

Decision D0122010 - Published in note form only

Re Courtney and Western Australia Police [2010] WAICmr 12

Date of Decision: 31 March 2010

Freedom of Information Act 1992: section 102(3); Schedule 1 clauses 3(1) and 5.

The complainant applied to Western Australia Police ('the agency') under the *Freedom of Information Act 1992* ('the FOI Act') for access to a copy of a letter sent to the agency by a named third party. The agency refused access to the requested document on the basis that it was exempt under clauses 3(1), 5(1)(a), 5(1)(b) and 5(1)(c) of Schedule 1 to the FOI Act. The complainant applied to the Information Commissioner for external review of that decision.

Following examination of the documents produced by the agency and after consideration of the complainant's submissions, the Commissioner advised the parties of his preliminary view of the matter. It was the Commissioner's preliminary view that the requested document was exempt under clause 3(1) as the agency claimed because, although it contained some personal information, as that term is defined in the FOI Act, about the complainant, it also contained personal information about various third parties.

The Commissioner considered that the personal information about the complainant was so inextricably intertwined with the personal information about the third parties that it was not possible to give the complainant access to the personal information about him, without also disclosing the personal information about the third parties. Therefore, the Commissioner's preliminary view was that the requested document was exempt under clause 3(1) of Schedule 1 to the FOI Act

In light of that view, the complainant was invited to reconsider whether he wished to pursue his complaint or to provide further submissions, in respect of the limit on the exemption in clause 3(6), which concerns the public interest.

The complainant did not withdraw his complaint and provided the Commissioner with further submissions in respect of the background to the application, including ongoing legal proceedings involving the third party. However, the complainant provided no new submissions on the public interest or any other matter for the Commissioner's determination.

Under section 102(3) of the FOI Act, the complainant bears the onus of establishing that disclosure of the requested document would, on balance, be in the public interest. Having considered the public interest factors weighing for and against disclosure in this case, there was insufficient information before the Commissioner to establish that there is a compelling public interest that requires the disclosure of personal information about third parties to the complainant pursuant to clause 3(6), in this instance.

Therefore, the Commissioner confirmed the agency's decision to refuse access to the requested document under clause 3(1) of Schedule 1 to the FOI Act. Having found the requested document exempt under clause 3(1), it was unnecessary for the Commissioner to determine whether the document was also exempt under clause 5 as initially claimed by the agency.