

Decision D0112020 – Published in note form only

Re ‘Y’ and Department of Education [2020] WAICmr 11

Date of Decision: 23 November 2020

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

On 29 August 2018, ‘Y’ (**the complainant**) applied to the Department of Education (**the agency**) under the *Freedom of Information Act 1992 (WA)* (**the FOI Act**) for access to various documents relating to the disability funding allocation for the complainant’s child over a specific period of time. To protect the privacy of the complainant’s child, the Information Commissioner (**the Commissioner**) decided not to identify the complainant by name.

The agency initially refused to deal with the complainant’s access application under section 20 of the FOI Act on the ground that the work involved in dealing with it would divert a substantial and unreasonable portion of the agency’s resources away from its other operations. The complainant applied to the Commissioner for external review of the agency’s decision. That external review was resolved in January 2019 when the parties agreed that the agency would deal with the complainant’s access application in a reduced form (**the reduced scope**).

By decision dated 20 February 2019, the agency identified 62 documents within the reduced scope. The agency gave the complainant access to 20 documents in full and access to edited copies of 42 documents, claiming that the deleted 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. As the agency did not complete the internal review process within the 15 days permitted under the FOI Act, the agency was taken to have decided to confirm the initial decision pursuant to section 43(2) of the FOI Act. On 19 March 2019, the complainant applied to the Commissioner for external review of the agency’s decision.

During the external review, the agency identified additional documents and gave the complainant access to them in full or in part, claiming that the deleted information was exempt under clause 3(1). Following discussions with the Commissioner’s office, the agency reconsidered some of its editing which resulted in the agency giving the complainant access to additional information in certain documents. With two exceptions, the complainant accepted the view of one of the Commissioner’s officers that the remaining editing of the documents released by the agency was justified. The two exceptions were the names of officers of the agency (**the third parties**) deleted from two documents that contained salary details of those officers (**the disputed information**). The complainant also claimed that certain specific documents had not been included in the documents released by the agency (**the further documents**), which amounted to a claim that the agency had, in effect, refused the complainant access to documents under section 26 of the FOI Act.

On 17 September 2020, after considering the material then before her, the Commissioner provided the parties with a letter setting out her preliminary view. It was the Commissioner’s preliminary view that the disputed information is exempt under clause 3(1) and that the agency’s decision to refuse the complainant access to the further documents under section 26 of the FOI Act is justified. The complainant did not accept the Commissioner’s preliminary view but did not make further submissions relevant to the matters for the Commissioner’s determination. After considering all of the information before her, the Commissioner was not dissuaded from her preliminary view.

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). The Commissioner was satisfied that disclosure of the disputed information, being the names of the third parties, would reveal personal information about those third parties which was, on its face, exempt under clause 3(1).

Having regard to the context of the disputed information and the details in the disputed documents already disclosed, the Commissioner considered that the disclosure of the disputed information about the third parties would reveal more than prescribed details: see also *Re Seven Network (Operations) Limited and Western Australia Police* [2015] WAICmr 14 at [36]. As a result, the Commissioner was of the view that the limit on the exemption in clause 3(3) did not apply to the disputed information.

The Commissioner considered whether disclosure of the disputed information would, on balance, be in the public interest such that the limit on exemption in clause 3(6) applied. In favour of disclosure, the Commissioner recognised a public interest in the accountability of State and local government agencies for the expenditure of public funds, including as it relates to the education of children with a disability. In this case, the salary figures and the corresponding position level and title of the officer to whom the salary was paid had been disclosed to the complainant; the only information that was not disclosed was the name of the officers. The Commissioner was of the view that the public interest in the accountability of the agency for the expenditure of public funds in the form of salaries in this case was satisfied by the information disclosed to the complainant and did not require the disclosure of the names of the individual officers.

Weighing against disclosure of the disputed information, the Commissioner recognised that there is a strong public interest in maintaining personal privacy, which may only be displaced by some other, strong or compelling public interest or interests that requires the disclosure of personal information about one person to another person.

The Commissioner noted that in *Re National Tertiary Education Industry Union (Murdoch Branch) and Murdoch University and Others* [2001] WAICmr 1, the base salary amounts and the nature of any benefits and bonuses payable were found not to be exempt under clause 3(1). However, as that case involved senior officers and circumstances where that salary information was not otherwise publicly available, the Commissioner considered that case could be distinguished from this one.

In balancing the competing public interests, the Commissioner was of the view that the public interests favouring disclosure of the disputed information were not sufficient to outweigh the public interest in the protection of personal privacy of the third parties.

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.

In relation to the complainant’s claims about the existence of the further documents, the Commissioner was satisfied, having considered all of the searches undertaken by the agency, that the agency had taken all reasonable steps to locate those documents and that those documents either do not exist or cannot be found. Therefore, the Commissioner found that the agency’s decision to refuse the complainant access to the further documents under section 26 of the FOI Act was justified and confirmed the agency’s decision.