Commissioner's preliminary view. The complainant was invited to provide the Commissioner with further submissions or to withdraw his complaint.

By letter dated 2 June 2015 the complainant made further submissions to the Commissioner for his consideration. The submissions largely reiterated the submissions made to the Commissioner by the complainant in her application for external review.

The Commissioner considered carefully the complainant's further submissions and reviewed all of the information before him but was not dissuaded from his preliminary view.

The Commissioner confirmed the agency's decision to refuse access to the documents and the matter remaining in dispute under clause 3(1) and to refuse access to further documents under section 26 of the FOI Act.