

**Decision D0122022 – Published in note form only**

***Re Cantrell and City of Swan [2022] WAICmr 12***

**Date of Decision: 4 October 2022**

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

On 12 October 2021, Mark Cantrell (**the complainant**) applied to the City of Swan (**the agency**) under the *Freedom of Information Act 1992 (WA)* (**the FOI Act**) for access to notes made by an officer of the agency relating to certain site visits to the complainant's property in a specified period.

By notice of decision dated 7 December 2021, the agency informed the complainant that it had identified one document coming within the scope of the access application which it described as a 'Work Request' (**the Work Request**). The agency decided to give access to an edited copy of that document, deleting information it claimed was exempt under clause 3(1) of Schedule 1 to the FOI Act and deleting parts of the document that it claimed were outside the scope of the complainant's access application (**the Outside Ambit information**).

On 12 December 2021, the complainant applied to the agency for an internal review of its decision and claimed that an additional document within the scope of the access application existed (**the Phone Record**).

By internal review decision dated 24 December 2021, the agency confirmed its initial decision and decided to refuse access to the Phone Record on the basis that it is exempt under clause 3(1).

On 27 December 2021, the complainant applied to the Information Commissioner (**the Commissioner**) for external review of the agency's decision to refuse access to the Phone Record and to give access to an edited copy of the Work Request with the Outside Ambit information deleted.

Section 76(1)(b) of the FOI Act provides that the Commissioner may decide any matter in relation to an access application that could have been decided by the agency. On 1 August 2022, after considering the material before her, the Commissioner provided the parties with her preliminary view that the Phone Record was outside the scope of the complainant's access application, rather than exempt under clause 3(1) as claimed by the agency. The complainant did not accept the Commissioner's preliminary view and made further submissions.

On 5 September 2022, one of the Commissioner's officers advised the complainant that, in her view, the Outside Ambit information in the Work Request was outside the scope of his access application, as claimed by the agency, and that the agency was entitled to delete that information on that basis. The complainant was invited to provide submissions in relation to this point before the Commissioner finalised the matter but did not do so.

After considering all of the material before her, including the complainant's further submissions, the Commissioner was not dissuaded from her preliminary view in respect of

the Phone Record and considered that the Outside Ambit information in the Work Request was outside the scope of the complainant's access application.

The Commissioner observed that the terms in which an access application is framed set the parameters for an agency's response under Part 2 of the FOI Act, and in particular, set the direction of the agency's searches to locate all documents which may fall within the scope of the access application. To that end, section 12 of the FOI Act not only requires that an access application be in writing, but that it must also provide such information to enable the requested documents to be identified.

The Commissioner had regard to the terms of the complainant's access application and examined the Phone Record and the Outside Ambit information in the Work Request. The Commissioner considered that none of that matter consisted of notes relating to site visits to the complainant's property in the specified period, as requested in the complainant's access application. As a result, the Commissioner considered that all of that matter was outside the scope of the complainant's access application.

The Commissioner found that the whole of the Phone Record, and the Outside Ambit information in the Work Request, were outside the scope of the complainant's access application. Accordingly, the Commissioner found that the agency's decision to refuse access to that matter was justified on that basis and varied the agency's decision.