

**Decision D0112018 – Published in note form only**

***Re Crawford and City of Melville* [2018] WAICmr 11**

**Date of Decision: 26 October 2018**

***Freedom of Information Act 1992 (WA): Sections 23(2) and 24; Schedule 1, clauses 3(1) and 3(6)***

In December 2017, Gary Crawford (**the complainant**) applied to the City of Melville (**the agency**) under the *Freedom of Information Act 1992 (WA)* (**the FOI Act**) for access to all documents including notes of telephone conversations and meetings between a named third party - a private individual - and officers, elected members or the Mayor of the agency from 1 April 2016.

The agency refused the complainant access to the requested documents under section 23(2) of the FOI Act, on the ground that it is apparent from the nature of the documents as described in his access application that they would all be exempt under clause 3(1) and clauses 5(1)(e) and (f) of Schedule 1 to the FOI Act.

In March 2018, the complainant applied to the Office of the Information Commissioner for external review of the agency's decision.

On 1 October 2018, after considering the material then before her, the Acting Information Commissioner (**the A/Commissioner**) provided the parties with her preliminary view of the matter. It was the A/Commissioner's preliminary view that the agency's decision to refuse the complainant access to the requested documents under section 23(2) of the FOI Act was justified.

Section 23(2) of the FOI Act provides that an agency may refuse access to the requested documents without having identified any or all of them and without specifying the reason why matter in any particular document is claimed to be exempt matter if (a) it is apparent, from the nature of the documents as described in the access application, that all of the documents are exempt documents; and (b) there is no obligation under section 24 to give access to an edited copy of any of the documents.

The A/Commissioner was of the view that the requirement in paragraph (a) of section 23(2) that 'all of the documents are exempt documents' indicates that it is not sufficient that all of the documents would be prima facie exempt. In her view, the wording of section 23(2)(a) is intended to ensure that it is apparent that all of the documents of the nature described in the access application are unconditionally exempt. This means that where an exemption clause has limits on the exemption, for an agency to find that all documents would be 'exempt documents' under section 23(2), requires a consideration of whether any relevant limits on an exemption apply.

The A/Commissioner observed that, by his access application in this matter, the complainant sought access to specific kinds of documents relating to a particular named individual and that the application was, in effect, a request for access to documents containing personal information about that named individual. The A/Commissioner was satisfied that, from the nature of the requested documents as described in the access application, any such documents would be prima facie exempt under clause 3(1) of Schedule 1 to the FOI Act because disclosure would reveal personal information about individuals other than the complainant.

Noting that the documents must be unconditionally exempt for section 23(2)(a) to apply, the A/Commissioner considered whether any of the limits on the exemption in clauses 3(2)-3(6) would apply. In the circumstances of this matter, the A/Commissioner considered that the only limit that could apply is clause 3(6); that is, whether disclosure would, on balance, be in the public interest.

In favour of disclosure, the A/Commissioner recognised a public interest in the accountability of local government agencies and their officers for the performance of their functions and observed that the actions and decisions of local government officers, including elected representatives, should be as transparent as possible. However, the A/Commissioner was of the view that these public interest factors were largely satisfied in this case by the existing means of bringing officers of the agency to account – including the current inquiry being conducted by the Department of Local Government, Sport and Cultural Industries into the operations and affairs of the agency – without the need to disclose personal information about third parties to the complainant, and potentially to the world at large, under the FOI Act. The A/Commissioner also recognised that there may be a public interest in disclosing personal information about third parties if it will contribute to the administration of justice but did not consider that this public interest factor required the disclosure of personal information about third parties in this case.

In weighing the public interest factors for and against disclosure, the A/Commissioner was not persuaded that the public interests favouring disclosure of the requested documents, should they exist, was sufficient to outweigh the strong public interest in the protection of the personal privacy of other individuals.

In considering the next question of whether the agency was obliged under section 24 of the FOI Act to give access to an edited copy of any of the requested documents, the A/Commissioner noted that when applicants apply for information about named individuals – as the complainant had done in this case – it is generally not possible for any documents to be edited in a way so as not to disclose personal information about those individuals: see *Re Ninan and Department of Commerce* [2012] WAICmr 31 at [82]. The A/Commissioner considered that it would not be practicable to edit any documents of the kind described in the complainant's access application to delete exempt matter and that there was no obligation on the agency under section 24 to give access to an edited copy of any of the requested documents.

The complainant was invited to accept the preliminary view or to provide the A/Commissioner with further submissions. The complainant did not accept the A/Commissioner's preliminary view and made further submissions. However, those submissions were not relevant to the issue for the A/Commissioner's determination in this matter.

Having considered the complainant's further submissions and reviewed all of the material before her, the A/Commissioner was not dissuaded from her preliminary view. The A/Commissioner found that it is apparent from the nature of the documents as described in the complainant's access application that, if any such documents exist, they would be exempt under clause 3(1) of Schedule 1 to the FOI Act and that there is no obligation on the agency under section 24 of the FOI Act to give access to an edited copy of any of those documents. In light of the A/Commissioner's finding, it was unnecessary for her to consider whether the requested documents would all be exempt under clauses 5(1)(e) or (f) of Schedule 1 to the FOI Act, as the agency claimed.

The A/Commissioner confirmed the agency's decision to refuse access to the requested documents under section 23(2) of the FOI Act.